

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of I HEART MOVERS, LLC, For Compliance with WAC 480-15	DOCKETS TV-201010 and TV-201011 (<i>Consolidated</i>) ORDER 01
In the Matter of the Penalty Assessment against I HEART MOVERS, LLC, in the amount of \$19,600	CONSOLIDATING DOCKETS; CANCELLING HOUSEHOLD GOODS PERMIT; IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On May 14, 2021, 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 I Heart Movers, LLC, (IHM 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 IHM's operations in April 2021 and cited the Company for 225 violations of federal and state safety regulations, which resulted in a proposed conditional safety rating. Based on its review, Staff recommended the Commission cancel IHM's household goods carrier permit unless the Company obtains Commission approval of a safety management plan. The Notice directed IHM to file a proposed safety management plan by June 10, 2021. The Notice also set a brief adjudicative proceeding for June 24, 2021, at 1:30 p.m. to determine whether the Commission should cancel IHM's household goods carrier permit.
- 3 On May 19, 2021, the Commission assessed a \$19,600 penalty (Penalty Assessment) against IHM for the safety violations discovered during Staff's April 2021 compliance review.¹ The Penalty Assessment includes:

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

- A \$1,000 penalty for 10 violations of WAC 480-15-555 for failing to acquire criminal background checks for prospective employees.
- A \$100 penalty for 30 violations of WAC 480-15-590(4) for failing to maintain a rental agreement with the required information about the commercial motor vehicle leased.
- A \$100 penalty for 12 violations of 49 C.F.R. § 391.11(b)(5) for failing to have valid commercial motor vehicle operator's license.
- An \$8,200 penalty for 82 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- A \$9,000 penalty for 90 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status.
- A \$100 penalty for one violation of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

4 On May 26, 2021, IHM filed with the Commission a request for mitigation of the penalty, admitting the violations and requesting the Commission reduce the assessed penalty.

5 The Commission conducted a virtual brief adjudicative proceeding on June 24, 2021, before Administrative Law Judge Rayne Pearson. Because the violations cited in Staff's April 2021 investigation gave rise to the enforcement actions taken in both dockets, the Commission exercised its discretion to consolidate these proceedings.

6 Staff presented testimony from Sandra Yeomans, special investigator, and Mathew Perkinson, assistant director, Transportation Safety. Yeomans provided documentation of the critical safety violations that resulted in Staff's proposed conditional safety rating.

7 Perkinson presented additional testimony and evidence related to the Commission's enforcement policy and the technical assistance provided to IHM since it first obtained its provisional household goods permit in November 2018. Perkinson testified that IHM was penalized \$9,100 in July 2020 in consolidated Dockets TV-200627 and TV-200628 for violations of Commission safety regulations. Those violations resulted in a proposed unsatisfactory safety rating. On August 31, 2021, the Commission entered Order 01 in Dockets TV-200627 and TV-200628, which required Staff to conduct a follow-up safety investigation in approximately six months. Staff subsequently performed a follow-up review in April 2021 and found multiple repeat violations that resulted in the proposed conditional safety rating at issue in this proceeding. Perkinson testified that, as of the date of the hearing, the Company had not yet provided an acceptable safety management plan.

8 Deavon Taylor, Company owner, testified for IHM. Taylor admitted each of the violations but requested the penalty be reduced and that the Company be allowed to

regulations with parallel federal rules are hereinafter referenced only by the applicable provision of Title 49 C.F.R.

maintain its permit. Taylor also claimed that the deficiencies contained in the Company's proposed safety management plan had been corrected and resubmitted for Staff's review shortly before the hearing.

- 9 Staff agreed to review the Company's revised proposed safety management plan and file its evaluation the following day. Staff nevertheless maintained its recommendation that the Commission cancel the Company's household goods carrier permit due to the repeat violations discovered upon reinspection.
- 10 On June 25, 2021, Staff filed its evaluation. 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 IHM'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.
- 11 Staff further recommends the Commission assess a reduced penalty of \$10,000. Finally, Staff recommends the Commission suspend the entire penalty for a period of two years, and then waive it, subject to condition that the Company refrains from operating as a household goods carrier without a permit.

DISCUSSION AND DECISION

1. Safety Rating

- 12 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's April 2021 compliance review of IHM found multiple repeat violations of critical 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.
- 13 On June 24, 2021, the Company submitted a revised proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that IHM'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.

14 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 June 28, 2021. 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

15 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 violations meet this standard.⁴

16 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

17 Here, Staff recommends the Commission assess a reduced penalty of \$10,000. We agree with Staff's recommendation. The Company corrected a portion of the violations identified during the safety investigation, cooperated with Staff, and accepted full responsibility for the violations. Accordingly, we assess a reduced penalty of \$10,000. We also agree with Staff that the entire penalty should be suspended for two years, and then waived, subject to the condition that the Company refrains from operating as a household goods carrier without first obtaining a permit from the Commission.

FINDINGS AND CONCLUSIONS

18 (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.

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.

- 19 (2) IHM is a household goods carrier subject to Commission regulation.
- 38 (3) IHM 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, IHM's household goods carrier permit should be cancelled.
- 20 (4) IHM committed 225 critical violations of WAC 480-15 and Title 49 C.F.R.
- 21 (5) IHM does not dispute that the violations occurred.
- 22 (6) IHM should be penalized \$10,000 for 225 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 IHM refrains from operating as a household goods carrier without first obtaining a permit from the Commission.

ORDER

THE COMMISSION ORDERS THAT:

- 23 (1) I Heart Movers, LLC's provisional household goods permit is cancelled. I Heart 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.
- 24 (2) I Heart Movers, LLC, is assessed a penalty of \$10,000. The entire penalty is suspended for two years, and then waived, subject to the condition that I Heart 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.

DATED at Lacey, Washington, and effective June 25, 2021.

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).