

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of 3Z MOVERS, LLC For Compliance with WAC 480-15-560 and WAC 480-15-570	DOCKET TV-180198 <i>(Consolidated)</i> ORDER 03
In the Matter of the Penalty Assessment Against 3Z MOVERS LLC In the Amount of \$1,900	Docket TV-190037 <i>(Consolidated)</i> ORDER 01 ORDER OF CONSOLIDATION; ORDER APPROVING SAFETY MANAGEMENT PLAN; ORDER IMPOSING PENALTY

BACKGROUND

- 1 On January 15, 2019, the Washington Utilities and Transportation Commission (Commission) issued a notice of intent to cancel the household goods carrier permit of 3Z Movers, LLC (3Z Movers or Company) and notice of a brief adjudicative proceeding regarding the same (Notice). In the Notice, the Commission explained that Commission staff (Staff) recommends that the Commission cancel 3Z Movers' household goods permit under Washington Administrative Code (WAC) 480-15-540 due to the Company's ongoing failure to comply with applicable laws and Commission rules governing household goods carriers. Staff's recommendation is based on a November 2018 compliance investigation during which Staff documented 24 safety violations.
- 2 In the Notice, the Commission directed 3Z Movers to come into compliance with applicable laws by filing a safety management plan by February 19, 2019. The Commission also set a brief adjudicative proceeding for February 26, 2019, at 9:30 a.m. to determine whether the Commission should cancel 3Z Movers' household goods carrier permit.
- 3 On February 5, 2019, the Commission assessed a \$1,900 penalty (Penalty Assessment) in Docket TV-190037 against 3Z Movers for violations of WAC 480-15-180, Carrier

Operations that Require a Household Goods Permit; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 CFR Part 396 – Inspection, Repair, and Maintenance; and WAC-480-15-570, Driver Safety Requirements, which adopts Title 49 CFR Part 390 – Safety Regulations, and Title 49 CFR Part 395 – Hours of Service of Drivers. The Penalty Assessment noted that Staff had identified nine violation types and a total of 24 individual occurrences.¹

- 4 On February 14, 2019, 3Z Movers submitted a safety management plan that addressed each type of violation and the steps that the Company has taken and will take to remedy those violations and ensure future compliance.
- 5 On February 21, 2019, Staff submitted an evaluation of the safety management plan submitted by 3Z Movers (Evaluation). Staff states its belief that the Company took all of the required steps to bring its safety operations into compliance with Commission regulations. Staff thus recommends that the Commission not cancel the Company's certificate and extend its provisional operating authority until Staff conducts a follow-up review in 2020, subject to four conditions: (1) that the Company maintain a conditional safety rating; (2) that the Company's owner, Boubacar Zida, attend the Commission-sponsored household goods carrier training on April 17, 2019; (3) that the Company immediately pay the \$1,900 penalty assessed in Docket TV-190037, although Staff would support a payment arrangement if the Company requests one; and (4) that the Company achieve a satisfactory safety rating at the Company's follow-up review in 2020.²
- 6 Also on February 21, 2019, Staff submitted a letter explaining that it spoke with the Company and found that the Company accepts the conditions outlined in the Evaluation and waives its right to a hearing. Accordingly, Staff recommended that the Commission cancel the brief adjudicative proceeding scheduled for February 26, 2019.
- 7 On February 22, 2019, the Commission issued a notice canceling the April 13, 2019, hearing and informing the parties that the Commission would enter an order based on the parties' written submissions.

¹ The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties.

² A follow-up review is required by ordering paragraph 3 of Order 01 in Docket TV-180198.

DISCUSSION AND DECISION

Consolidation

- 8 The penalty assessment in Docket TV-190037 and the Notice in Docket TV-180198 involve common issues of fact and law. On its own motion, pursuant to WAC 480-07-320, the Commission consolidates Dockets TV-180198 and TV-190037 for Commission consideration.
- 9 The Commission clarifies, however, that the \$8,000 penalty assessed in Docket TV-180198 on May 10, 2018, is separate from the penalty assessed in Docket TV-190037 and from the Notice issued in Docket TV-180198 on January 15, 2019. Any remaining balance of the \$8,000 penalty remains subject to payment per Orders 01 and 02 in Docket TV-180198.

