

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

JFS TRANSPORT, INC., d/b/a COAST
MOVERS

For Compliance with WAC 480-15

DOCKET TV-220509

ORDER 01

DEFAULT ORDER; CANCELING
TEMPORARY AUTHORITY;
DENYING APPLICATION FOR
PERMANENT AUTHORITY;
IMPOSING AND SUSPENDING
PENALTIES

BACKGROUND

- 1 **Procedural History.** On July 21, 2022, the Commission issued a Notice of Intent to Cancel; Notice of Brief Adjudicative Proceeding (BAP) set for August 19, 2022, at 9:30 a.m. (Notice of Hearing). The BAP was rescheduled for August 12, 2022, at 9:30 a.m. by subsequent notice. The Notice of Hearing alleges that Commission staff (Staff) completed an investigation of JFS Transport, Inc., d/b/a Coast Movers (JFS Transport or Company) and found that the Company failed to comply with safety and other requirements of Washington Administrative Code (WAC) 480-15. As a result of the investigation, Staff documented 83 violations of Commission rules,¹ including 69 acute or critical violations.² On June 29, 2022, Staff notified the Company that the investigation resulted in a proposed unsatisfactory safety rating based on the acute and critical violations discovered during the compliance review.

¹ The total violations include 5 violations of 49 Code of Federal Regulations (C.F.R.) Parts 393 and 396 found during commercial vehicle inspections. These violations do not affect the Company's safety rating.

² An acute violation is a violation of a regulation where "noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier." 49 C.F.R. Part 385, Appendix B.II.b; WAC 480-15-560; WAC 480-15-570; WAC 480-14-999. A critical violation is a violation of a regulation where "noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls." 49 C.F.R. Part 385, Appendix B.II.c; WAC 480-15-560; WAC 480-15-570; WAC 480-14-999.

2 On July 25, 2022, the Commission issued a penalty assessment against JFS Transport in the amount of \$2,500 for the violations discovered during Staff's compliance review.

3 **Brief Adjudicative Proceeding.** The Commission convened a virtual brief adjudicative proceeding (BAP) in this Docket on August 12, 2022, before Administrative Law Judge Rayne Pearson. Staff was the only party who appeared at the BAP. Staff moved for default pursuant to RCW 34.05.440(2) and WAC 480-07-450. Staff also requested that it be allowed to present a prima facie case demonstrating that: (1) JFS Transport has not met the provisional permit requirements of receiving a satisfactory safety rating under WAC 480-15-305, and (2) the Commission has good cause to cancel the Company's permit for receiving an unsatisfactory safety rating.

4 RCW 34.05.440(2) allows the presiding officer discretion to enter a "default or other dispositive order" if a party fails to appear at the hearing. Based on the failure of JFS Transport to appear, the Administrative Law Judge granted Staff's request to enter a default order and to allow for presentation of its case.

5 Staff presented the testimony of two witnesses: Staff Investigator Francine Gagne and Assistant Director for Transportation Safety Mathew Perkinson. Staff recommended the Commission cancel the Company's provisional household goods carrier permit authority for failing to achieve a satisfactory safety rating. Staff further recommended the Commission suspend the \$2,500 penalty assessed in this Docket subject to the condition that the Company ceases and desists from operating as household goods carrier without a permit. Staff also recommends that if Staff discovers that the Company operates without a permit, the entire penalty will become due and payable immediately. Similarly, Staff recommends that if the Company applies for reinstatement of its permit following Staff's approval of a proposed safety management plan, the entire penalty will become due and payable.

6 **Default Initial Order.** The Commission finds JFS Transport in default pursuant to RCW 34.05.440(2) and WAC 480-07-450(1). The Commission also finds that JFS Transport has not obtained the satisfactory safety rating necessary to successfully complete its provisional period. The Commission therefore has good cause to cancel JFS Transport's provisional household goods carrier permit and deny its application for permanent authority.

7 **Appearances.** Harry Fukano, Assistant Attorney General, Lacey, Washington, represents
Commission Staff.³

DISCUSSION

A. Default

8 The Notice of Hearing included a notice that any party who failed to attend or participate
in the hearing may be held in default in accordance with the terms of RCW 34.05.440 and
WAC 480-07-450. RCW 34.05.440(2) provides: “If a party fails to attend or participate
in a hearing or other stage of an adjudicative proceeding ... the presiding officer may
serve upon all parties a default or other dispositive order, which shall include a statement
of the grounds for the order.” WAC 480-07-450(1) provides that the Commission may
find a party in default if the party fails to appear at the time and place set for a hearing.

9 Staff moved to hold JFS Transport in default pursuant to RCW 34.05.440(2) and WAC
480-07-450. Staff testified that the Company sent an email during the hearing and asked
to move the hearing to another date. Staff further testified that the Company has a history
of failing to appear and making last-minute requests to move proceedings for which it has
received sufficient notice. Based on JFS Transport’s failure to appear, the Administrative
Law Judge orally granted Staff’s request to enter a default order and to hear Staff’s case
on the merits.

10 **Decision.** The Commission electronically served JFS Transport with the Notice
Rescheduling the BAP on July 25, 2022, 18 days in advance of the BAP. Accordingly,
JFS Transport was properly and legally served and provided due and proper notice of the
time and place set for hearing. JFS Transport did not appear at the BAP and is therefore
held in default.

