

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against:	DOCKET TV-190294
CAN'T STOP MOVING, LLC	ORDER 02
	GRANTING APPLICATION SUBJECT TO CONDITIONS AND IMPOSING PENALTIES

BACKGROUND

- 1 On March 7, 2019, the Washington Utilities and Transportation Commission (Commission) notified Can't Stop Moving, LLC, (Can't Stop Moving or Company) that its provisional household goods carrier permit would be canceled unless the Company submitted acceptable proof of insurance by April 11, 2019. On April 16, 2019, the Commission cancelled Can't Stop Moving's household goods carrier permit for failure to timely submit acceptable proof of insurance. Can't Stop Moving subsequently filed an application for reinstatement of its household goods carrier permit on April 22, 2019.
- 2 In the interim, on March 19, 2019, Commission staff (Staff) completed a compliance review of Can't Stop Moving pursuant to Order 04/02 in Dockets TV-170293/180319 (Consolidated) and found 36 violations of WAC 480-15-530 and 49 C.F.R. §§ 391, 392, 395, and 396.¹ Thus, on May 10, 2019, the Commission issued Order 01 in this docket, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties, and Notice of Intent to Deny Application for Reinstatement; Notice of Hearing (Order 01). In Order 01, the Commission noted Staff's request that the Commission deny Can't Stop Moving's application for reinstatement of its provisional permit in light of the safety violations documented in Staff's March 19, 2019, compliance review. Order 01 also documents Staff's request that the Commission assess penalties of up to \$1,000 against Can't Stop Moving for each acute, critical, or repeat violation.²
- 3 On March 26, 2019, the Commission issued Order 06/04 in Dockets TV-170293/180319 (Consolidated), granting extension of the Company's payment arrangement. Because the

¹ These provisions of the Code of Federal Regulations are adopted by reference in WAC 480-15-560 – 570.

² Of the 36 violations that Staff found in its compliance review, one was an acute violation and 24 were critical violations.

Company did not pay the \$5,400 due within 10 days as required by Order 06/04, on April 23, 2019, the Commission issued a letter discontinuing the payment plan previously allowed in the dockets.

- 4 The Commission conducted a brief adjudicative proceeding to determine whether Can't Stop Moving's provisional authority should be reinstated before Administrative Law Judge Nelli Doroshkin on June 6, 2019.³
- 5 Staff presented testimony from Wayne Gilbert, motor carrier safety investigator, and Jason Sharp, motor carrier safety supervisor. Mr. Gilbert testified about Staff's safety investigation of Can't Stop Moving and Staff's proposed conditional safety rating resulting from that review. Mr. Gilbert also testified that he had previously investigated the Company for safety compliance in 2017 and 2018. Both of those investigations found critical violations and resulted in conditional safety ratings.
- 6 With respect to the March 2019 investigation, Staff documented one acute violation of WAC 480-15-530, which sets the public liability and property damage insurance requirements for household goods carriers. Staff alleges that Can't Stop Moving failed to maintain insurance for its vehicles when it allowed its automobile liability insurance to expire on January 13, 2019, and failed to renew it until January 15, 2019.
- 7 Staff also documented 21 critical violations of 49 C.F.R. § 395.8(a)(1), incorporated by reference in WAC 480-15-570, which requires drivers to prepare records of duty status. Staff alleges that Can't Stop Moving allowed a driver to operate a commercial motor vehicle without documenting hours of service.
- 8 Staff also cited three critical violations of 49 C.F.R. § 396.17(a), incorporated by reference in WAC 480-15-560, which requires periodic Department of Transportation inspections of commercial motor vehicles. Staff alleges that the Company failed to obtain annual inspections of vehicles.
- 9 Finally, Staff documented the following violations: three violations of 49 C.F.R. § 391.23(a), requiring driver background investigations; two violations of 49 C.F.R. § 391.51(b)(1), requiring maintenance of driver employment applications in driver qualification files; one violation of 49 C.F.R. § 391.51(b)(2), requiring maintenance of inquiries into driver driving records in driver qualification files; two violations of 49 C.F.R. § 391.51(d), requiring maintenance of records in driver qualification file for three

³ Staff clarified at the brief adjudicative proceeding that Staff sought penalties only in the event that the Company's application for reinstatement of household goods carrier permit was granted.

years after date of execution; one violation of 49 C.F.R. § 392.4(a), prohibiting driver operation of a commercial motor vehicle while in possession of a controlled substance; and three violations of 49 C.F.R. § 396.3(b)(2), requiring means of indicating the nature and due date of inspection and maintenance operations to be performed.

