

Service Date: September 4, 2020

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of the Investigation of PRO MOVERS LLC, D/B/A GROOVIN MOVIN For Compliance with WAC 480-15-560, WAC 480-15-570, and WAC 480-15-555 <hr/> In the Matter of the Penalty Assessment against PRO MOVERS LLC, D/B/A GROOVIN MOVIN <hr/> in the amount of \$4,200 | DOCKETS TV-200626 and TV-200625 (<i>Consolidated</i>) ORDER 01 CONSOLIDATING DOCKETS; CANCELLING HOUSEHOLD GOODS PERMIT; IMPOSING AND SUSPENDING PENALTIES |
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BACKGROUND

- 1 On July 20, 2020, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Permit as a Household Goods Carrier and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements (Notice) In the Matter of the Investigation of Pro Movers LLC, d/b/a Groovin Movin, (Groovin Movin or Company) For Compliance with Washington Administrative Code (WAC) 480-15 in Docket TV-200626. The Notice set the Brief Adjudicative Proceeding for August 27, 2020, at 1:30 p.m.
- 2 On July 16, 2020, the Commission assessed a penalty of \$4,200 (Penalty Assessment) in Docket TV-200626 against Groovin Movin for 146 violations of WAC 480-15, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Part 391 related to driver qualifications; 49 C.F.R. Part 393 related to parts and accessories necessary for safe operations; 49 C.F.R. Part 395 related to preparation of a record of duty status; and 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance.
- 3 Also on July 16, 2020, Groovin Movin filed an application for mitigation of the Penalty Assessment. In its application, the Company explains it is unable to pay the penalty due to a significant downturn created by the COVID-19 pandemic.

- 4 The Commission conducted a brief adjudicative proceeding on August 27, 2016, before Administrative Law Judge Samantha Doyle. The Company failed to appear. Commission staff (Staff) moved to consolidate Dockets TV-200625 and TV-200626, and the motion was granted.
- 5 Staff presented testimony from Jason Sharp, transportation planning specialist. Sharp provided documentation of the critical safety violations that resulted in Staff's proposed unsatisfactory safety rating for Groovin Movin. Following an investigation conducted on July 7, 2020, Staff documented 146 violations as follows:¹
- 13 violations of WAC 480-15-555 – Failing to complete a criminal background check of prospective employee.
 - 24 violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.
 - Two violations of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file for each driver employed.
 - 107 violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to prepare a record of duty status using the appropriate method.
- 6 Sharp presented additional testimony in response to the Company's request for mitigation of the penalty. Staff testified that Groovin Movin provided some proof of corrective action by producing a medical certificate for Company owner Andrey Goncharuk. Staff recommended that the Penalty Assessment for 24 violations of 49 C.F.R. § 391.45(a) be reduced from \$2,400 to \$1,200. This recommendation reduces the total penalty amount from \$4,200 to \$3,000.
- 7 After Staff presented its case on the merits, Staff moved for default against the Company. The motion was granted. Later that afternoon, Groovin Movin contacted the Commission and requested the hearing be rescheduled.
- 8 On August 28, 2020, the Commission conducted a second brief adjudicative proceeding before Administrative Law Judge Rayne Pearson. The default order was vacated and the Company presented testimony from Andrey Goncharuk, who explained that the

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.

Company submitted a proposed safety management plan to Staff moments before the hearing began. Goncharuk further testified that the Company was unable to pay the penalty due to the economic downturn created by COVID-19.

- 9 Judge Pearson directed Staff to submit its evaluation of the Company's proposed safety management plan by close of business on September 2, 2020.
- 10 On September 2, 2020, Staff filed its evaluation of the Company's proposed safety management plan (Evaluation). Upon review, Staff concludes that Groovin Movin's safety management plan is insufficient because it fails to demonstrate that adequate corrective actions have been taken to address the violations cited during Staff's investigation. Accordingly, Staff maintains its recommendation that the Commission should cancel the Company's household goods carrier permit.
- 11 Staff notes in its Evaluation that the Company provided with its proposed safety management a policy manual, partial documentation of a driver qualification file, and vehicle maintenance receipts. According to Staff, the Company's policy manual appears to be a terms sheet for customers that fails to address applicable safety regulations.
- 12 Daniel J. Teimouri, Assistant Attorney General, Lacey, Washington, represents Commission Staff (Staff). Andrey Goncharuk, Owner, Vancouver, Washington, represents Groovin Movin.

DISCUSSION AND DECISION

1. Docket TV-200626 – Household Goods Permit

- 13 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's July 2020 compliance review of Groovin Movin found 146 violations of "critical" regulations, which resulted in a proposed unsatisfactory safety rating. "Critical" regulations relate to management and/or operational issues, and violations of these regulations typically indicate a breakdowns 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.