11 JFS Transport’s failure to appear at the BAP is unacceptable. Both the Commission and
the parties expended resources preparing for, and attending, the BAP. This default order
cancels the Company’s temporary authority and denies its application for permanent
authority, as discussed below, and should serve to impress upon JFS Transport the

³ 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.

importance of responding to the Commission's communications and notices and cooperating with Commission Staff.

- 12 WAC 480-07-450(2) provides that: "A party who is dismissed from a proceeding or found in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process." A notice appearing at the end of this order provides instructions for filing such a request with the Commission.

B. Temporary Authority to Operate as a Household Goods Carrier and Application for Permanent Authority

- 13 WAC 480-15-305 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. Among other things, the applicant also must receive a satisfactory safety rating in a safety review conducted by Commission Staff.
- 14 Pursuant WAC 480-15-450(1)(e), the Commission may cancel a carrier's permit for good cause, such as failing to "comply with applicable laws and commission rules pertaining to operations of household goods carriers, including safety requirements set in law or rule."
- 15 Francine Gagne, a compliance investigator with the Commission, testified concerning her investigation into the operations and business practices of JFS Transport. Gagne prepared exhibits summarizing the findings.⁴ Gagne testified that JFS Transport failed to provide a proposed safety management plan to address the violations cited in Staff's investigation report. Gagne further testified that Staff's compliance review resulted in a proposed unsatisfactory safety rating for JFS Transport.
- 16 **Decision.** By failing to appear at the hearing held on August 12, 2022, JFS Transport has also failed to meet the burden of proving that the Company did not violate WAC 480-15 or demonstrate that the Commission should not cancel its permit pursuant to WAC 480-15-450(1)(e). The evidence presented by Staff through exhibits and witness testimony establishes that JFS Transport has not obtained the satisfactory safety rating necessary to complete its provisional period. The Commission therefore has good cause to cancel JFS Transport's provisional household goods carrier permit and deny its application for permanent authority.

⁴ See Exh. FG-1 and Exh. FG-2.

C. Penalty Assessment

17 The Penalty Assessment instructed the Company to respond within 15 days by either
18 (1) paying the amount due, (2) contesting the violations, or (3) admitting the violations
and requesting mitigation of the penalty.

18 **Decision.** JFS Transport failed to respond to the Penalty Assessment within 15 days as
required. Accordingly, the Commission upholds the \$2,500 penalty, but agrees with
Staff's recommendation to suspend the entire penalty subject to the condition that JFS
Transport ceases and desists operating as a household goods company unless and until it
files a safety management plan acceptable to Staff and applies for and obtains
reinstatement of its permit. If Staff discovers JFS Transport is operating as a household
goods carrier without a permit, or if JFS Transport applies for reinstatement of its permit,
the \$2,500 penalty will become due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 19 (1) The Commission is an agency of the State of Washington vested by statute with
authority to regulate persons engaged in the business of transporting household
goods for compensation over public roads in Washington.
- 20 (2) The Commission has jurisdiction over the subject matter of this proceeding and
over JFS Transport.
- 21 (3) JFS Transport has not obtained the satisfactory safety rating necessary to
complete its provisional period in violation of WAC 480-15-305.
- 22 (4) The Commission has good cause to cancel JFS Transport's provisional
household goods carrier permit and deny its application for permanent authority
pursuant to WAC 480-15-450(1)(f).
- 23 (5) Pursuant to RCW 34.05.440(2), JFS Transport is held in default for failing to
appear at the August 12, 2022, BAP.
- 24 (6) As an unpermitted carrier, JFS Transport must cease and desist conducting
operations requiring permit authority unless or until the required authority is
obtained from the Commission.
- 25 (7) The \$2,500 penalty assessed in this Docket is suspended for a period of two
years, and then waived, subject to the condition that JFS Transport ceases and
desists from operating as a household goods carrier unless and until it obtains the

permit required for such operations. If Staff discovers JFS Transport is operating as a household goods carrier without a permit, or if JFS Transport applies for reinstatement of its permit, the \$2,500 penalty will become due and payable without further Commission order.

ORDER

THE COMMISSION ORDERS:

- 26 (1) JFS Transport, Inc., d/b/a Coast Movers, is held in default. Should JFS Transport, Inc., d/b/a Coast Movers, fail to respond to this Order by filing a written motion within ten (10) days requesting that the order be vacated pursuant to WAC 480-07-450(2), the default in this proceeding shall remain in place.
- 27 (2) JFS Transport, Inc., d/b/a Coast Movers' provisional permit is canceled and its application for permanent authority is denied.
- 28 (3) JFS Transport, Inc., d/b/a Coast Movers is ordered to immediately cease and desist operations as a household goods carrier within the state of Washington.
- 29 (4) If Staff discovers that JFS Transport, Inc., d/b/a Coast Movers is operating as a household goods carrier without a permit, or if JFS Transport, Inc., d/b/a Coast Movers applies for reinstatement of its permit, the \$2,500 penalty will become due and payable without further Commission order.
- 30 (5) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

Dated at Lacey, Washington, and effective August 16, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
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 480-07-450(2) states that a party held in default has 10 days after service of a default order to file a written motion requesting the order be vacated and the proceeding reopened for further process. The party held in default must state the grounds relied upon, including its reasons for failing to appear.

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).