

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against,

PMC MOVING, LLC

in the amount of \$3,600.

DOCKET TV-240603

ORDER 01

GRANTING MITIGATION, IN PART;
IMPOSING PENALTIES

BACKGROUND

1 On August 30, 2024, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against PMC Moving, LLC (PMC Moving or Company) in the amount of \$3,600 for the following violations of Washington Administrative Code: (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; and WAC 480-15-560, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 390 - Safety Regulations, General, and 49 C.F.R. Part 391 - Qualifications of Drivers. Specifically, the penalty assessment reads as follows:

- Nine violations of WAC 480-15-555 - Carrier failed to complete a national criminal background check for an employee. The Company failed to acquire criminal background checks prior to hiring employees Alex, Rocky, Garrett Coleman, Guy Higa, Joseph McBride, Charles Medley, Kevin Mills, Colby Phelps, and Memo Will.
- One violation of 49 C.F.R. § 390.19(b)(2) - Failing to file the appropriate form under 390.19(a) (MCS-150, 150B, or 150C) each 24 months according to schedule. The Company failed to update its MCS-150 with correct information at the time of the biennial update or as a routine update.
- Twenty-six violations of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified. PMC Moving allowed driver John Mitchell to operate a motor vehicle without a valid medical certificate on 26 occasions between May 8, 2024, and June 20, 2024.

- 2 On September 16, 2024, PMC Moving filed with the Commission its application for mitigation in response to the penalty assessment. The Company requested the Commission to issue a decision based solely on the information it provided in its response. Supporting the mitigation request, PMC Moving provided a letter acknowledging that the violations occurred, though it contested the total count of violations of 49 C.F.R. § 391.45(a), and states that it believed to be complying with WAC 480-15-555. The Company did not take issue with the penalty regarding 49 C.F.R. § 390.19(b)(2).
- 3 On September 27, 2024, Commission staff (Staff) filed a response recommending the Commission grant the request for mitigation, in part, and assess a reduced total penalty of \$3,000. The Company further requests to split the payment of the penalty into two installments, the first installment to be due on November 1, 2024, and the second installment to be due on December 1, 2024. Staff believes this proposed payment arrangement is reasonable and supports granting this request

DISCUSSION AND DECISION

- 4 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.¹ The Commission also considers whether the violations were promptly corrected, a company's history of compliance, and the likelihood the violation will reoccur. We address each violation category below.
- 5 **49 C.F.R. § 391.45(a).** The Commission assessed a penalty of \$2,600 for 26 violations of 49 C.F.R. § 391.45(a). PMC Moving admits that its driver had a lapse in medical certification, but believes that 26 occurrences is inaccurate, and that the actual number of days in violation is 22. The Company provided communications between itself and Staff outlining the dates in which driver John Mitchell operated without valid medical certification. Following a review of the supporting documentation provided by PMC Movers and comparing it to documents collected during the safety investigation, Staff agrees with the Company's claim that actual violation count is 22. Staff could have recommended up to \$1,000 for each of these repeat critical violations, however, chose to recommend \$100 per occurrence. Staff recommends that the penalty for this violation be reduced from \$2,600 to \$2,200. We agree with Staff's recommendation. Accordingly, we

¹ Enforcement Policy ¶19.

grant the Company's request to mitigate this portion of the penalty and assess a \$2,200 penalty for 22 violations of 49 C.F.R. § 391.45(a).

- 6 **49 C.F.R. § 390.19(b)(2).** The Commission assessed a penalty of \$100 for one violation of 49 C.F.R. § 390.19(b)(2). PMC Moving does not dispute the occurrence of this violation. Staff recommends no reduction of the \$100 penalty. We agree that no reduction of this portion of the penalty is warranted. Accordingly, and the penalty amount remains \$100.
- 7 **WAC 480-15-555.** The Commission assessed a penalty of \$900 for nine violations of WAC 480-15-555. Company claims that the count of nine violations should be six because the investigator noted violations for "Memo" and "Alex" who are Guillermo Barragan and John A. Lutz (owner). Lutz further claims that Guy Higa has been with the Company since 2022 and has a criminal background check on file. Additionally, Lutz claims that each employee had a Washington State Patrol Watch Report on file, but since a national background check is now required, those checks are not valid. PMC Movers claims that the Commission did not properly notify the moving community of its rule change and only found one mention of it in an October 2023 Mover Newsletter to notify of the requirement.
- 8 Regarding Lutz's statement that six of the violations occurred because the carrier performed state background checks instead of national background checks, Staff notes that the company requested and received the state background checks it had on file after the initiation of the safety investigation. However, the regulation requires companies to receive national criminal background checks on every employee it intends to hire. This was not done prior to hiring the employees named in the violation. Additionally, Staff believes the Commission issued industry appropriate notices of the changes to WAC 480-15-555 throughout the rulemaking process in Docket T-220252 and on multiple occasions following the implementation of the rules.
- 9 As for the carrier's claim that "Memo" and "Alex" are Guillermo Barragan and John A. Lutz, Staff has no evidence to refute the claim. The Commission ran a criminal background check on Lutz during the application process, and the Company was previously cited for not obtaining a criminal background check for Barragan during a safety investigation dated April 28, 2022. The Company did not have a criminal background check on file for Higa until after the initiation of the investigation. Staff could have recommended up to \$1,000 for each of these repeat critical violations, however, chose to recommend \$100 per occurrence. Staff recommends that the penalty for this violation be reduced from \$900 to \$700. We agree with Staff's recommendation. Accordingly, we grant the Company's request to mitigate this portion of the penalty and assess a \$700 penalty for seven violations of WAC 480-15-555.

FINDINGS AND CONCLUSIONS

- 10 (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.
- 11 (2) PMC Moving is a household goods carrier subject to Commission regulation.
- 12 (3) PMC Moving violated 49 C.F.R. § 391.45(a) when it allowed driver John Mitchell to operate a motor vehicle without a valid medical certificate on 22 occasions between May 8, 2024, and June 20, 2024.
- 13 (4) The Commission should penalize PMC Moving \$2,200 for 22 violations of 49 C.F.R. § 391.45(a).
- 14 (5) PMC Moving violated 49 C.F.R. § 390.19(b)(2) when it failed to update its MCS-150 with correct information at the time of the biennial update or as a routine update.
- 15 (6) The Commission should penalize PMC Moving \$100 for one violation of 49 C.F.R. § 390.19(b)(2).
- 16 (7) PMC Moving violated WAC 480-15-555 when it failed to acquire criminal background checks prior to hiring employees Rocky, Garrett Coleman, Guy Higa, Joseph McBride, Charles Medley, Kevin Mills, and Colby Phelps.
- 17 (8) The Commission should penalize PMC Moving \$700 for seven violations of WAC 480-15-555.
- 18 (9) The Commission should grant PMC Moving's request to split the payment of the penalty amount into two installments, the first installment to be due on November 1, 2024, and the second installment to be due on December 1, 2024.

ORDER

THE COMMISSION ORDERS:

- 19 (1) PMC Moving, LLC's request for mitigation of the \$3,600 penalty is GRANTED, in part, and the penalty is reduced to \$3,000.

- 20 (2) PMC Moving, LLC shall pay the mitigated \$3,000 penalty amount in two equal installments, the first installment to be due on November 1, 2024, and the second installment to be due on December 1, 2024.
- 21 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 October 11, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Jeff Killip
Executive Director and Secretary
By: /s/ Kathy Hunter
Director of Transportation Safety
Executive Director's Designee

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.