

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

IRON MAN MOVERS AND
STORAGE, INC.

in the amount of \$15,900

DOCKET TV-170205

ORDER 01

ORDER DENYING MITIGATION;
IMPOSING AND SUSPENDING
PENALTIES SUBJECT TO CONDITIONS

BACKGROUND

- 1 On May 22, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$15,900 penalty (Penalty Assessment) against Iron Man Movers and Storage, Inc. (Iron Man or Company) for 211 violations of Washington Administrative Code (WAC) 480-15 and Tariff 15-C, which govern the operations of household goods moving companies.
- 2 On June 5, 2017, Iron Man responded to the Penalty Assessment, admitting certain violations, requesting further information about other violations, and requesting mitigation of the penalty based on the written information provided. The Company filed a supplemental response on June 15, 2017, addressing additional violations. In its response, the Company explained that the violations have since been corrected, and requests the Commission reduce the penalty by an unspecified amount.
- 3 On June 21, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. The Penalty Assessment included a \$2,400 penalty for 24 violations of WAC 480-15-490 and Tariff 15-C, Item 230(7) for failing to bill required minimum hours for weekend and holiday moves; a \$200 penalty for two violations of WAC 480-15-710 and Tariff 15-C, Item 230(6) for charging less than the minimum hourly rate; a \$13,100 penalty for 131 violations of WAC 480-15-710 and Tariff 15-C, Item 95 for failing to properly complete bills of lading; a \$100 penalty for 52 violations of WAC 480-15-630 and Tariff 15-C, Item 85 for failing to fully and accurately complete estimate forms; and a \$100 penalty for one violation of WAC 480-15-610(1) for failing to include the Company's address on its Facebook page and

one violation of WAC 480-15-390(1) for failing to use the Company's name as recorded at the Commission on its website.

- 4 Staff recommends reducing the portion of the penalty assessed for violations of WAC 480-15-710 and Tariff 15-C, Item 95 to \$8,700 because the Company has corrected the violations and now uses the required bill of lading form. Staff does not recommend any further mitigation of the penalty because all but one of the violations cited in the Penalty Assessment are repeat offenses. According to Staff's investigation report filed in conjunction with the Penalty Assessment, Iron Man has received extensive technical assistance on five separate occasions between 2011 and 2015, and attended Commission Household Goods Training in 2012. Also in 2012, Iron Man received penalties for all but one of the violations cited in the Penalty Assessment. In light of the Company's negative compliance history, Staff recommends the Commission grant the Company's request for mitigation only as it relates to one category of violations and assess a reduced penalty of \$11,500.

DISCUSSION AND DECISION

- 5 Household goods carriers are required to comply with WAC 480-15 and Tariff 15-C, which are designed to both protect consumers from deceptive practices and prevent unfair competition among carriers. For first-time violations, the Commission will typically assess a penalty of \$100 for each violation category. For repeat violations, like those cited here, the Commission will assess escalated penalties of \$100 per violation.
- 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.¹ We address each violation category in turn.
- 7 **WAC 480-15-490 and Tariff 15-C, Item 230(7).** The Penalty Assessment includes a \$2,400 penalty for 24 repeat violations of Tariff 15-C, Item 230(7) because Iron Man failed to bill a minimum of four hours for household goods moves conducted on

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶19 (Jan. 7, 2013).

weekends or state-recognized holidays on 24 occasions. In its response, the Company claims it misinterpreted the rules and has since changed its practices.

8 Staff recommends the Commission deny the Company's request to mitigate this portion of the penalty. We agree. As noted in Staff's investigation report, the Company has received technical assistance for these same violations on multiple prior occasions. While we appreciate the Company's assurance of future compliance, we find that a "per violation" penalty is appropriate in light of the circumstances. Moreover, the Company did not introduce any new information or offer any explanation that would warrant a reduced penalty. Accordingly, we assess a \$2,400 penalty for 24 violations of WAC 480-15-490 and Tariff 15-C, Item 230(7).

9 **WAC 480-15-710 and Tariff 15-C, Item 230(6).** The Penalty Assessment also includes a \$200 penalty for two violations of Tariff 15-C, Item 230(6) because Iron Man charged below the minimum hourly rate published in Tariff 15-C on two occasions. In its response, the Company acknowledged the violations and stated that it will charge the correct rates going forward.

