

Service Date: August 1, 2022

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

PMC MOVING, LLC,

in the amount of \$41,400

DOCKET TV-220303

ORDER 02

FINAL ORDER DENYING PETITION FOR
ADMINISTRATIVE REVIEW

BACKGROUND

- 1 On May 9, 2022, the Washington Utilities and Transportation Commission (Commission) assessed a \$41,400 penalty (Penalty Assessment) against PMC Moving, LLC, (PMC or Company) for 421 violations of Washington Administrative Code (WAC) 480-15-555; WAC 480-15-560, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Parts 393 and 396; and WAC 480-15-570, which adopts by reference 49 C.F.R. Part 391.¹
- 2 On May 13, 2022, PMC responded to the Penalty Assessment, admitting the violations and requesting the Commission convene an evidentiary hearing to determine the appropriate penalty amount. In its response, the Company admitted the violations and explained the corrective actions it took to prevent them from reoccurring. Commission staff (Staff) filed a response recommending the Commission assess a reduced penalty of \$21,000, and further recommending the Commission suspend a \$10,000 portion of the penalty for a period of two years, and then waive it, subject to certain conditions.
- 3 On June 9, 2022, the Commission entered Order 01, Order Granting Mitigation to \$20,850; Imposing and Suspending Penalty Subject to Conditions (Order 01). Order 01 directed the Company to either pay the \$10,850 portion of the penalty that was not suspended or file jointly with Staff a proposed payment arrangement within 10 days of its effective date.

¹WAC 480-30-221 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

- 4 On June 21, 2022, PMC filed with the Commission a petition for administrative review of Order 01 (Petition).² The Company challenges the Commission’s finding that it committed 390 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified. Specifically, PMC disputes the 67 violations cited for occasions when the Company’s owner drove a commercial motor vehicle without a valid medical certificate because the Company believes its owner is exempt from these requirements. The Company further requests an extension until January 1, 2023, to begin making payments on the portion of the penalty that is not suspended.
- 5 On June 23, 2022, Staff responded to the Company’s request. Staff recommends the Commission uphold the penalty assessed in Order 01, noting that it disagrees with the Company’s interpretation of federal medical examination and certification requirements. Staff also stated it is willing to work with the Company to develop a mutually agreeable payment plan.

DISCUSSION AND DECISION

- 6 We deny PMC’s Petition. As a threshold matter, the Petition fails to meet the requirements that govern petitions for administrative review. WAC 480-07-825(2) provides that such petitions must conform to certain requirements, including a citation to the page or part of the record that includes the evidence on which the petitioner relies. The Petition contains no citations to the record that support its position. Instead, PMC disputes the Commission’s finding based solely on “the research I have done and your Compliance Investigator, Sandi Yeomans.”³ Despite this procedural defect, we exercise our discretion to address the merits of the Petition for the purpose of providing technical assistance to the Company.
- 7 We adopt Order 01 in its entirety as our own and conclude that the requirements in 49 C.F.R. § 391.45(a) were properly applied to the Company’s owner, John Lutz. 49 C.F.R. § 391.45(a) provides that any person who operates a commercial motor vehicle must be

² PMC sent an email to the Executive Director and Secretary that the Commission construes as a petition for administrative review under WAC 480-07-825. WAC 480-07-396(4) provides that the Commission liberally construes filings with a view to effect justice among the parties. The Commission considers pleadings based primarily on the relief they request and will not rely solely on the name of the document.

³ PMC Petition.

medically examined and certified as physically qualified to operate such vehicles in accordance with 49 C.F.R. § 391.43. Contrary to PMC's assertion, the rule contains no exception for company owners. In fact, 49 C.F.R. § 391.1(a) provides that persons who drive commercial motor vehicles *as, for, or on behalf of* motor carriers must comply with the minimum qualifications established in that subpart.⁴ Additionally, 49 C.F.R. § 391.1(b) states that a person who meets the definition of both a motor carrier and a driver employed by that motor carrier must comply with both the rules that apply to motor carriers and the rules that apply to drivers. Lutz meets both definitions and therefore must comply with the rules that apply to drivers. Accordingly, we deny the Company's request to remove the penalty for those 67 violations.

8 We also reject PMC's unsubstantiated claim that Staff advised the Company that Lutz was not required to be medically examined and certified. Even if Staff conveyed incorrect information to the Company, it would not relieve the Company of its obligation to comply with federal regulations regarding the safe operation of commercial motor vehicles.

9 Finally, we deny the Company's request for an extension until January 2023 to begin making payments on the portion of the penalty that is not suspended. As Staff explained in its response, the Company should first attempt to work with Staff to develop a mutually agreeable payment arrangement. If the parties are unable to reach an agreement, Staff is directed to file a letter in this Docket that describes both parties' positions. The Commission will determine at that time an appropriate payment schedule.

ORDER

THE COMMISSION ORDERS:

- 10 (1) PMC Movers, LLC's petition for administrative review is DENIED.
- 11 (2) PMC Movers, LLC, must either pay the \$10,850 portion of the penalty that is not suspended within 90 days of the date of this Order or file jointly with Staff a proposed payment arrangement within 20 days of the date of this Order.

⁴ Emphasis added.

DATED at Lacey, Washington, and effective August 1, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner