

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TV-220303
PMC MOVING, LLC,	ORDER 01
in the amount of \$41,400	GRANTING MITIGATION TO \$20,850; IMPOSING AND SUSPENDING PENALTIES SUBJECT TO CONDITIONS

BACKGROUND

1 On May 9, 2022, the Washington Utilities and Transportation Commission (Commission) assessed a \$41,400 penalty (Penalty Assessment) against PMC Moving, LLC, (PMC or Company) for 421 violations of Washington Administrative Code (WAC) 480-15-555; WAC 480-15-560, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Parts 393 and 396; and WAC 480-15-570, which adopts by reference 49 C.F.R. Part 391.¹ The Penalty Assessment includes:

- a \$2,100 penalty for 21 violations of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background check for every person the carrier intends to hire;
- a \$39,000 penalty for 390 violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified;
- a \$100 penalty for five violations of 49 C.F.R. §391.51(a);
- a \$100 penalty for one violation of 49 C.F.R. § 393.48(a); and
- a \$100 penalty for four violations of 49 C.F.R. §396.3(b).

2 On May 13, 2022, the Company submitted a response to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty. The Company further requested that the Commission hold a hearing to determine the appropriate penalty amount. In its response, the Company admitted to each of the violations, but stated that it had taken action to correct the violations and prevent recurrence.

¹ WAC 480-30-221 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

3 On May 19, 2022, Staff filed a response recommending the Commission grant the request for mitigation, in part. Staff recommends the penalties be reduced to a total of \$21,000. Staff further recommends that \$10,000 of the reduced penalty be suspended for a period of two years, and then waived, subject to the following conditions: (1) the Company may not incur any repeat violations of critical regulations, and (2) the Company must pay the \$11,000 portion of the penalty that is not suspended. Staff proposes to conduct a follow-up investigation in two years to review the Company's safety management practices.

4 Staff also recommends that the Commission deny PMC's request for hearing. Staff states that PMC does not contest that the violations occurred and does not provide any further evidence that is not already available in the record.

DISCUSSION AND DECISION

5 Washington law requires household goods companies to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.³ Violations defined by federal law as "critical," which are indicative of a breakdown in a carrier's management controls, meet this standard.⁴

6 As a preliminary matter, we deny the Company's request for hearing. The Commission's penalty assessment advised the Company that a request for hearing will only be granted if material issues of law or fact are in dispute. In its response, the Company admits the violations. The facts, therefore, are undisputed, the only issue is the degree of leniency the Commission will afford in light of the actions PMC took in response to the violations. Accordingly, the Company's request for a hearing is denied.

7 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that

² See RCW 81.04.405.

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

⁴ 49 C.F.R. § 385, Appendix B.

convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.⁵ We address each violation category below.

- 8 **WAC 480-15-555.** The Penalty Assessment includes a \$2,100 penalty for 21 violations of WAC 480-15-555 because the Company failed to conduct background checks for five employees prior to hiring them. In its response, the Company admits the violations and states that it provides evidence that the violations have been corrected. The Company further states that it has signed up with a screening service to prevent reoccurrence of this violation.
- 9 Staff recommends that the Commission reduce the total penalty amount, but does not address this portion specifically. Because the Company has taken action to correct the violations and ensure future compliance, we reduce the penalty for this violation category by half and assess a total penalty of \$1,050 for 21 violations of WAC 480-15-555.
- 10 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$39,000 penalty for 390 violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified. In its response, the Company stated that it promptly obtained medical certificates for its drivers and has implemented procedures to prevent recurrence.
- 11 Staff recommends that the Commission reduce the total penalty amount, but does not address this portion specifically. Because the Company has taken action to ensure future compliance, we reduce the penalty for this violation category by half and assess a total penalty of \$19,500 for 390 violations of 49 C.F.R. Part 391.45(a).
- 12 **49 C.F.R. § 391.51(a).** The Penalty Assessment includes a \$100 penalty for five violations of 49 C.F.R. §391.51(a) for failing to maintain driver qualification files for three of its drivers. In its response, the Company stated that it has corrected the violation and started files for all drivers.
- 13 Staff recommends that the Commission reduce the total penalty amount, but does not address this portion specifically. Although the Company promptly corrected the violation, the Commission assessed the minimum “per category” penalty for this violation. We thus conclude that no further penalty reduction is warranted.
- 14 **49 C.F.R. §393.48(a).** The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. §393.48(a) for operating a commercial motor vehicle with inoperative or

⁵ Enforcement Policy ¶19.

defective brakes. In its response, the Company does not address the violation, but stresses that it has prioritized vehicle maintenance and checks going forward.

