

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

DOCKET TV-220959

VISIONARY MOVERS LLC,

ORDER 01

For Compliance with WAC 480-15

CANCELLING HOUSEHOLD
GOODS PERMIT; IMPOSING AND
SUSPENDING PENALTIES

BACKGROUND

- 1 On January 11, 2023, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding, Setting Time for Oral Statements in the Matter of the Investigation of Visionary Movers LLC (Visionary or Company) for Compliance with Washington Administrative Code (WAC) 480-15 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a follow-up compliance review of Visionary's operations in December 2022 and cited the Company for 92 violations of federal and state safety regulations, which resulted in a proposed conditional safety rating. Based on its review, Staff recommended the Commission cancel Visionary's household goods carrier permit unless the Company obtained Commission approval of a safety management plan. The Notice directed Visionary to file a proposed safety management plan by January 18, 2023. The Notice also set a brief adjudicative proceeding for February 1, 2023, at 2 p.m. to determine whether the Commission should cancel Visionary's household goods carrier permit.
- 3 On January 4, 2023, the Commission assessed a \$5,700 penalty (Penalty Assessment) against Visionary for the safety violations discovered during Staff's December 2022 compliance review.¹ The Penalty Assessment includes:
 - A \$1,900 penalty for 19 violations of WAC 480-15-550 for operating a commercial motor vehicle without adequate cargo insurance.
 - A \$400 penalty for 4 violations of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background checks or hiring an individual with a disqualifying conviction.

¹ The Penalty Assessment cites violations of Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570. WAC 480-15-560 and -570 adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.). Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of Title 49 C.F.R.

- A \$3,200 penalty for 32 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- A \$100 penalty for 1 violation of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file for each driver employed.
- A \$100 penalty for 30 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status.

4 The Commission conducted a virtual brief adjudicative proceeding on February 1, 2023, before Administrative Law Judge Rayne Pearson. Staff presented testimony from Jason Sharp, Motor Carrier Safety Supervisor, Transportation Safety. Sharp provided documentation of the critical safety violations that resulted in Staff’s proposed conditional safety rating. Sharp testified that, as of the date of the hearing, the Company had not yet provided an acceptable safety management plan.

5 The Company admitted each of the violations but requested the penalty be reduced and that the Company be allowed to maintain its permit. The Company stated it would continue to work with staff to develop an acceptable safety management plan.

6 On February 10, 2023, Staff filed its evaluation of the Company’s proposed safety management plan. Staff determined that the Company’s proposed plan is insufficient because it fails to adequately demonstrate that corrective actions have been taken to address the safety violations at issue. Specifically, Staff concludes that Visionary’s plan fails to demonstrate that each violation has been corrected or that the Company has sufficient management controls in place to ensure that violations do not occur again in the future. Because the Company failed to submit an acceptable safety management plan, Staff recommends the Commission cancel the Company’s permit. Staff further recommends the Commission assess the full \$5,700 penalty.

DISCUSSION AND DECISION

1. Safety Rating

7 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff’s December 2022 compliance review of Visionary found violations of critical and acute safety regulations, which resulted in a proposed conditional safety rating. Violations classified as “critical” are indicative of a breakdown in a carrier’s management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates. Violations classified as “acute” are so severe as to require immediate corrective actions by a motor carrier regardless of its overall safety posture.

8 On February 9, 2023, the Company submitted a revised proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that Visionary's revised proposed safety management plan is not supported by evidence that the Company has taken corrective actions to address the violations, or that the Company's operations currently meet the safety fitness standards set forth in 49 C.F.R. Parts 385.5 and 385.7. We agree.

9 Based on the testimony and evidence presented at the hearing, the Commission finds that the Company failed to take corrective action to address the violations within a 60-day period as required. Accordingly, the Commission finds good cause to cancel the Company's provisional household goods permit effective February 14, 2023. The Company must cease and desist all regulated operations, including advertising and offering its services, unless and until the Company's permit is reinstated or the Company applies for and obtains a new permit from the Commission.

2. Penalty

10 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 Critical and acute violations meet this standard.⁴

11 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 convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.⁵

12 Here, Staff recommends the Commission assess the full penalty of \$5,700. We agree with Staff's recommendation. The Company has not satisfactorily demonstrated that it has corrected the violations at issue or taken appropriate steps to ensure the violations will not reoccur.

13 We exercise our discretion, however, to suspend the entire penalty for two years, and then waive it, subject to the condition that the Company refrains from operating as a

² See RCW 80.04.405.

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

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

household goods carrier without first obtaining a permit from the Commission. If the Company applies to reinstate its permit or applies for a new household goods carrier permit prior to the expiration of the two-year suspension period, the Company must pay the \$5,700 penalty, or enter into a mutually acceptable payment arrangement with Staff approved by the Commission, prior to the permit being reinstated or issued.

FINDINGS AND CONCLUSIONS

- 14 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 15 (2) Visionary is a household goods carrier subject to Commission regulation.
- 38 (3) Visionary failed to cure the deficiencies that led to the proposed conditional safety rating or demonstrate that its operations currently meet the safety fitness standards set forth in 49 C.F.R Parts 385.5 and 385.7. Accordingly, Visionary's provisional household goods carrier permit should be cancelled.
- 16 (4) Visionary committed 86 critical and acute violations of WAC 480-15 and Title 49 C.F.R.
- 17 (5) Visionary does not dispute that the violations occurred.
- 18 (6) Visionary should be penalized \$5,700 for 86 violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend the entire penalty for two years, and then waive it, subject to the condition that Visionary refrains from operating as a household goods carrier without first obtaining a permit from the Commission.
- (7) If Visionary applies to reinstate its permit or applies for a new household goods carrier permit prior to the expiration of the two-year suspension period, Visionary should be required to pay the \$5,700 penalty or enter into a mutually acceptable payment arrangement with Staff approved by the Commission, prior to the permit being reinstated or issued.

ORDER

THE COMMISSION ORDERS THAT:

- 19 (1) Visionary Movers LLC's provisional household goods permit is cancelled. Visionary Movers LLC must cease and desist all operations unless and until its

permit is reinstated, or it applies for and obtains a new permit from the Commission.

- 20 (2) Visionary Movers LLC is assessed a penalty of \$5,700. The entire penalty is suspended for two years, and then waived, subject to the condition that Visionary Movers LLC refrains from operating as a household goods carrier unless and until the Company obtains from the Commission the permit required to conduct such operations.
- 21 (3) If Visionary Movers LLC applies to reinstate its permit or applies for a new household goods carrier permit prior to the expiration of the two-year suspension period, Visionary Movers LLC must pay the \$5,700 penalty, or enter into a mutually acceptable payment arrangement with Staff approved by the Commission, prior to the permit being reinstated or issued.

DATED at Lacey, Washington, and effective February 14, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal, as required by WAC 480-07-140(5).