

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of JAKE THEIS, d/b/a ROYAL MOVING For Compliance with WAC 480-15-555, WAC 480-15-560, and WAC 480-15- 570	DOCKET TV-210170 <i>(Consolidated)</i> ORDER 01
In the Matter of the Penalty Assessment Against JAKE THEIS, d/b/a ROYAL MOVING In the amount of \$4,800	DOCKET TV-210171 <i>(Consolidated)</i> ORDER 01 CONSOLIDATING DOCKETS; UPGRADING SAFETY RATING; IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On April 2, 2021, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate as a Household Goods Carrier and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements In the Matter of the Investigation of Jake Theis d/b/a Royal Moving (Royal Moving or Company) For Compliance with Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570 in Docket TV-210170 (Notice of Intent to Cancel). The Notice of Intent to Cancel set a Brief Adjudicative Proceeding for May 11, 2021, at 9:30 a.m.
- 2 Also on April 2, 2021, the Commission assessed a \$4,800 penalty (Penalty Assessment) in Docket TV-210171 against Royal Moving for 77 violations of Washington Administrative Code (WAC) Chapter 480-15, which adopts by reference Title 49 of the Code of Federal Regulations (49 C.F.R.) § 391.51(a) related to driver qualifications; 49 C.F.R. § 396.3(b) related to vehicle inspection, repair, and maintenance; 49 C.F.R. § 396.45(a) related to driver examination and certification; 49 C.F.R. § 395.8(a)(1) related to records of duty status; and five violations of WAC 480-15-555 related to criminal

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

background checks for prospective employees.¹

3 The Commission conducted a virtual brief adjudicative proceeding on May 11, 2021, before Administrative Law Judge Samantha Doyle. At the hearing, the Company submitted its proposed safety management plan and a written request for mitigation of the penalty. The parties agreed that the Commission should address the Penalty Assessment in Docket TV-210171 concurrently with the Notice of Intent to Cancel in Docket TV-210170. Accordingly, the Commission consolidated Dockets TV-210170 and TV-210171.

4 Staff presented testimony from Sandi Yeomans, special investigator, and Jason Sharp, transportation planning specialist, Transportation Safety. Staff witness Yeomans provided documentation about the critical safety violations that resulted in Staff's proposed "conditional" safety rating for Royal Moving. Staff documented the following violations during its March 2021 routine safety investigation:

- A \$100 penalty for one violation of WAC 480-15-555 for failing to acquire a criminal background check for a prospective employee.
- A \$4,400 penalty for 44 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified on 44 occasions.
- A \$100 penalty for one violation of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file for each driver.
- A \$100 penalty for 30 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status using the appropriate method.
- A \$100 penalty for one violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of vehicle inspection and maintenance.

5 Staff witness Sharp presented testimony and evidence related to the Commission's enforcement policy. At the hearing, Sharp stated the Company's proposed safety management plan was insufficient as filed. Accordingly, Staff recommended canceling the Company's permit if Royal Moving failed to file an appropriate plan prior to the May 18, 2021, deadline.

6 Royal Moving presented testimony from Jake Theis, Company owner, who admitted the violations but requested the penalty be mitigated. Theis explained that the violations were

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.

unintentional, and the Company has since worked with Staff to develop a compliance plan to prevent recurring violations.

- 7 Sharp testified for Staff in response to the Company’s request for mitigation and proposed safety management plan. With respect to the penalty assessed in Docket TV-210171, Staff recommends the Commission assess the full penalty of \$4,800. However, because the Company acted quickly to remedy the violations of 49 C.F.R. § 391.45(a), Staff recommends the Commission suspend a \$2,200 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: (1) Staff must 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 critical violations upon re-inspection; (3) the Company must pay the \$2,600 portion of the penalty that is not suspended, and (4) the Company owner, Jake Theis, must attend the next Commission-provided household goods training.
- 8 On May 17, 2021, Royal Moving submitted an updated safety management plan addressing each violation cited in Staff’s investigation. That same day, Staff filed its evaluation of the Company’s plan. Staff recommends the Commission (1) maintain the Company’s safety rating as conditional and allow Royal Moving to continue operating as a household goods carrier, and (2) extend the Company’s provisional period until such time that the Company achieves a satisfactory safety rating. Staff’s penalty recommendation remains the same.
- 9 Jeff Roberson, Assistant Attorney General, Lacey, Washington, represents Commission Staff (Staff). Jake Theis, Company Owner, Brier, Washington, represents Royal Moving, *pro se*.

