

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of I HEART MOVERS, LLC, For Compliance with WAC 480-15-555, WAC 480-15-560, WAC 480-15-570, and WAC 480-15-590	DOCKETS TV-200628 and TV-200627 (<i>Consolidated</i>) ORDER 01
In the Matter of the Penalty Assessment against I HEART MOVERS, LLC, in the amount of \$9,100	CONSOLIDATING DOCKETS; APPROVING SAFETY MANAGEMENT PLAN; UPGRADING SAFETY RATING; IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On July 20, 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 I Heart Movers, LLC, (IHM or Company) for Compliance with Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, WAC 480-15-570, and WAC 480-15-590 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of IHM's operations between April and July 2020 and, on July 8, 2020, cited the Company for 151 violations of federal and state safety regulations, which resulted in a proposed "unsatisfactory" safety rating. Based on its review, Staff recommends the Commission cancel IHM's household goods carrier's permit unless the Company obtains Commission approval of a safety management plan. The Notice directed IHM to file a proposed safety management plan by August 12, 2020. The Commission also set a brief adjudicative proceeding (BAP) for August 26, 2020, at 1:30 p.m. to determine whether the Commission should cancel IHM's household goods carrier's permit.

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

3 On July 21, 2020, the Commission assessed a \$9,100 penalty (Penalty Assessment) against IHM for the safety violations discovered during Staff's compliance review.¹ The Penalty Assessment includes:

- 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.
- An \$8,200 penalty for 82 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- A \$100 penalty for two violations of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file for each driver employed.
- A \$100 penalty for 60 violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to prepare records of duty status.
- A \$100 penalty for one violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
- A \$100 penalty for one violation of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

4 On July 22, 2020, IHM 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-200627.

5 On August 17, 2020, IHM submitted a proposed safety management plan. On August 19, 2020, 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 the IHM'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 upgrade the Company's safety rating to "conditional" and extend its provisional period until such a time that the Company achieves a satisfactory safety rating. Staff further recommends that Dockets TV-200627 and TV-200628 be consolidated.

7 Staff also recommends that the Commission assess a reduced penalty of \$4,750. Finally, Staff recommends that \$2,250 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) IHM does not incur any repeat violations

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.

of critical regulations, and (3) the Company pays the \$2,500 portion of the penalty that is not suspended.

8 On August 19, 2020, Staff sent an email to the presiding officer representing that the Company waives its right to a hearing in Docket TV-200628, and recommending that the brief adjudicative proceeding be cancelled. On August 20, 2020, the Commission issued a Notice cancelling the August 26, 2020, hearing 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-200627 and Docket TV-200628 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 IHM found 151 violations of Commission safety regulations; all of the violations were "critical," which resulted in a proposed "unsatisfactory" 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.

11 On August 17, 2020, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating to "conditional." Staff determined that IHM'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 IHM'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 led to the proposed "unsatisfactory" safety rating. Accordingly, the Commission agrees with Staff's recommendation that the Company's safety rating should be upgraded to "conditional."

3. Penalty

- 13 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 violations meet this standard.⁴
- 14 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
- 15 Here, Staff recommends the Commission assess a reduced penalty of \$4,750. 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, hours of service records, vehicle maintenance, carrier registration, vehicle leasing, and criminal background check information. Accordingly, we are satisfied that IHM has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring.
- 16 **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

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.

⁶ *Id.* at ¶20.

⁷ *Id.*

17 In this case, IHM has taken action to prevent each of the violations from reoccurring, and also 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.

18 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 \$2,250 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) IHM must not incur any repeat violations of critical regulations, and;
- 3) The Company pays the \$2,500 portion of the penalty that is not suspended within 10 days of the effective date of this Order.

FINDINGS AND CONCLUSIONS

- 19 (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.
- 20 (2) IHM is a household goods carrier subject to Commission regulation.
- 21 (3) IHM cured the deficiencies that led to Staff's recommendation to cancel the Company's household goods permit. Accordingly, IHM's safety rating should be upgraded to "conditional."
- 22 (4) IHM committed 151 critical violations of WAC 480-15 and Title 49 C.F.R.
- 23 (5) IHM does not dispute that the violations occurred.
- 24 (6) IHM should be penalized \$4,750 for 151 critical violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend a \$2,250 portion of the penalty for two years, and then waive it, subject to the conditions set out in paragraph 18, above.

ORDER

THE COMMISSION ORDERS THAT:

- 25 (1) The Commission approves I Heart Movers, LLC’s safety management plan.
- 26 (2) I Heart Movers, LLC’s safety rating is upgraded to “conditional.”
- 27 (3) The Commission assesses a \$4,750 penalty against I Heart Movers, LLC. The
Commission suspends a \$2,250 portion of the penalty for a period of two years,
and then waives it, subject to the conditions set out in paragraph 18, above.
- 28 (4) The \$2,500 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 August 31, 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).