

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

INDUSTRY MOVERS, INC.

For Compliance with WAC 480-15-555(1)
and C.F.R. § 395.8(a)(1)

DOCKET TV-230785

ORDER 01

APPROVING SAFETY
MANAGEMENT PLAN;
EXTENDING PROVISIONAL
PERIOD SUBJECT TO
CONDITIONS

BACKGROUND

- 1 On October 3, 2023, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment against Industry Movers, Inc., (Industry Movers or Company) in the amount of \$600. The Penalty Assessment documented violations of WAC chapter 480-15 and Title 49 of the Code of Federal Regulations.
- 2 That next day, October 4, 2023, the Commission issued a Notice of Intent to Cancel; Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements (NOIC) against Industry Movers. The NOIC, among other things, scheduled a brief adjudicative proceeding (BAP) for November 14, 2023. The NOIC also required the Company to obtain Commission approval of its Safety Management Plan (SMP) by November 20, 2023.
- 3 On October 12, 2023, Industry Movers filed an application for mitigation, admitting the violations of WAC 480-15-555(1) noted in the Penalty Assessment, and requesting a decision based on the written information filed to the docket.
- 4 On November 3, 2023, the Company submitted a waiver of hearing and admitted to all of the violations alleged in the NOIC.
- 5 That same day, Commission staff (Staff)¹ submitted its evaluation of Industry Movers' proposed SMP. Staff notes that earlier on September 21, 2023, it completed a routine

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

safety investigation of Industry Movers that resulted in a proposed conditional safety rating. The proposed conditional safety rating was based on thirty-five violations of critical regulations – Washington Administrative Code (WAC) 480-15-555(1) and 49 CFR § 395.8(a)(1). Pursuant to 49 CFR § 385.17, a carrier that receives a conditional or unsatisfactory rating must take corrective action and request a change of safety ratings within 61 days of a conditional or unsatisfactory rating, or cease operations.

6 Staff proffers that the Company's SMP, submitted on November 3, 2023, is acceptable and meets the requirements of 49 C.F.R. part 385. Documentation of driver qualifications, hours of service records, inspector qualifications, leasing documents, and criminal background checks were included in the plan. Staff submits that the Company took the required steps to bring its safety operations into compliance with Commission regulations.

7 Staff therefore recommends the following:

- The Commission does not cancel Industry Movers' provisional permit;
- Maintain the safety rating of conditional; and
- The Commission extends the Company's provisional period until such a time that Industry Movers achieves a satisfactory safety rating, or the Commission finds good cause to cancel the Company's operating authority.

8 On November 7, 2023, the Commission cancelled the hearing by notice, and indicated that this matter would be decided on a paper record.

DISCUSSION

9 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's September 2023 compliance review of Industry Movers found thirty-five violations of critical regulations, which resulted in a proposed conditional safety rating. We rule on whether the Company's SMP should be approved and whether its provisional period should be extended for good cause.

10 On November 3, 2023, the Company submitted its updated SMP. Staff determined that Industry Movers' SMP 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 Industry Movers' SMP is acceptable and satisfies the legal requirements of 49 CFR part 385. We agree.

- 11 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with 49 C.F.R. part 385, by correcting the violations that led to the proposed conditional safety rating. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to maintain its safety rating as conditional. The Commission declines to cancel the Company's permit and operating authority.
- 12 We also agree with Staff's recommendation to extend the Company's provisional period for its household goods operating authority. 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. In this case, Staff recommends that the Commission extend the Company's provisional period until such a time that Industry Movers achieves a satisfactory safety rating, or the Commission finds good cause to cancel the Company's operating authority.
- 13 Additionally, the Company has requested mitigation of some of the assessed \$600 penalty.
- 14 Staff and Company have negotiated a resolution of this penalty, wherein \$300 of the assessed penalty is suspended for two years and then waived subject to the following conditions:
- Industry Movers maintains a conditional safety rating;
 - Staff performs a follow-up safety investigation at least six months from the date of the order;
 - The Company does not incur repeat critical violations upon reinspection; and
 - Industry Movers pay the non-suspended \$300 assessed penalty, over the course of three months, on a payment plan mutually agreed to be the parties.
- 15 Because the Company has admitted to the violations and has agreed to pay an amount acceptable to Staff, there would appear to be no outstanding controversy as to whether the violations occurred or the appropriate amount of the penalty. As such, the Commission approves the settlement of penalties as proposed, and suspends \$300 of the penalty subject to the conditions contained in paragraph 14.

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) Industry Movers is a household goods carrier subject to Commission regulation.
- 18 (3) Industry Movers committed five violations of WAC 480-15-555(1), thirty violations of 49 C.F.R. § 395.8(a)(1).
- 19 (4) Industry Movers cured the deficiencies that led to the conditional safety rating.
- 20 (5) Industry Movers' updated SMP submitted on November 2, 2023, should be approved, and the Company's provisional period should be extended subject to the conditions proposed by Staff, as noted in paragraph 14 of this Order.

ORDER

THE COMMISSION ORDERS:

- 21 (1) The Commission approves Industry Movers, Inc.'s safety management plan.
- 22 (2) Industry Movers Inc.'s provisional period is extended subject to the conditions noted in paragraph 14 of this Order.
- 23 (3) Half of the \$600 penalty will be suspended subject to the conditions noted in paragraph 14 of this Order. The remaining \$300 penalty will be paid in monthly increments of \$100, as agreed to by the parties.

DATED at Lacey, Washington, and effective November 17, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Bijan Hughes

BIJAN HUGHES

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 twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

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 fails to 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). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).