- 14 Groovin Movin received notice of its proposed unsatisfactory safety rating on July 16, 2020. Carriers that receive proposed unsatisfactory safety ratings have 60 days to request and receive a change to the proposed rating. Groovin Movin’s deadline for requesting and receiving an upgrade to its safety rating was September 7, 2020.
- 15 In its July 20, 2020, Notice, the Commission instructed the Company to submit its proposed safety management plan no later than 5:00 p.m. on August 13, 2020. On Friday, August 28, 2020, the Company submitted its proposed safety management plan.
- 16 Staff concluded in its Evaluation that the Company’s 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.
- 17 Based on the testimony and evidence presented at the hearing, the Commission finds that Groovin Movin failed to take corrective action to address the violations within the 60-day time period provided by federal law. Accordingly, the Commission finds good cause to cancel the Company’s household goods permit effective September 8, 2020. The Company is ordered to cease and desist all operations, including advertising and offering its services, unless and until the Company’s permit is reinstated or the Company applies for and obtained a new permit from the Commission.

2. Docket TV-200625 – Penalty Assessment

- 18 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 Violations defined by federal law as “critical” meet this standard.⁴
- 19 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been

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.

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 The Penalty Assessment cited 146 critical violations in four categories. We address each category in turn.

WAC 480-15-555

20 **Discussion.** WAC 480-15-555 requires the Company to complete a criminal background check for prospective employees. The Penalty Assessment cited 13 violations of WAC 480-15-555. Goncharuk testified that he was unaware that seasonal employees were subject to this requirement.

21 As noted in the Penalty Assessment, Goncharuk acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations in the Company's original household goods permit application.

22 On December 15, 2017, and August 31, 2018, the Groovin Movin filed applications to reinstate its permit for household goods moving authority. In both applications, Goncharuk acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

23 Finally, on February 20, 2019, Goncharuk attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

24 **Decision.** Here, the Commission assessed a \$1,300 penalty for 13 violations of WAC 480-15-555. Staff recommends a "per violation" penalty because the Company received training pertaining to motor carrier safety regulations. We agree with Staff that the responsibility for complying with Commission rules rests solely with the Company. If Mr. Goncharuk had difficulty comprehending the Commission's regulations, he should have contacted Commission Staff with questions or sought other assistance. Accordingly, we decline to mitigate this portion of the penalty.

⁵ Enforcement Policy ¶ 19.

49 C.F.R. § 391.45(a)

25 **Discussion.** 49 C.F.R. § 391.45(a) requires carriers to ensure that all drivers have been medically examined and certified. Goncharuk testified that he is now the only driver for the Company, and that he has since obtained a medical examination and certificate.

26 Staff testified that Goncharuk received household goods training on February 20, 2019, and was responsible for understanding and following Commission regulations. Staff nevertheless recommends the Commission assess a reduced penalty of \$1,200 for these first time violations.

27 **Decision.** We agree with Staff's recommendation and assess a \$1,200 penalty for 24 violations of 49 C.F.R. § 391.45(a). The Company promptly corrected these first-time violations and provided documentation that its driver has obtained the appropriate medical certification.

49 C.F.R § 391.51(a)

28 **Discussion.** 49 C.F.R. § 391.51(a) requires companies to maintain a driver qualification file for each driver. The Company failed to maintain driver qualification files for drivers Aleksey Goncharuk and Andrey Goncharuk. Goncharuk testified that he was attempting to address the issue in the Company's proposed safety management plan by creating a filing system.

29 Staff testified that Goncharuk received household goods training on February 20, 2019, and is responsible for understanding and following Commission regulations.

30 **Decision.** The Commission assessed a \$100 a "per category" penalty for these first-time violations of 49 C.F.R. § 391.51(a). The Company received training related to vehicle inspection and maintenance records, and failed to introduce any new information at hearing that would support any further mitigation. Accordingly, we decline to mitigate this portion of the penalty.

49 C.F.R. § 393.75(b)

31 **Discussion.** 49 C.F.R. § 393.75(b) requires that commercial motor vehicles maintain a front tire tread depth of at least 2/32 of an inch. The Penalty Assessment cited one

violation of 49 C.F.R. § 393.75(b) because Staff discovered a commercial motor vehicle with the front right steer tire worn on the outer part of the tire with the tread wear indicator showing. This vehicle was placed out-of-service.

32 **Decision.** A company that operates defective commercial motor vehicles puts its customers' belongings and the traveling public at risk. Goncharuk stated that the vehicle was being serviced, but did not provide any documentation to support that claim. Accordingly, we decline to mitigate this portion of the penalty.

49 C.F.R. § 395.8(a)(1)

33 **Discussion.** 49 C.F.R. § 395.8(a)(1) requires drivers to prepare a record of duty status using the appropriate method. The Penalty Assessment cited 107 violations of this regulation because the Company failed to require its drivers to prepare records of duty status on 107 occasions between November 1, 2019, and April 17, 2020. Goncharuk stated that, going forward, drivers would prepare records of duty status.