10 Staff recommends the Commission deny the Company's request to mitigate this portion of the penalty. Staff notes in its investigation report that the Company attended Commission Household Goods Carrier Training in October 2012, which provided technical assistance related to this requirement. We agree with Staff and assess a \$200 penalty for two violations of Tariff 15-C, Item 230(6). Although Iron Man was not previously penalized for this particular violation, the Company has been cited for similar violations and is well aware that its rates and charges must comply with those set out in Tariff 15-C. Moreover, the Company did not introduce any new information or offer any explanation that would warrant a reduced penalty.

11 **WAC 480-15-710 and Tariff 15-C, Item 95.** The Penalty Assessment includes \$13,100 penalty for 131 repeat violations of Tariff 15-C, Item 95 because Iron Man failed to properly complete bills of lading in connection with each of the 131 moves reviewed. In its response, the Company explained that it trained its staff and is now using bill of lading forms that comply with Tariff 15-C.

12 Staff recommends assessing a reduced penalty of \$8,700 for these violations because the Company has obtained new forms. We decline to adopt Staff's recommendation. Iron Man has received technical assistance related to this issue on five separate occasions,

including the 2012 investigation that resulted in penalties. Despite being given multiple opportunities to correct its practices, the Company failed to come into compliance until faced with an escalated penalty. Accordingly, we find that the Company is unlikely to comply going forward unless the penalty is upheld in full. In addition, the Company did not introduce any new information or offer any explanation that would warrant a reduced penalty. We therefore assess a \$13,100 penalty for 131 violations of Tariff 15-C, Item 95.

- 13 **WAC 480-15-630 and Tariff 15-C, Item 85.** The Penalty Assessment also includes a \$100 penalty for 52 repeat violations of Tariff 15-C, Item 85 because Iron Man failed to fully and accurately complete estimate forms in connection with 52 of the moves reviewed. The Company did not address these violations in its response. Staff recommends the Commission deny the Company's request to mitigate this portion of the penalty.
- 14 Staff's investigation report offers no support for its recommendation that the Commission assess a \$100 "per category" penalty for these fourth-time violations. Iron Man received extensive technical assistance related to these violations on three prior occasions, including the 2012 investigation that resulted in penalties. Staff's recommendation is inconsistent with both its position related to other repeat violations and the Commission's Enforcement Policy.² In light of Iron Man's six-year failure to implement changes despite receiving technical assistance and penalties, we find that an escalated penalty is appropriate. Accordingly, we exercise our discretion to assess a \$5,200 penalty for 52 violations of Tariff 15-C, Item 85.
- 15 **WACs 480-15-610(1) and 480-15-390(1).** Finally, the Penalty Assessment includes a \$100 penalty for two advertising violations. First, the Company failed to advertise its current address on its Facebook page in violation of WAC 480-15-610(1). Second, the Company failed to use its trade name as recorded at the Commission on its website in violation of WAC 480-15-390(1). In its response, the Company claims it updated its address on its Facebook page and contacted its website administrator to update its trade name on its website.
- 16 Staff recommends the Commission deny the Company's request to mitigate this portion of the penalty, and notes that neither correction has been made as the Company represents. According to Staff's investigation report, Iron Man received technical

² See *Id.* ¶15, "The Commission will deal more harshly with companies that have a history of non-compliance, repeated violations of the same or other regulations, and previous penalties."

assistance related to these same violations on two prior occasions, and was penalized in 2012. Despite repeated requests to make these changes, the Company has failed to comply for more than six years, and now falsely represents that corrections were made. Accordingly, we exercise our discretion to assess a “per violation” penalty of \$100 for one violation of WAC 480-15-610(1) and \$100 for one violation of WAC 480-15-390(1), for a total penalty of \$200 related to advertising violations.

- 17 **Suspended Penalty.** We are gravely disappointed by Iron Man’s extensive history of non-compliance. Iron Man must either make significant efforts to achieve full compliance with Commission rules and Tariff 15-C or face more serious enforcement action, up to and including suspension or revocation of its household goods permit.
- 18 We recognize, however, that assessing and imposing a total penalty of \$21,100 against a company that reported operating revenues of approximately \$340,000 in 2016 would create a significant, if not insurmountable, financial burden. We also recognize that suspending a portion of the penalty subject to conditions designed to ensure the Company changes its practices once and for all will better serve the Commission’s goal of compliance. Accordingly, we impose a total penalty of \$21,100, and exercise our discretion to suspend a \$10,600 portion for a period of two years, and then waive it, subject to the following conditions:
- a) Within 60 days of the effective date of this Order, Iron Man will submit to Staff for review and approval a comprehensive compliance plan that addresses each of the violations cited in Staff’s investigation report and the Penalty Assessment. The compliance plan will describe the steps the Company has taken to correct the violations and the controls it has put in place to prevent the violations from reoccurring.
 - b) Within one year of the effective date of this Order, Iron Man’s owners and all of its employees will attend Commission-sponsored Household Goods Training.
 - c) At the end of two years from the effective date to this Order, Commission Staff will conduct a follow-up review to determine whether Iron Man has achieved compliance with Commission rules and Tariff 15-C and will submit to the Commission its recommendation about whether to impose or waive the suspended penalty. This condition in no way limits Staff’s ability to investigate Iron Man for any other purpose or to pursue other enforcement action.

