



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

April 26, 2016

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P. O. Box 47250  
Olympia, Washington 98504-7250

RE: *In the matter of a Penalty Assessment Against Jorge H. Luna-Lopez, d/b/a EDL Movers*  
Commission Staff's Response to EDL Movers' Mitigation Request  
Docket TE-160202

Dear Mr. King:

On February 24, 2016, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment TE-160202 against Jorge H. Luna-Lopez d/b/a EDL Movers in the amount of \$4,400, for forty-four violations of WAC 480-15-570 Driver Safety Requirements, which requires household goods carriers to comply with CFR Part 391 – Qualifications of Drivers and CFR Part 395 – Hours of Service of Drivers, as follows:

- **36 violations of CFR Part 391.45(b)(1) – Using a driver not medically examined and certified.** On 36 occasions over a six-month period, EDL Movers used a driver not medically certified. Company owner Jorge Luna-Lopez drove on 36 occasions and had not been medically examined and certified at the times he drove.
- **One violation of CFR Part 391.51(a) – Failing to maintain driver qualification files.** The company failed to maintain a driver qualification file for Jorge Luna-Lopez.
- **Seven violations of CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Jorge Luna-Lopez failed to make a required record of duty status on seven occasions during September 2015.

On March 9, 2016, EDL Movers filed with the Commission its application for mitigation of penalties (Mitigation Request). Jorge H Luna-Lopez, owner of EDL Movers, admitted the violations but asked that the penalties be reduced for the reasons noted in his response. EDL movers requested a hearing to present evidence in support of its request for mitigation.

On April 6, 2016 the Commission issued notice denying EDL Movers' request for hearing, and invited Commission staff to respond and file supporting documentation no later than April 27, 2016. Staff's response follows.

EDL Movers operates as a household goods carrier under permit number THG-065687. On January 13, 2016 Motor Carrier Safety Investigator Mathew Perkinson conducted a compliance review investigation, an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or "critical."<sup>1</sup> Acute regulations are identified where noncompliance is so severe as to require immediate corrective actions regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.<sup>2</sup> Mr. Perkinson found 49 total violations, all of which were first-time violations. Of the 49 violations found, 44 were of critical regulations.

The Commission's Enforcement Policy provides that some Commission requirements are so critical to safe operations that the Commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues.<sup>3</sup>

In the Mitigation Request, Mr. Luna-Lopez admitted the violations and provided detailed documentation of the actions taken by the company to correct the violations. Staff's response is included below.

1. **Mitigation Request:** CFR 391.45(b)(1) Using a driver not medically examined and certified. Immediately following the compliance review, driver Jorge H. Luna-Lopez was examined and was certified by a nationally registered medical examiner. Mr. Luna-Lopez provided staff a copy of his current medical card.
2. **Mitigation Request:** CFR 391.51(a) Failing to maintain a driver qualification file on each driver employed. EDL Movers provided evidence to staff that it now maintains a

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<sup>1</sup> Code of Federal Regulations, [Appendix B to Part 385—Explanation of safety rating process.](#)

<sup>2</sup> *Id.*

<sup>3</sup> Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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driver qualification file for its driver Jorge H. Luna-Lopez, and that the file contains the documents specified in the CFR.

3. **Mitigation Request:** CFR 395.8(a) Failing to require driver to make record of duty status. EDL Movers has begun keeping driver time records and provided evidence of such to staff.

**Staff Response:** These are first-time violations. The carrier has corrected all violations and has put measures in place for future compliance. Staff recommends mitigation of the \$4,400 penalty to \$2,000.

EDL Movers is a small company with one driver and one vehicle. For a significant portion of 2015 its only vehicle was out of service with mechanical issues. EDL Movers reported \$92,487.19 in gross revenue and 8,000 miles traveled in 2015.

If you have any questions, please contact Mike Turcott, Compliance Investigator, Transportation Safety, at 360-664-1174, or by e-mail at [miturcot@utc.wa.gov](mailto:miturcot@utc.wa.gov).

Sincerely,



David Pratt

Assistant Director, Transportation Safety