

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against JORGE H. LUNA-LOPEZ d/b/a EDL MOVERS in the amount of \$4,400	DOCKET TV-160202 ORDER 01 ORDER GRANTING MITIGATION TO \$2,000
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BACKGROUND

- 1 On February 24, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a \$4,400 penalty (Penalty Assessment) against Jorge H. Luna-Lopez d/b/a EDL Movers (EDL Movers or Company) for 44 violations of Washington Administrative Code (WAC) 480-15-570, which adopts by reference 49 C.F.R. § 391 related to driver qualifications, and 49 C.F.R. § 395 related to driver hours of service.
- 2 On March 9, 2016, EDL Movers responded to the Penalty Assessment admitting the violations, requesting mitigation of the penalty based on the written information provided, and requesting a hearing. The Company's owner, Jorge Luna-Lopez, explained that he has corrected each of the violations identified in the Penalty Assessment. Mr. Luna-Lopez provided documentation that he has obtained his medical certification card, created a driver qualification file, and begun keeping driver time records.
- 3 On April 6, 2016, the Commission issued a Notice Denying Request for Hearing and Notice of Opportunity to Respond to Mitigation Request. The Notice denied the Company's request for hearing, but provided Staff with an opportunity to file a response supporting or opposing the Company's request to mitigate the penalty.
- 4 On April 27, 2016, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff explains that although each of the 49 violations cited in the Penalty Assessment are first-time offenses, 44 warrant penalties because they present a risk of serious harm to the public. The Penalty Assessment includes a \$3,600 penalty for 36 violations of 49 C.F.R. § 391.45(b)(1); a \$100 penalty for one violation of 49 C.F.R. § 391.51(a); and a \$700 penalty for seven violations of 49 C.F.R. § 395.8(a). Staff recommends the Commission

assess a reduced penalty of \$2,000 because the Company has corrected each of the violations cited in the Penalty Assessment and implemented a compliance plan to prevent repeat violations.

DISCUSSION AND DECISION

- 5 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.¹ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.³
- 6 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.⁴
- 7 The Penalty Assessment includes a \$3,600 penalty for 36 violations of 49 C.F.R. § 391.45(b)(1) because Mr. Luna-Lopez drove on 36 occasions without being medically certified. In its response, the Company admits that the violations occurred, but explains that Mr. Luna-Lopez obtained a medical certificate immediately following the compliance review. The Company also provided assurances of future compliance.
- 8 The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. § 391.51(a), for failing to maintain a driver qualification file for Mr. Luna-Lopez. In its response, the Company explained that it was not aware of this requirement, but has since corrected the violation and implemented a compliance plan to ensure this requirement is met going forward.

¹ See RCW 81.04.405.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. § 385, Appendix B.

⁴ Enforcement Policy ¶19.

- 9 Finally, the Penalty Assessment includes a \$700 penalty for seven violations of 49 C.F.R. § 395.8(a) because the Company failed to require its driver to make a record of duty status. The Company explained that it was not aware of this requirement, but has since begun keeping driver time records, which Staff verified.
- 10 Staff recommends the Commission mitigate the \$4,400 penalty to \$2,000 because the Company has corrected each of the violations identified in the Penalty Assessment and implemented a compliance plan to prevent their recurrence. In addition, EDL Movers is a small company with less than \$93,000 in gross revenue and 8,000 miles traveled in 2015.
- 11 We agree with Staff's recommendation. Although it is the Company's responsibility to be aware of – and comply with – Commission rules, we appreciate the Company's swift efforts to correct the violations and implement a compliance plan to prevent them from recurring. In addition, the original penalty amount is substantial in proportion to the Company's earnings. Ultimately, the Commission's goal is to obtain compliance, not create an insurmountable financial burden for a small company. In light of these factors, the Commission will exercise its discretion to reduce the penalty to \$2,000, which is still significant; yet not unduly burdensome. The Company may work with Staff to establish a mutually agreeable payment plan.

ORDER

THE COMMISSION ORDERS:

- 12 (1) Jorge H. Luna-Lopez d/b/a EDL Movers' request for mitigation of the \$4,400 penalty is GRANTED, in part, and the penalty is reduced to \$2,000.
- 13 (2) Jorge H. Luna-Lopez d/b/a EDL Movers must either pay the \$2,000 penalty or file jointly with Staff a proposed payment plan no later than May 16, 2016.

14 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective May 2, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website. The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's website.