

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of	DOCKET TV-220417
MR. MUSCLES MOVING COMPANY LLC	ORDER 01
For Compliance with WAC 480-15	APPROVING SAFETY MANAGEMENT PLAN; MAINTAINING SAFETY RATING; EXTENDING PROVISIONAL PERIOD; IMPOSING AND SUSPENDING PENALTIES

**BACKGROUND**

- 1 On June 28, 2022, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel; Notice of Hearing Setting Time for Oral Statements; Complaint for Penalties; and Notice of Prehearing Conference in the Matter of the Investigation of Mr. Muscles Moving Company LLC (Mr. Muscles Moving 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 the Company's operations in June 2022 and cited the Company for 45 critical violations of federal and state safety regulations, which resulted in a proposed conditional safety rating. Based on its review, Staff recommended the Commission cancel the Company's household goods carrier permit unless Mr. Muscles Moving obtains Commission approval of a safety management plan by July 29, 2022. The Notice directed Mr. Muscles Moving to file a proposed safety management plan by July 8, 2022. The Commission also set a prehearing conference for July 8, 2022, to discuss the Company's progress, and scheduled a hearing for July 22, 2022, at 10 a.m. to determine whether the Commission should cancel the Company's household goods carrier permit.
- 3 The Complaint sought penalties of up to \$1,000 for each of the following safety violations discovered during Staff's compliance review:<sup>1</sup>

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<sup>1</sup> The Complaint cites violations of Washington Administrative Code (WAC) 480-15-530, WAC 480-15-550, WAC 480-15-560, and WAC 480-15-570. WAC 480-15-560 and -570 adopt by

- 5 violations of Revised Code of Washington (RCW) 81.80.075(1) for engaging in business as a household goods carrier without first obtaining a permit from the Commission as required.
- 3 violations of WAC 480-15-555 for failing to perform criminal background checks on 3 company employees.
- 1 violation of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to prepare records of duty status.
- 1 violation of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification files for each driver employed.
- 2 violations of WAC 480-15-590(3) and -590(4) for failing to maintain the original lease agreement for a term lease vehicle the Company operated in the preceding 365 days.
- 1 violation, with 23 individual occurrences, of 49 C.F.R. § 391.45(a) for using drivers not medically examined and certified.
- 1 violation of WAC 480-15-480(4) for failing to file an annual report with the Commission as required.
- 1 violation of 49 C.F.R. § 396.17(a) for using a vehicle that was not periodically inspected.
- 1 violation of 49 C.F.R. § 396.3(b) for failing to retain vehicle maintenance files.

4 On July 8, 2022, the Commission convened a prehearing conference to discuss the status of the Company's proposed safety management plan. The Company represented that it was continuing to work with Staff to develop an acceptable safety management plan.

5 On July 22, 2022, the Commission convened an evidentiary hearing to determine whether Mr. Muscles Moving's household goods permit should be canceled. Staff presented the testimony of Tracy Cobile, transportation safety investigator, and Jason Sharp, transportation planning specialist. Cobile testified about the safety investigation and the violations Staff discovered and documented in its Safety Investigation Report, which led to the proposed conditional safety rating for Mr. Muscles Moving. Cobile further testified that Mr. Muscles Moving operated on five occasions between November 2021 and January 2022 while the Company's household goods permit was canceled for insufficient proof of insurance.<sup>2</sup> Cobile explained that the Company holds a provisional household

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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.

<sup>2</sup> Mr. Muscles Moving's provisional household goods permit THG069221 was canceled for insufficient proof of insurance in Docket TV-210846 on November 5, 2021, and was reinstated on January 10, 2022, in Docket TV-210917.

goods permit and has not yet been granted permanent authority to operate as a household goods moving company.<sup>3</sup>

6 Alex Conner, Company owner, testified on behalf of Mr. Muscles Moving. Conner stipulated to the violations and explained that he did not intentionally operate without a permit while it was canceled for lack of insurance. Conner expressed a desire to come into compliance and a willingness to continue working with Staff to develop an acceptable safety management plan.

7 At the conclusion of the hearing, Staff witness Sharp recommended the Commission assess a total penalty of \$8,000 as follows:

- \$1,000 for each of the 5 violations of RCW 81.80.075(1) for a total penalty of \$5,000
- \$100 for each of the 3 violations of WAC 480-15-555, for a total penalty of \$300.
- \$100 for each of the 23 violations of 49 C.F.R. § 391.45(a) for a total penalty of \$2,300.
- \$100 for 1 violation of 49 C.F.R. § 391.51(a).
- \$100 for 30 violations of 49 C.F.R. § 395.8(a)(1).
- \$100 for 1 violation of 49 C.F.R. § 396.3(b).
- \$100 for 1 violation of 49 C.F.R. § 396.17(a).

8 Sharp further testified that the Company had not yet submitted an acceptable safety management plan and recommended the Commission proceed with canceling the Company's permit unless the Company provided an acceptable safety management plan no later than close of business on July 28, 2022.

9 On July 28, 2022, Mr. Muscles Moving submitted a proposed safety management plan addressing each violation cited in Staff's investigation. That same day, Staff filed its evaluation of the Company's plan.