34 **Decision.** Rather than assessing penalties of \$100 per violation, the Commission assessed a single penalty for these first-time violations. In addition, the Company failed to provide sufficient documentation to demonstrate that this violation has been corrected. Accordingly, we decline to mitigate this portion of the penalty any further.

49 C.F.R. § 396.3(b)

35 **Discussion.** 49 C.F.R. § 396.3(b) requires companies keep minimum records of inspection and vehicle maintenance. The Penalty Assessment cited one violation of 49 C.F.R. § 396.3(b) because Groovin Movin failed to maintain a vehicle maintenance file for its commercial motor vehicle.

36 **Decision.** The Company failed to provide sufficient documentation to demonstrate that this violation has been corrected. Accordingly, we decline to mitigate this portion of the penalty.

49 C.F.R. § 396.17(a)

37 **Discussion.** 49 C.F.R. § 396.17(a) requires commercial motor vehicles to be periodically inspected. The Penalty Assessment cited one violation of 49 C.F.R. § 396.17(a) because

Staff discovered that the Company failed to perform an annual inspection on its commercial motor vehicle.

38 **Decision.** The Company failed to provide sufficient documentation to demonstrate that this violation has been corrected. Accordingly, we decline to mitigate this portion of the penalty.

39 **Suspended Penalty.** The Commission considers several factors when determining whether to suspend any 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.⁶ Another factor we consider is whether the company continues to operate.

40 Here, the Company will no longer be permitted to operate as a household goods carrier in Washington. Accordingly, the Commission finds good cause to suspend the entire \$3,000 penalty for a period of two years subject to the condition that Groovin Movin must cease and desist all operations as a household goods carrier unless and until the Company applies for and obtains a new permit from the Commission.

FINDINGS AND CONCLUSIONS

- 41 (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 companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 42 (2) Groovin Movin is a household goods company subject to Commission regulation.
- 43 (3) Groovin Movin failed to cure the deficiencies that led to its proposed unsatisfactory safety rating within 60 days, as required. Accordingly, Groovin Movin's household goods permit should be cancelled.
- 44 (4) Groovin Movin violated WAC 480-15-555 by failing to complete criminal background checks on prospective employees on 13 occasions.

⁶ *Id.* at ¶20.

- 45 (5) Groovin Movin should be penalized \$1,300 for 13 violations of WAC 480-15-555.
- 46 (6) Groovin Movin violated 49 C.F.R. § 391.45(a) by using a driver not medically examined and certified.
- 47 (7) Groovin Movin should be penalized \$1,200 for 24 violations of 49 C.F.R. § 391.45(a).
- 48 (8) Groovin Movin violated 49 C.F.R. § 391.51(a) by failing to maintain a driver qualification file for each driver.
- 49 (9) Groovin Movin should be penalized \$100 for two violations 49 C.F.R. § 391.51(a).
- 50 (10) Groovin Movin violated 49 C.F.R. § 393.75(b) by operating a commercial motor vehicle with the front tire tread depth less than 2/32 of an inch on a major tread groove.
- 51 (11) Groovin Movin should be penalized \$100 for one violations of 49 C.F.R. § 393.75(b).
- 52 (12) Groovin Movin violated 49 C.F.R. § 395.8(a)(1) by failing to require drivers to prepare a record of duty status on 107 occasions.
- 53 (13) Groovin Movin should be penalized \$100 for 107 violations of 49 C.F.R. § 395.8(a)(1).
- 54 (14) Groovin Movin violated 49 C.F.R. § 396.3(b) by failing to keep minimum records of inspection and vehicle maintenance.
- 55 (15) Groovin Movin should be penalized \$100 for one violation of 49 C.F.R. § 396.3(b).
- 56 (16) Groovin Movin violated 49 C.F.R. § 396.17(a) by using a commercial motor vehicle not periodically inspected.
- 57 (17) Groovin Movin should be penalized \$100 for one violation of 49 C.F.R. § 396.17(a).

- 58 (18) The entire penalty amount of \$3,000 should be suspended subject to the condition that Groovin Movin ceases and desists operating as a household goods carrier unless it obtains from the Commission the permit necessary to conduct such operations.

ORDER

THE COMMISSION ORDERS THAT

- 59 (1) Pro Movers LLC, d/b/a Groovin Movin's household goods permit is cancelled effective September 8, 2020. Pro Movers LLC, d/b/a Groovin Movin, must cease and desist all operations unless and until it applies for and obtains a new permit from the Commission.
- 60 (2) Pro Movers LLC, d/b/a Groovin Movin, is assessed a penalty of \$3,000. The Commission suspends a \$3,000 penalty for a period of two years subject to the condition that Pro Movers LLC, d/b/a Groovin Movin, refrains from operating as a household goods carrier without a permit.

DATED at Lacey, Washington, and effective September 4, 2020.

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).