

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Investigation of TWO MEN AND A MOVING VAN LLC, D/B/A MOVE FOR LESS, For Compliance with WAC 480-15-560 and WAC 480-15-570</p>	<p>DOCKETS TV-200946 and TV-200947 (<i>Consolidated</i>) ORDER 01</p>
<p>In the Matter of the Penalty Assessment against TWO MEN AND A MOVING VAN LLC, D/B/A MOVE FOR LESS, in the amount of \$7,300</p>	<p>CONSOLIDATING DOCKETS; APPROVING SAFETY MANAGEMENT PLAN; MAINTAINING SAFETY RATING; EXTENDING PROVISIONAL PERIOD; IMPOSING AND SUSPENDING PENALTIES</p>

BACKGROUND

- 1 On December 8, 2020, 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 Two Men and A Moving Van LLC, d/b/a Move For Less, (Move for Less or Company) for Compliance with Washington Administrative Code (WAC) 480-15-560 and WAC 480-15-570 (Notice) in Docket TV-200946.

- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Move for Less’s operations on November 19, 2020, and cited the Company for 91 violations of federal and state safety regulations, which resulted in a proposed “conditional” safety rating. Based on its review, Staff recommends the Commission cancel Move for Less’s household goods carrier’s permit unless the Company obtains Commission approval of a safety management plan. The Notice directed Move for Less to file a proposed safety management plan by January 4, 2021. The Commission also set a brief adjudicative proceeding (BAP) for January 15, 2020, at 1:30 p.m. to determine whether the Commission should cancel Move for Less’s household goods carrier’s permit.

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

3 On December 1, 2020, the Commission assessed a \$7,300 penalty (Penalty Assessment) against Move for Less in Docket TV-200947 for the safety violations discovered during Staff's compliance review.¹ The Penalty Assessment includes:

- A \$5,000 penalty for 50 violations of WAC 480-15-530 for operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.
- A \$500 penalty for five violations of WAC 480-15-555 for failing to complete a criminal background check for every person the carrier intends to hire.
- A \$1,500 penalty for one violation of 49 C.F.R. § 382.115(a) for failing to implement a controlled substance and/or alcohol testing program on the date the employer begins commercial motor vehicle operations.
- A \$200 penalty for two violations of 49 C.F.R. § 83.23(a) for allowing a driver to operate a commercial motor vehicle without a valid CDL.
- A \$100 penalty for five violations of 49 C.F.R. § 391.51(b)(2) for failing to maintain inquiries into driver's driving record in driver qualification file.

4 On December 27, 2020, Move for Less filed with the Commission a request for mitigation of the penalty based on the written information provided and waived its right to a hearing in Docket TV-200947.

5 On January 14, 2021, Move for Less submitted a proposed safety management plan. On January 15, 2021, Staff filed with the Commission its evaluation of the Company's safety management plan and penalty recommendation (Evaluation).

6 Staff determined, based on its review of Move for Less's proposed plan, that the Company took all of the required steps to bring its safety operations into compliance with Commission regulations. Staff recommends that the Commission extend the Company's provisional period until such time that the Company achieves a satisfactory safety rating. Staff further recommends that Dockets TV-200946 and TV-200947 be consolidated.

7 Staff also recommends that the Commission assess a reduced penalty of \$3,650. Finally, Staff recommends that \$2,000 of the penalty be suspended for a period of two years, and then waived, subject to the conditions that: (1) Staff conducts a follow-up safety investigation in approximately six months, (2) Move for Less does not incur any repeat

¹ The Penalty Assessment cites violations of WAC 480-15-560 and WAC 480-15-570, which 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.

violations of critical regulations, and (3) the Company pays the \$1,650 portion of the penalty that is not suspended.

- 8 On January 14, 2021, Staff sent an email to the presiding officer representing that the Company waives its right to a hearing in Docket TV-200946 and recommending that the BAP be cancelled. On January 14, 2021, the Commission issued a Notice cancelling the January 15, 2021, BAP and informing the parties that the Commission would enter an order based on the parties' written submissions.

