

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of QUEEN CITY BUSINESS MOVERS LLC For Compliance with WAC 480-15	DOCKETS TV-200870 and TV-200869 (<i>Consolidated</i>) ORDER 01
In the Matter of the Penalty Assessment against QUEEN CITY BUSINESS MOVERS LLC in the amount of \$24,700	CONSOLIDATING DOCKETS; APPROVING SAFETY MANAGEMENT PLAN; UPGRADING SAFETY RATING; IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On October 14, 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 Queen City Business Movers LLC (Queen City or Company) for Compliance with Washington Administrative Code (WAC) 480-15 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Queen City's operations in October 2020 and cited the Company for 324 acute and critical violations of federal and state safety regulations. Based on its review, Staff recommends the Commission cancel Queen City's household goods carrier permit unless the Company obtains Commission approval of a safety management plan. The Notice directed Queen City to file a proposed safety management plan by November 24, 2020. The Commission also set a brief adjudicative proceeding for December 8, 2020, at 9:30 a.m. to determine whether the Commission should cancel Queen City's household goods carrier permit.
- 3 On October 26, 2020, the Commission assessed a \$24,700 penalty (Penalty Assessment) against Queen City for the safety violations discovered during Staff's October 2020 compliance review.¹ The Penalty Assessment includes:

¹ The Penalty Assessment cites violations of Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570. WAC 480-15-560 and -570 adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.). Accordingly, Commission safety

- An \$800 penalty for eight violations of WAC 480-15-555 for failing to acquire criminal background checks for prospective employees.
- A \$1,500 penalty for one violation of 49 C.F.R. § 382.115(a) for failing to implement a random controlled substance and alcohol testing program.
- A \$22,000 penalty for 220 violations of 49 C.F.R. § 383.37(a) for knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver does not have a current commercial learner's permit or commercial driver's license with the proper class endorsements.
- A \$100 penalty for three violations of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification files for each driver.
- A \$100 penalty for 90 violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to prepare records of duty status using the appropriate method.
- A \$100 penalty for one violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of vehicle inspection and 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 November 17, 2020, Queen City filed with the Commission a request for mitigation of the penalty, admitting the violations and requesting a hearing to present evidence to support its request.

5 On November 24, 2020, Queen City submitted a proposed safety management plan.

6 On December 2, 2020, Staff filed with the Commission its evaluation of the Company's safety management plan and penalty recommendation (Evaluation).² In its Evaluation, Staff indicated that the Company waived its right to a hearing in both dockets and requested the Commission cancel the brief adjudicative proceeding and decide this matter on a paper record. On December 4, 2020, the Commission issued a notice canceling the December 8, 2020, hearing and informing the parties that the Commission would enter an order based on the parties' written submissions.

7 Based on its review of the Company's proposed plan, Staff determined 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

regulations with parallel federal rules are hereinafter referenced only by the applicable provision of Title 49 C.F.R.

² Staff's Evaluation stated in error that the Penalty Assessment included 220 violations of an additional provision of Title 49 C.F.R. Our discussion and decision are based on only the violations cited in the Penalty Assessment.

safety rating to conditional, but also extend the Company's provisional permit period until such time as the Company achieves a satisfactory safety rating. Staff further recommends that the Commission assess a reduced penalty of \$12,450. Finally, Staff recommends the Commission suspend an \$8,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: (1) Staff must conduct a follow-up safety investigation at least six months from the effective date of this Order; (2) the Company must not incur any repeat acute or critical violations upon re-inspection; and (3) the Company must pay the \$4,450 portion of the penalty that is not suspended.

DISCUSSION AND DECISION

1. Consolidation

8 Because the violations cited in Staff's October 2020 investigation gave rise to the enforcement actions taken in both dockets, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket TV-200870 and Docket TV-200869 are consolidated.

2. Safety Rating

9 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's October 2020 compliance review of Queen City found 324 violations of acute and critical safety regulations, which resulted in a proposed unsatisfactory safety rating. Violations are considered "acute" when non-compliance is so severe that immediate corrective action is required regardless of the overall safety posture of the company. 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.

10 On November 24, 2020, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that Queen City'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 Queen City's safety management plan is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385. We agree.

11 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 and grants the Company's request to upgrade its safety rating to conditional.

- 12 We likewise agree with Staff's recommendation to extend the Company's provisional period for its household goods carrier permit. 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. Here, the Company has corrected the violations at issue and demonstrated that it has taken significant steps to ensure its operations comply with applicable safety regulations. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time as the Company achieves a satisfactory rating.

3. Penalty

- 13 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 Acute and critical violations meet this standard.⁵
- 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.⁶
- 15 Here, Staff recommends the Commission assess a reduced penalty of \$12,450. 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. The safety management plan includes documentation of driver qualifications, criminal background checks, hours of service records, and vehicle

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.

⁶ Enforcement Policy ¶19.

maintenance files. Accordingly, we are satisfied that Queen City 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.⁷ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁸

17 In this case, penalties were assessed for first-time violations. In addition, the Company has taken action to prevent each of the violations from reoccurring. 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 an \$8,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

a) Queen City must maintain a conditional safety rating;

b) Staff must conduct a follow-up investigation at least six months from the effective date of this Order;

c) Queen City may not incur any repeat acute or critical violations of WAC 480-15 upon re-inspection; and

d) Queen City must pay the remaining \$4,450 penalty within ten days of the effective date of this Order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$4,450 portion of the penalty that is not suspended.

FINDINGS AND CONCLUSIONS

⁷ *Id.* at ¶20.

⁸ *Id.*

- 18 (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.
- 19 (2) Queen City is a household goods carrier subject to Commission regulation.
- 20 (3) Queen City cured the deficiencies that led to the proposed unsatisfactory safety rating. Accordingly, Queen City's safety rating should be upgraded to conditional, and the Company should be allowed to maintain its household goods carrier permit.
- 21 (4) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend Queen City's provisional period until such time as the Company achieves a satisfactory safety rating.
- 22 (5) Queen City committed 324 acute and critical violations of WAC 480-15 and Title 49 C.F.R.
- 23 (6) Queen City does not dispute that the violations occurred.
- 24 (7) Queen City should be penalized \$12,450 for 324 violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend an \$8,000 portion of the penalty for two years, and then waive it, subject to the conditions set out in paragraph 17, above.

ORDER

THE COMMISSION ORDERS THAT:

- 25 (1) The Commission approves Queen City Business Movers LLC's safety management plan.
- 26 (2) Queen City Business Movers LLC's safety rating is upgraded to conditional.
- 38 (3) The Commission assesses a \$12,450 penalty against Queen City Business Movers LLC. The Commission suspends an \$8,000 portion of the penalty for a period of

two years, and then waives it, subject to the conditions set out in paragraph 17, above.

- 27 (4) Within 10 days of the effective date of this Order, Queen City Business Movers LLC must either pay the \$4,450 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement.
- 28 (5) Queen City Business Movers LLC's provisional period is extended until such time as the Company achieves a satisfactory safety rating.

DATED at Lacey, Washington, and effective December 8, 2020.

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 480-07-610(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).