

Agenda Date: December 11, 2014
Item Number: B1

Docket: TV-143221

Petitioner: PMC Moving, LLC

Staff: Betty Young, Compliance Investigator

Recommendation

Issue an order in Docket TV-143221, affirming Order 01 denying mitigation of PMC Moving, LLC's (PMC Moving) penalty for safety violations found by staff during a July 2014 compliance review.

Background

On September 18, 2014, the Washington Utilities and Transportation Commission (commission) assessed a penalty of \$5,900 (Penalty Assessment) against PMC Moving, LLC for 58 violations of Washington Administrative Code (WAC) 480-15-570, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications and hours of service, and one violation of WAC 480-15-560, which adopts 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance.

On October 6, 2014, PMC Moving responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. PMC Moving stated that prior to receiving the Penalty Assessment, it was unaware of commission safety requirements, but had since implemented a compliance program. The company also claimed that some violations were cited because the commission's safety inspector Alan Dickson "misconstrued" company data.

On October 17, 2014, staff filed a response recommending the commission deny the company's request for mitigation. Staff explained that although all 168 violations cited in the Penalty Assessment are first-time offenses, 59 warranted penalties because they presented a risk of serious harm to the public. The commission assessed a reduced penalty of \$100 for three violations of 49 C.F.R. Part 396.17(a) where the company used three vehicles that were not periodically inspected as required. The commission assessed a penalty of \$100 per violation for the remaining 58 violations of 49 C.F.R. Part 391.45(b)(1) for using drivers who were not medically certified, which is a category of violation that is ineligible for reduced penalties even for a first-time offense. Because the company presented no new information in its mitigation request that would support reducing the penalty, staff opposed mitigation.

On November 4, 2014, the commission issued Order 01, denying the company's mitigation request. On November 13, 2014, the commission received a letter from John Lutz of PMC Moving requesting commission review of Order 01. According to commission rules in WAC 480-07-904(3), the commission's review takes place at the Open Meeting.

Discussion

Mr. Lutz's November 13, 2014, petition for commission review of Order 01 requests a hearing to address some of the points in PMC Moving's mitigation request which Mr. Lutz believes were overlooked, including alleged inaccuracies in Mr. Dickson's report.

The Penalty Assessment included penalties of \$100 each for 58 violations of 49 C.F.R. Part 391.45(b)(1) because the company failed to ensure its three drivers were medically examined and certified. During the compliance review, staff found that in June 2014, three company drivers drove without the required medical certification for a total of 58 days: Nickolas Urbach drove 17 days, Julian Lave drove 20 days, and Tyler Prall drove 21 days.

Prior to the compliance review, Mr. Dickson requested the specific records that he would review during the inspection, including driver hours of service records for each PMC Moving employee. PMC Moving provided records which reflected hours for Mr. Prall on 21 days in June. PMC Moving disputes staff's finding with respect to Mr. Prall, but has offered no explanation to support its claim that Mr. Dickson misread or misconstrued company time sheets. To date, PMC Moving has not submitted any evidence to refute staff's finding that Mr. Prall drove uncertified on 21 days.

The Penalty Assessment also included a penalty of \$100 for three violations of 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance. Because the commission could have assessed a \$100 penalty for each of the three violations, staff believes the penalty has already been sufficiently reduced and does not support any further reduction of the penalty.

Commission staff reviewed Mr. Lutz's November 13, 2014, petition for review and does not find any new information which would support mitigation.

Conclusion

Issue an Order in Docket TV-143221, affirming Order 01 denying mitigation of PMC Moving, Inc.'s penalty assessment.