DISCUSSION AND DECISION

1. Consolidation

- 9 Because the violations cited in Staff's investigation gave rise to the enforcement actions taken in both dockets, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket TV-200946 and Docket TV-200947 are consolidated.

2. Safety Rating

- 10 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's compliance review of Move for Less found 91 violations of Commission safety regulations; all of the violations were "acute" or "critical," 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. "Acute" regulations are those identified as such where non-compliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier.
- 11 On January 14, 2020, the Company submitted its proposed safety management plan. Staff determined that Move for Less's safety management plan addresses each violation, identifies how each violation occurred, describes the steps taken to correct each violation, and describes the controls put in place to ensure compliance going forward. Staff concludes that Move for Less's safety management plan is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385. We agree.
- 12 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-15 by correcting the violations that resulted in Staff's recommendation to cancel the Company's household goods permit. Accordingly, the

Commission agrees with Staff's recommendation and grants the Company's request to maintain its permit with a conditional safety rating.

- 13 We likewise agree with Staff's recommendation to extend the Company's provisional period for its household goods carrier permit. WAC 480-15-305(1)(b) provides that, prior to a grant of permanent authority, an applicant must complete a provisional period of not less than six months and not more than 18 months unless the Commission determines for good cause that the provisional period should be extended. Good cause may include, among other things, a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating. Here, the Company has corrected the violations at issue and demonstrated that it has taken significant steps to ensure its operations comply with applicable safety regulations. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time as the Company achieves a satisfactory rating.

3. Penalty

- 14 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
- 15 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
- 16 Here, Staff recommends the Commission assess a reduced penalty of \$3,650. We agree with Staff's recommendation. The Company provided a comprehensive safety management plan that details the steps it has taken to bring its operations into compliance with applicable regulations and put controls in place to ensure the Company maintains compliance. The safety management plan includes documentation of driver qualifications, vehicle maintenance, insurance, criminal background check information,

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.

and motor vehicle report of sale receipts. Accordingly, we are satisfied that Move for Less has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring.

17 **Suspended Penalty.** The Commission considers several factors in 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

18 In this case, Move for Less has taken action to prevent each of the violations from reoccurring, and has been cooperative with Staff. In any enforcement proceeding, the Commission's goal is to obtain compliance, not create an insurmountable financial burden for a small business. We additionally recognize that the industry is facing unprecedented conditions due to the COVID-19 pandemic.

19 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 agree with Staff's recommendation and suspend a \$2,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- 1) Staff conducts a follow-up safety investigation approximately six months from the date of this Order;
- 2) Move for Less must not incur any repeat violations of critical regulations, and;
- 3) The Company pays the \$1,650 portion of the penalty that is not suspended within 10 days of the effective date of this Order.

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, practices, and accounts of public

⁶ *Id.* at ¶20.

⁷ *Id.*

service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.

- 21 (2) Move for Less is a household goods carrier subject to Commission regulation.
- 22 (3) Move for Less cured the deficiencies that led to Staff's recommendation to cancel the Company's household goods permit.
- 23 (4) Move for Less committed 91 critical and acute violations of WAC 480-15 and Title 49 C.F.R.
- 24 (5) Move for Less does not dispute that the violations occurred.
- 25 (6) Move for Less should be penalized \$3,650 for 91 critical and acute violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend a \$2,000 portion of the penalty for two years, and then waive it, subject to the conditions set out in paragraph 19, above.

ORDER

THE COMMISSION ORDERS THAT:

- 26 (1) The Commission approves Two Men and A Moving Van LLC's, d/b/a Move For Less, safety management plan.
- 27 (2) The Commission assesses a \$3,650 penalty Two Men and A Moving Van LLC, d/b/a Move For Less. The Commission suspends a \$2,000 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 19, above.
- 28 (3) The \$1,650 portion of the penalty that is not suspended is due and payable within 10 days of the effective date of this Order.

DATED at Lacey, Washington, and effective January 15, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Samantha Doyle
SAMANTHA DOYLE
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).