Docket TV-180198 — Household Good Carrier Certificate

- 10 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's November 2018 compliance review of 3Z Movers found 24 safety violations, which resulted in Staff proposing that the Commission cancel the Company's household goods carrier permit.
- 11 On February 14, 2019, the Company submitted its proposed safety management plan, which Staff filed in Docket TV-180198 on behalf of the Company on February 28, 2019. Staff found that 3Z Movers' safety management plan addresses each violation, identified 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 3Z Movers' safety management plan is acceptable and satisfies the legal requirements of 49 CFR Part 385.
- 12 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-15-180, WAC 480-15-560, and WAC-480-15-570 by correcting the violations that led to the proposal to cancel the Company's household goods carrier permit. Accordingly, we agree with Staff's recommendation and allow the Company to maintain its household goods carrier permit, subject to the four conditions proposed by Staff: (1) that the Company maintain a conditional safety rating; (2) that the Company's owner, Boubacar Zida, attend the Commission-sponsored household goods carrier training on April 17, 2019; (3) that the Company pay, or request a payment arrangement for, the \$1,900 penalty assessed in Docket TV-190037; and (4) that the Company achieve a satisfactory safety rating at the Company's follow-up review in 2020.

If the Company fails to satisfy any of these conditions, the Commission will reassess whether to cancel the Company's household goods carrier permit.

- 13 Finally, 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. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time the Company achieves a satisfactory rating.

Docket TV-190037 — Penalty Assessment

- 14 Violations discovered during safety inspections are subject to penalties of \$100 per violation.³ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.⁴ Critical violations meet this standard.⁵
- 15 3Z Movers did not submit a request for mitigation of the penalty. As noted in paragraph 12, above, payment of this penalty is one of the conditions of Staff's recommendation to not cancel 3Z Movers' household goods carrier permit. Thus, the \$1,900 penalty is due within 10 days of the effective date of this Order. In the alternative, Staff and 3Z Movers may submit a mutually agreeable payment plan for the \$1,900 penalty within 10 days of the effective date of this Order.

FINDINGS AND CONCLUSIONS

- 16 (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.
- 17 (2) 3Z Movers is a household goods carrier subject to Commission regulation.

³ See RCW 80.04.405.

⁴ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

⁵ 49 C.F.R. § 385, Appendix B.

- 18 (3) 3Z Movers committed 24 violations of WAC 480-15.
- 19 (4) 3Z Movers cured the deficiencies that led to the proposal to cancel its household goods carrier permit by February 19, 2019, as required. Accordingly, the Commission should allow the Company to maintain its household goods carrier permit, subject to the conditions set out in paragraph 12, above.
- 20 (5) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend 3Z Movers' provisional period until such time the Company achieves a satisfactory safety rating.
- 21 (6) The Commission should assess a total penalty of \$1,900 for 24 violations of WAC 480-15.

ORDER

THE COMMISSION ORDERS THAT:

- 22 (1) 3Z Movers, LLC's provisional operating authority is extended until Commission staff conducts a follow-up review in 2020, subject to the conditions set out in paragraph 12 above. If 3Z Movers, LLC fails to satisfy any of those conditions, the Commission will reassess whether to cancel 3Z Movers, LLC's household goods carrier permit.
- 23 (2) The Commission assesses a \$1,900 penalty against 3Z Movers, LLC for violations discovered during the November 2018 safety investigation.
- 24 (3) 3Z Movers, LLC must either pay the \$1,900 penalty or file jointly with Commission staff a proposed payment plan within 10 days of the effective date of this Order.

DATED at Olympia, Washington, and effective March 20, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NELLI DOROSHKIN
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 480-07-825(2)(a) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 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.

RCW 80.01.060(3) 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).