- 10 Mr. Sharp testified about the Company's compliance history with the Commission, including a 2014 household goods carrier permit suspension and a 2015 cancellation due to lack of insurance on file, as well as previous penalties assessed for safety violations.⁴ Mr. Sharp stated that Staff had exhausted its tools for encouraging the Company's compliance with safety regulations, including household goods carrier training, technical assistance, penalties, and safety management plans. Mr. Sharp also noted that Can't Stop Moving had missed payments of previously enforced penalties in Dockets TV-170293/180319 (Consolidated).
- 11 Eric Michelson, co-owner, testified for Can't Stop Moving. While Mr. Michelson did not deny the violations found in Staff's review, he offered the following explanations:
- a) Regarding lack of insurance on file, Mr. Michelson stated that the Company had continuous insurance coverage following a two-day lapse in insurance coverage during its insurance renewal period in January 2019. On March 12, 2019, Can't Stop Moving changed insurance providers and the new insurance provider did not file proof of insurance with the Commission. Mr. Michelson brought to the June 6 hearing an insurance policy document showing an effective date of March 12, 2019.⁵
 - b) Regarding driver status records, the violation of 49 C.F.R. § 395.8(a)(1) was for a driver who completed only total hours worked and did not complete a start and stop time. Mr. Michelson noted that he followed up with his employees on proper maintenance of driver timecards after the Company's previous compliance review, and one employee failed to properly fill out his timecards. Mr. Michelson testified that he had since followed up with the Company's employees and corrected the issue. According to Mr. Michelson, the Company is in the process of signing on with a new payroll company using a human resource suite that allows for

⁴ Previously, in 2012, the Company's permit was suspended in Docket TV-120223 for failure to maintain insurance on file.

⁵ See Exh. EM-1.

automatic tracking of driver qualifications, employee records, and medical cards in order to reduce human error.

- c) Regarding the Company's failure to obtain annual inspections for its vehicles, Mr. Michelson explained that the Company switched mechanics in March because the previous mechanic it had worked with became unresponsive to the Company's needs. Two of the Company's four trucks have been inspected and the Company is in the process of having the other two trucks inspected. In the meantime, Can't Stop Moving has used rental trucks to ensure that the Company operates only compliant vehicles. Mr. Michelson stated that the Company has installed a Global Positioning System tracking program on its trucks that includes maintenance schedules and logs for each truck.

12 More generally, Mr. Michelson stated that the Company had hired a human resources manager, no longer with the Company, who was required to attend Commission-sponsored training for household goods companies.⁶ He offered that the Company is in the process of hiring another human resource manager who will act as a safety manager; Mr. Michelson currently manages safety compliance for the Company and has attended household goods carrier trainings provided by the Commission.

13 According to Mr. Michelson, in regard to missed payments in Dockets TV-170293/180319 (Consolidated), Can't Stop Moving was given the opportunity to make a lump-sum payment within 10 days of receiving an updated payment plan and made three of the four required payments.⁷ Mr. Michelson testified that the check for the fourth payment did not clear, so he made the final payment through automatic bill pay on April 10, 2019.⁸

14 Nash Callaghan, Assistant Attorney General, Lacey, Washington, represents Commission Staff. Eric Michelson, Co-owner, Seattle, Washington, represents Can't Stop Moving.

⁶ In 2018, Mr. Michelson testified that the Company had hired a safety manager to focus on compliance and prevent safety violations from recurring. *In re Penalty Assessment Against Can't Stop Moving, LLC*, Dockets TV-170293 and TV-180319, Order 04/02, ¶ 16 (June 11, 2018).