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<sup>3</sup> Mr. Muscles Moving filed an application for permanent household goods moving authority on May 15, 2020.

10 Based on its review of the Company’s proposed plan, Staff determined that the Company took all the required steps to bring its safety operations into compliance with Commission regulations. Staff recommends that the Commission maintain the Company’s safety rating as conditional, but also extend the Company’s provisional permit period until such time as the Company achieves a satisfactory safety rating. Staff further recommends the Commission impose an \$8,000 penalty, but suspend a \$6,000 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) Alex Conner, Company owner, must attend Commission-provided household goods training on August 4, 2022, (2) Staff will conduct a follow-up investigation at least six months from the date of this Order, (3) Mr. Muscles Moving may not incur any repeat critical violations upon reinspection, (4) the Company must maintain a conditional safety rating, and (5) Mr. Muscles Moving must pay the \$2,000 portion of the penalty that is not suspended or file jointly with Staff a proposed payment plan within 10 days of the effective date of this order.

## **DISCUSSION AND DECISION**

### **1. Safety Rating**

11 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff’s compliance review of Mr. Muscles Moving found 45 violations of critical regulations. 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.

12 On July 28, 2022, Mr. Muscles Moving submitted its proposed safety management plan and requested the Commission allow it to maintain its household goods permit.

13 That same day, Staff filed its evaluation of the Company’s proposed safety management plan. Staff determined that the Company’s 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 the Company’s safety management plan is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385. We agree.

14 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 conditional safety rating. Accordingly, the Commission agrees with Staff’s

recommendation and grants the Company's request to maintain its household goods permit.

- 38 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.

## 2. Penalty

- 15 Violations discovered during safety inspections are subject to penalties of \$100 per violation.<sup>4</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>5</sup> Critical violations meet this standard.<sup>6</sup>
- 16 The Commission considers several factors when determining whether to assess a reduced penalty, 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.<sup>7</sup>
- 17 Here, Staff recommends the Commission assess a reduced penalty of \$8,000. 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

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<sup>4</sup> See RCW 80.04.405.

<sup>5</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

<sup>6</sup> 49 C.F.R. § 385, Appendix B.

<sup>7</sup> Enforcement Policy ¶19.

driver qualifications, criminal background checks, hours of service records, and vehicle maintenance files. Accordingly, we are satisfied that Mr. Muscles Moving has cured the violations and has put adequate controls in place to prevent the violations from reoccurring.

18 **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.<sup>8</sup> Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.<sup>9</sup>

19 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 a \$6,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- a) Alex Conner, Company owner, must attend Commission-provided household goods training on August 4, 2022.
- b) Mr. Muscles Moving must maintain a conditional safety rating.
- c) Staff must conduct a follow-up investigation at least six months from the effective date of this Order.
- d) Mr. Muscles Moving may not incur any repeat critical violations of WAC 480-15 upon re-inspection; and
- e) Mr. Muscles Moving must pay the remaining \$2,000 penalty within 10 days of the effective date of this Order. The Company may work with Staff to establish

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<sup>8</sup> *Id.* at ¶20.

<sup>9</sup> *Id.*

mutually agreeable payment arrangements to pay the \$2,000 portion of the penalty that is not suspended.

**FINDINGS AND CONCLUSIONS**

- 20 (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.
- 21 (2) Mr. Muscles Moving is a household goods carrier subject to Commission regulation.
- 22 (3) Mr. Muscles Moving cured the deficiencies cited in Staff's Investigation Report. Accordingly, Mr. Muscles Moving's safety rating should be maintained as conditional, and the Company should be allowed to maintain its household goods carrier permit.
- 23 (4) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend Mr. Muscles Moving's provisional period until such time as the Company achieves a satisfactory safety rating.
- 24 (5) Mr. Muscles Moving committed 45 violations of WAC 480-15 and Title 49 C.F.R.
- 25 (6) Mr. Muscles Moving does not dispute that the violations occurred.
- 26 (7) Mr. Muscles Moving should be penalized \$8,000 for 45 violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend a \$6,000 portion of the penalty for two years, and then waive it, subject to the conditions set out in paragraph 19, above.

**ORDER**

**THE COMMISSION ORDERS THAT:**

- 27 (1) The Commission approves Mr. Muscles Moving Company LLC's safety management plan.
- 28 (2) Mr. Muscles Moving Company LLC's safety rating is maintained as conditional.

- 38 (3) The Commission assesses an \$8,000 penalty against Mr. Muscles Moving Company LLC. The Commission suspends a \$6,000 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 19, above.
- 39 (4) Within 10 days of the effective date of this Order, Mr. Muscles Moving Company LLC must either pay the \$2,000 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement.
- 29 (5) Mr. Muscles Moving Company LLC's provisional period is extended until such time as the Company achieves a satisfactory safety rating.

DATED at Lacey, Washington, and effective July 29, 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 480-07-825(2)(a) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file an answer (Answer) to a Petition within 10 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 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 not accept answers to a petition to reopen unless the Commission requests answers by written notice.

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).