d) Within 30 days of the effective date of this Order, Iron Man must either pay the \$10,500 portion of the penalty that is not suspended or file jointly with Staff a mutually agreeable payment arrangement for Commission approval.

FINDINGS AND CONCLUSIONS

- 19 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 20 (2) Iron Man is a household goods carrier subject to Commission regulation.
- 21 (3) Iron Man violated WAC 480-15-490 and Tariff 15-C, Item 230(7) when it failed to bill the required minimum hours on 24 occasions.
- 22 (4) Iron Man should be penalized \$2,400 for 24 violations of WAC 480-15-490 and Tariff 15-C, Item 230(7).
- 23 (5) Iron Man violated WAC 480-15-710 and Tariff 15-C, Item 230(6) when it failed to bill the minimum hourly rate as required on two occasions.
- 24 (6) Iron Man should be penalized \$200 for two violations of WAC 480-15-710 and Tariff 15-C, Item 230(6).
- 25 (7) Iron Man violated WAC 480-15-710 and Tariff 15-C, Item 95 when it failed to properly complete bills of lading in connection with 131 moves.
- 26 (8) Iron Man should be penalized \$13,100 for 131 violations of WAC 480-15-710 and Tariff 15-C, Item 95.
- 27 (9) Iron Man violated WAC 480-15-630 and Tariff 15-C, Item 85, when it failed to fully and accurately complete estimate forms in connection with 52 moves.
- 28 (10) Iron Man should be penalized \$5,200 for 52 violations of WAC 480-15-630 and Tariff 15-C, Item 85.
- 29 (11) Iron Man violated WAC 480-15-610(1) by failing to publish its address as recorded at the Commission on its Facebook page.

- 30 (12) Iron Man should be penalized \$100 for one violation of WAC 480-15-610(1).
- 31 (13) Iron Man violated WAC 480-15-390(1) when it failed to use its trade name as recorded at the Commission on its website.
- 32 (14) Iron Man should be penalized \$100 for one violation of WAC 480-15-390(1).
- 33 (15) Iron Man should be assessed a total penalty of \$21,100 for 211 violations of WAC 480-15 and Tariff 15-C. The Commission should suspend a \$10,600 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 18, above.

ORDER

THE COMMISSION ORDERS:

- 34 (1) Iron Man Movers and Storage, Inc.'s request for mitigation of the \$15,900 penalty is DENIED.
- 35 (2) The Commission assesses a \$21,100 penalty against Iron Man Movers for 211 violations of WAC 480-15 and Tariff 15-C.
- 36 (3) The Commission suspends a \$10,600 portion of the penalty for a period of two years, and then waives it, subject to the following conditions:
- a) Within 60 days of the effective date of this Order, Iron Man Movers and Storage, Inc. must submit to Staff for review and approval a comprehensive compliance plan that addresses each of the violations cited in Staff's investigation report and the Penalty Assessment. The compliance plan must describe the steps Iron Man Movers and Storage, Inc. has taken to correct the violations and the controls it has put in place to prevent the violations from reoccurring.
 - b) Within one year of the effective date of this Order, Iron Man Movers and Storage, Inc.'s owners and all of its employees must attend Commission-sponsored Household Goods Training.
 - c) At the end of two years from the effective date to this Order, Commission Staff will conduct a follow-up review to determine whether Iron Man Movers and Storage, Inc. has achieved compliance with Commission rules and Tariff 15-C

and will submit to the Commission its recommendation about whether to impose or waive the suspended penalty. This condition in no way limits Staff's ability to investigate Iron Man Movers and Storage, Inc. for any other purpose or to pursue other enforcement action.

d) Within 30 days of the effective date of this Order, Iron Man Movers and Storage, Inc. must either pay the \$10,500 portion of the penalty that is not suspended or file jointly with Staff a mutually agreeable payment arrangement for Commission approval.

37 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 July 11, 2017.

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.