⁷ That is, four payments of \$1350 for the \$5400 total amount due. Mr. Michelson testified in 2018 that he would arrange automatic payments with his bank to ensure that penalty payments would be timely in the future. *Id.* at ¶ 23.

⁸ *See* Exh. EM-1.

DISCUSSION AND DECISION

Application for Reinstatement

- 15 We grant Can't Stop Moving's application for reinstatement of its provisional household goods carrier permit, subject to several conditions. Can't Stop Moving has applied for reinstatement within 30 days of the cancellation of its permit and has provided proof that the Company corrected the insurance issue that led to the cancellation.⁹ Under RCW 81.80.170, the Commission may issue temporary permits only after finding that issuance of a temporary permit is consistent with the public interest. Here, Can't Stop Moving has taken multiple meaningful steps to ensure compliance with the Commission's safety and insurance regulations since its March 2019 safety review, including automating certain processes to ensure compliance with driver and vehicle safety standards.
- 16 While it is concerning that the Company has a lengthy record of safety violations and that some of the safety violations found in Staff's 2019 are recurring, Staff's 2019 compliance review found far fewer violations than previous reviews. In Staff's 2017 review, Staff found 529 violations;¹⁰ in the April 2018 review, Staff found 81 violations.¹¹ In the review at hand, Staff found 36 violations. Because the Commission's ultimate goal is compliance,¹² and the Company has worked toward and shown marked improvement in its safety performance, we find that the Company's continued operations are in the public interest. Moreover, we expect that the Company's most recent compliance efforts will yield additional improvements.
- 17 Thus, we will allow Can't Stop Moving to continue to provide household goods carrier services in Washington State, provided that the Company continues to improve its safety compliance. To help ensure continued improvement, we will impose conditions on Can't Stop Moving that must be met within the required timeframes in order to maintain the Company's permit; *i.e.*, Staff may seek cancellation of the Company's permit by motion filed in this Docket if Can't Stop Moving fails to comply with these conditions. The

⁹ See WAC 480-15-450(4)(a).

¹⁰ *In re Penalty Assessment Against Can't Stop Moving, LLC*, Dockets TV-170293 and TV-180319, Order 04/02, ¶ 1 (June 11, 2018).

¹¹ See *id.* at ¶¶ 9-14.

¹² *In re Investigation of MVP Moving and Storage LLC*, Dockets TV-170039 and TV-170038, Order 04, ¶ 13 (June 7, 2018) ("In any enforcement proceeding, the Commission's ultimate goal is compliance").

Company is cautioned that we will not be inclined to exercise the leniency shown here yet again.¹³

18 Accordingly, we grant the Company's application, subject to the following conditions:

- a) Can't Stop Moving must work with Staff to develop a safety management plan that is acceptable to staff. The plan must address each of the violations noted in this Order and provide specific explanations and documentation demonstrating how each violation has been corrected.
- b) Staff will conduct a compliance review at least six months from the date of this Order.
- c) Can't Stop Moving may not incur any repeat violations of critical regulations upon review.
- d) All employees and owners of Can't Stop Moving must attend a Commission-sponsored household goods carrier training in 2019 following the date of this Order.

19 We also extend the Company's provisional period for its household goods operating authority. WAC 480-15-305(3) provides that, if a carrier has not completed the requirements for permanent authority within 18 months of the date the provisional permit was issued, the Commission will cancel the provisional permit, unless the Commission determines that for good cause the provisional period should be extended beyond 18 months. Can't Stop Moving was granted a provisional household goods carrier permit in 2015 and has failed to achieve a satisfactory rating following three safety reviews. However, "good cause" per WAC 480-15-305(3) includes where a carrier "is making substantial progress toward a satisfactory rating." Certainly Can't Stop Moving's improved safety performance since 2017 meets this standard. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time that the Company achieves a satisfactory safety rating.

Penalty

20 We do, however, assess a penalty of \$25,000 for the acute and critical violations found in Staff's compliance review. Under RCW 81.04.380, the Commission may impose financial penalties of up to \$1,000 for each violation of a Commission rule. Here, Staff sought penalties only for acute, critical, and repeat violations, noting that a total of 25 acute and critical violations were found.

