

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of SAFE TO GO MOVERS LLC For Compliance with WAC 480-15	DOCKETS TV-190515 and TV-190514 (<i>Consolidated</i>) ORDER 01
In the Matter of the Penalty Assessment against SAFE TO GO MOVERS LLC in the amount of \$8,600	CONSOLIDATING DOCKETS; APPROVING SAFETY MANAGEMENT PLAN; UPGRADING SAFETY RATING TO CONDITIONAL; IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On July 1, 2019, 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 Safe to Go Movers, LLC, (Safe to Go Movers 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 Safe to Go Movers' operations from April to June 2019 and cited the Company for various acute, critical, and out-of-service violations of federal and state safety regulations. Based on its review, Staff recommended the Commission cancel Safe to Go Movers' household goods carrier permit unless the Company obtains Commission approval of a safety management plan. The Notice directed Safe to Go Movers to file a proposed safety management plan by July 26, 2019. The Commission also set a brief adjudicative proceeding for August 1, 2019, at 9:30 a.m. to determine whether the Commission should cancel Safe to Go Movers' household goods carrier permit.

3 On July 9, 2019, the Commission assessed an \$8,600 penalty (Penalty Assessment) against Safe to Go Movers for the safety violations discovered during Staff's compliance review.¹ The Penalty Assessment includes:

- a \$3,400 penalty for 34 violations of WAC 480-15-555 for failing to acquire criminal background checks for prospective employees;
- a \$4,200 penalty for 42 violations of 49 C.F.R. § 391.15(a) for using a disqualified driver;
- a \$100 penalty for one violation of 49 C.F.R. § 391.23(c) for failing to investigate driver's background within 30 days of employment;
- a \$100 penalty for two violations of Title 49 C.F.R. § 391.25(a) for failing to make an inquiry into the driving record of each driver at least once every 12 months;
- a \$100 penalty for one violation of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified;
- a \$100 penalty for one violation of 49 C.F.R. § 391.51(b)(9) for failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners;
- a \$200 penalty for four violations of Title 49 C.F.R. §393.9(a) for inoperable lamps and turn signals;
- a \$100 penalty for one "per category" violation of Title 49 C.F.R. §395.8(a) for failing to require driver to make a record of duty status using the appropriate method on 122 occurrences;
- a \$100 penalty for one violation of Title 49 C.F.R. § 396.3(a)(1) for brake system pressure loss;
- a \$100 penalty for one "per category" violation of Title 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected; and
- a \$100 penalty for two violations of Title 49 C.F.R. § 396.21(b) for failing to retain periodic inspection reports for 14 months from the date of inspection.

4 On July 12, 2019, Safe to Go Movers filed with the Commission a request for mitigation of the penalty, admitting the violations and requesting the Commission assess a reduced penalty based on the written information provided.

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

- 5 On July 30, 2019, Safe to Go Movers submitted a proposed safety management plan.
- 6 On July 30, 2019, Staff contacted the presiding officer and requested the Commission cancel the brief adjudicative proceeding and decide this matter on a paper record. The next day, the Commission issued a notice canceling the August 1, 2019, hearing and informing the parties that the Commission would enter an order based on the parties' written submissions.
- 7 On August 1, 2019, Staff filed with the Commission its evaluation of the Company's safety management plan and penalty recommendation (Evaluation). Staff determined, based on its review of the Company'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. Staff recommends no mitigation of the \$8,600 penalty due to the severity and number of repeat violations. However, Staff recommends the Commission suspend a \$5,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) Staff will 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; 3) The Company must maintain a conditional safety rating; and 4) the Company must pay the \$3,600 portion of the penalty that is not suspended.

DISCUSSION AND DECISION

1. Consolidation

- 8 Because the violations cited in Staff's April through June 2019 investigation gave rise to the enforcement actions taken in both dockets, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket TV-190515 and Docket TV-190514 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 compliance review of Safe to Go Movers found 42 acute, 156 critical, and 3 out-of-service violations of safety regulations, which resulted in a proposed unsatisfactory safety rating. Violations classified as "acute" and "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 July 30, 2019, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that Safe to Go Movers' 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 Safe to Go Movers' safety management plan is acceptable and satisfies the legal requirements of 49 CFR 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.

3. Penalty

- 12 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
- 13 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
- 14 Here, Staff recommends the Commission deny the Company's request for mitigation due to the severity of the violations and number of repeat violations. We agree with Staff's recommendation. The Notice of Penalties cites 11 different categories of violations, many of which are serious and potentially harmful to the public. For example, Staff found that the Company allowed two drivers to drive with suspended driver's licenses on 42 occasions. In addition, Staff found that the Company failed to acquire criminal background checks for 34 prospective employees. Staff also found 3 violations requiring

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.

Company vehicles to be placed out-of-service. Five of the violations were repeat violations from the Company's 2017 safety investigation.

- 15 The Company provided a comprehensive safety management plan that details the steps it has taken to bring its operations into compliance with applicable regulations. We are satisfied that the Company has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring. However, given the number of repeat violations and the severity and number of violations, we agree with Staff that the penalty should not be mitigated. The Company has not demonstrated that a lesser penalty will be equally or more effective in ensuring compliance.
- 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
- 17 In this case, 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 \$5,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:
- a) Safe to Go Movers 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) Safe to Go Movers may not incur any repeat acute or critical violations of WAC 480-15 upon re-inspection;
 - d) Safe to Go Movers must pay the remaining \$3,600 penalty within 10 days of the effective date of this Order. The Company may work with Staff to

⁶ *Id.* at ¶20.

⁷ *Id.*

establish mutually agreeable payment arrangements to pay the \$3,600 portion of the penalty that is not suspended.

FINDINGS AND CONCLUSIONS

- 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) Safe to Go Movers is a household goods carrier subject to Commission regulation.
- 20 (3) Safe to Go Movers cured the deficiencies that led to the proposed unsatisfactory safety rating. Accordingly, Safe to Go Movers' safety rating should be upgraded to conditional, and the Company should be allowed to maintain its household goods carrier permit.
- 21 (4) Safe to Go Movers committed 42 acute, 156 critical, and 3 out-of-service violations of WAC 480-15 and Title 49 C.F.R.
- 22 (5) Safe to Go Movers does not dispute that the violations occurred.
- 23 (6) Safe to Go Movers should be penalized \$8,600 for 211 violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend a \$5,000 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:

- 24 (1) The Commission approves Safe to Go Movers, LLC's safety management plan.
- 25 (2) Safe to Go Movers, LLC's safety rating is upgraded to conditional.
- 26 (3) The Commission assesses an \$8,600 penalty against Safe to Go Movers, LLC. The Commission suspends a \$5,000 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) The \$3,600 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 12, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Laura Chartoff

LAURA CHARTOFF

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).