- 15 Staff recommends that the Commission reduce the total penalty amount, but does not address this portion specifically. Ensuring the safety of its vehicles is the Company's responsibility and operating a vehicle with defective or inoperative brakes put the Company's customer's, it's customer's belongings, and the traveling public at risk. We thus decline to mitigate this portion of the penalty.
- 16 **49 C.F.R. § 396.3(b).** The Penalty Assessment includes a \$100 penalty for four violations of 49 C.F.R. §396.3(b) for failing to keep minimum records of inspection and vehicle maintenance. In its response, the Company states that it is correcting its vehicle maintenance logs to comport with Commission standards and has emphasized to its drivers the importance of vehicle checks.
- 17 Staff recommends that the Commission reduce the total penalty amount, but does not address this portion specifically. Although the Company promptly corrected the violation and took steps to prevent recurrence, the Commission assessed the minimum "per category" penalty for this violation. We thus conclude that no further penalty reduction is warranted.
- 18 **Penalty Suspension.** The Commission considers several factors when determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations, and whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future, such as purchasing new technology, making system changes, or training company personnel.⁶ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁷
- 19 In this case, the Company has taken action to prevent each of the violations from reoccurring. Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we suspend a \$10,000 portion of the reduced penalty for two years, and then waive it, subject to the following conditions: (1) The Company may not incur any repeat violations of critical regulations, and (2) the Company must pay the \$10,850 portion of the penalty that is not suspended. Staff will conduct a follow-up safety

⁶ *Id.* at ¶20.

⁷ *Id.*

investigation in two years to review the Company's safety management practices. If the Company fails to comply with either of the conditions, the suspended penalty will become immediately due and payable without further Commission order. To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

FINDINGS AND CONCLUSIONS

- 20 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 21 (2) PMC is a household goods carrier subject to Commission regulation.
- 22 (3) PMC violated WAC 480-15-555 when it failed to conduct or retain paperwork containing criminal background checks for a household goods carrier in the state of Washington as required on five occasions.
- 23 (4) The Commission should penalize PMC \$1,050 for 21 violations of WAC 480-15-555.
- 24 (5) PMC violated 49 C.F.R. § 391.45(a) when it used a driver not medically examined and certified on 390 occasions.
- 25 (6) The Commission should penalize PMC \$19,500 for 390 violations of 49 C.F.R. § 391.45(a).
- 26 (7) PMC violated 49 C.F.R. § 391.51(a) when it failed to maintain driver qualification file for five of its drivers.
- 27 (8) The Commission should penalize PMC \$100 for five violations of 49 C.F.R. §391.51(a)
- 28 (9) PMC violated 49 C.F.R. § 393.48(a) when it operated a commercial motor vehicle with inoperative brakes.
- 29 (10) The Commission should penalize PMC \$100 for one violation of 49 C.F.R. §393.48(a).

- 30 (11) PMC violated 49 C.F.R. § 396.3(b) by failing to keep minimum records of inspection and vehicle maintenance on four of its vehicles.
- 31 (12) The Commission should penalize PMC \$100 for four violations of 49 C.F.R. § 396.3(b)
- 32 (13) The Commission should suspend a \$10,000 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 19, above.

ORDER

THE COMMISSION ORDERS:

- 33 (1) PMC Moving, LLC's request for mitigation of the \$39,000 penalty is GRANTED, in part, and the penalty is reduced to \$20,850.
- 34 (2) The Commission suspends a \$10,000 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: (1) PMC Moving, LLC, must either pay the \$10,850 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order; and (2) PMC Moving, LLC, may not incur any repeat violations of critical regulations upon reinspection.
- 35 (3) Commission Staff will conduct a follow-up review of PMC Moving, LLC's operations approximately two years after the effective date of this Order.
- 36 (4) If PMC Moving, LLC, fails to satisfy any of the conditions in paragraph 34 of this order or fails to comply with the terms of the payment arrangement, if applicable, the entire unpaid portion of the \$20,850 penalty will become immediately due and payable without further Commission order.

37 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Lacey, Washington, and effective June 9, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.