¹³ *Id.* at ¶ 14. *See also* Michelson testimony, TR. 32:7 ("What I'm asking for is one more chance").

21 This penalty is assessed as an incentive to come into full compliance with Commission safety and insurance rules. It is evident that previous penalties have been effective, given the Company's decreasing number of violations and efforts made towards greater compliance. A \$20,000 portion of the penalty is suspended; it will become immediately due and payable if the Company fails to comply with the conditions listed in paragraph 18. The remaining \$5,000 is due within 10 days of the effective date of this Order; the Company may, however, within that timeframe file jointly with Staff a proposed payment plan for the \$5,000 due.

FINDINGS AND CONCLUSIONS

- 22 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, and practices of public service companies, including household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 23 (2) Can't Stop Moving is a household goods carrier subject to Commission regulation.
- 24 (3) Can't Stop Moving has met the requirements of WAC 480-15-450(4)(a) for reinstatement of its provisional household goods carrier permit.
- 25 (4) The Commission may cancel a carrier's permit for good cause, such as failure to comply with applicable Commission rules, including those governing safe operations.
- 26 (5) On March 19, 2019, Staff completed a compliance review of Can't Stop Moving and documented 36 violations of WAC 480-15-530 and 49 C.F.R. §§ 391, 392, 395, and 396, which resulted in a proposed "conditional" safety rating.
- 27 (6) Twenty-five of the 36 violations are acute or critical violations.
- 28 (7) Can't Stop Moving has demonstrated a good faith effort to come into compliance with Commission rules and has shown progress in its compliance trajectory.
- 29 (8) The continued operation of Can't Stop Moving is in the public interest.
- 30 (9) Can't Stop Moving's application for reinstatement of a household goods carrier permit should be granted, subject to the following conditions:

- a) Can't Stop Moving must work with Staff to develop a safety management plan that is acceptable to staff. The plan must address each of the violations noted in this Order and provide specific explanations and documentation demonstrating how each violation has been corrected.
 - b) Staff will conduct a compliance review at least six months from the date of this Order.
 - c) Can't Stop Moving may not incur any repeat violations of critical regulations upon review.
 - d) All employees and owners of Can't Stop Moving must attend a Commission-sponsored household goods carrier training in 2019 following the date of this Order.
- 31 (10) Can't Stop Moving was granted a provisional household goods carrier permit more than eighteen months prior to the issuance of this Order and has since failed to achieve a satisfactory rating in safety reviews.
- 32 (11) The Commission may extend a household goods carrier's provisional permit where a carrier "is making substantial progress toward a satisfactory rating," and Can't Stop Moving is making such progress.
- 33 (12) The Commission should find good cause to extend the Company's provisional period until such time that the Company achieves a satisfactory safety rating.
- 34 (13) The Commission should assess a \$25,000 penalty for the acute and critical violations found in Staff's compliance review. A \$20,000 portion of this penalty is suspended and will become immediately due if Can't Stop Moving fails to comply with the conditions described in paragraph 30. Can't Stop Moving must either pay the \$5,000 penalty immediately due or file jointly with Staff a proposed payment plan within 10 days of the effective date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 35 (1) Can't Stop Moving, LLC's application for reinstatement of its provisional household goods permit is GRANTED, subject to the conditions set out in paragraph 30, above.

- 36 (2) Can't Stop Moving, LLC's provisional period is extended until such time Can't
Stop Moving, LLC, achieves a satisfactory safety rating.
- 37 (3) The Commission assesses a \$25,000 penalty against Can't Stop Moving, LLC, for
violations discovered during the March 2019 compliance review. A \$20,000
portion of this penalty is suspended and will become immediately due if Can't
Stop Moving, LLC, fails to comply with the conditions described in paragraph 30,
above. Can't Stop Moving, LLC, must either pay the \$5,000 penalty immediately
due or file jointly with Staff a proposed payment plan within 10 days of the
effective date of this Order.

DATED at Lacey, Washington, and effective July 3, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NELLI DOROSHKIN
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 twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that, before entry of 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. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

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). Any Petition or Response filed must also be electronically served on each party of record, as required by WAC 480-07-140(1)(b).