DISCUSSION AND DECISION

1. Docket TV-210171 – Safety Rating

- 10 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff’s March 2021 routine inspection of Royal Moving found 77 violations of regulations that would be considered critical if more than one employee had violated them, which resulted in a proposed “conditional” safety rating. Critical regulations relate to management and/or operational issues, and violations of these regulations typically indicate 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.

- 11 On May 17, 2021, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that Royal Moving's 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 Royal Moving's safety management plan is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385. We agree.
- 12 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-15 by correcting the violations that resulted in Staff's recommendation to cancel the Company's household goods permit. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to maintain its safety rating as conditional.
- 13 We likewise agree with Staff's recommendation to extend the Company's provisional period for its household goods carrier permit. WAC 480-15-305(1)(b) provides that, prior to a grant of permanent authority, an applicant must complete a provisional period of not less than six months and not more than 18 months unless the Commission determines for good cause that the provisional period should be extended. Good cause may include, among other things, a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating. Here, the Company has corrected the violations at issue and demonstrated that it has taken significant steps to ensure its operations comply with applicable safety regulations. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time as the Company achieves a satisfactory rating.

2. Docket TV-210171 – Penalty Assessment

- 14 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

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).

violations meet this standard.⁴

- 15 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 The Penalty Assessment cited 77 critical violations. We address each violation category in turn.

WAC 480-15-555

- 16 WAC 480-15-555 requires household goods carriers complete a criminal background check for every person the carrier intends to hire. The Commission assessed a \$100 penalty for one violation of WAC 480-15-555 because Royal Moving failed to conduct a criminal background check for employee Daniel Theis.
- 17 Jake Theis explained that he was unaware that all employees required background checks. Theis testified that he has since corrected the violation will perform background checks as required going forward.
- 18 We decline to mitigate this portion of the penalty. As noted in the Penalty Assessment, an employee with an unknown criminal history raises serious concerns about personal safety and the security of customer belongings. Although the Company has since corrected the violations, it failed to introduce any new information or explain extenuating circumstances that would warrant a reduced penalty.

49 C.F.R. § 391.45(a)

- 19 The Penalty Assessment cited 44 violations of 49 C.F.R. § 391.45(a), which requires drivers to be medically examined and certified as physically qualified to operate a commercial motor vehicle. Staff discovered during its review that one driver drove on 44 occasions without being medically examined and certified. Theis testified that a medical card has been obtained as the owner and operator, at that the Company has no other employees.

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

20 We find that a “per violation” penalty is appropriate here because medical certification is fundamental to safe operations; drivers who are not medically certified may have an undocumented medical condition that puts the traveling public at risk.

49 C.F.R. § 395.8(a)(1)

21 The Penalty Assessment cited 30 violations of 49 C.F.R. § 395.8(a)(1) because the Company did not previously require its driver to maintain a record of duty status. Theis testified that prior to the July 2016 inspection, Company drivers performed inspections but did not record the information in the proper format. The Company now maintains a record of duty status.

22 Here, the Commission assessed a \$100 penalty for 30 violations of 49 C.F.R. Part 395.8(a)(1). The Commission could have assessed penalties of \$100 per violation, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. Accordingly, we find that no further penalty reduction is warranted, and decline to mitigate this portion of the penalty.

49 C.F.R. Part 396.3(b)

23 The Penalty Assessment cited one violation of 49 C.F.R. Part 396.3(b) because the Company did not previously maintain a record of vehicle inspection and maintenance. Theis testified that prior to the March 2021 inspection, the Company performed inspections and maintenance but did not record the information in the proper format. The Company stated that it now maintains a record of inspection and vehicle maintenance.

24 Because these were first time violations, the Commission assessed a penalty by type of violation rather than per occurrence. As such, we conclude that no further penalty reduction is warranted.

3. Penalty Suspension

25 Because the Company has submitted a satisfactory proposed safety management plan that details the controls it put in place to prevent repeat violations of Commission safety rules, we agree with Staff’s recommendation and suspend a \$2,200 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- a) Royal Moving must maintain a conditional safety rating;

- b) Staff must conduct a follow-up investigation at least six months from the date of this Order;
- c) Royal Moving may not incur any repeat critical violations of WAC 480-15 upon re-inspection;
- d) Royal Moving must pay the remaining \$2,600 penalty within ten days of the effective date of this Order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the portion of the penalty that is not suspended.

26 If Royal Moving fails to comply with any of these conditions, the entire \$2,600 suspended penalty will become immediately due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 27 (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 auto transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 28 (2) Royal Moving is a household goods company subject to Commission regulation.
- 29 (3) Royal Moving cured the deficiencies that led to its “conditional” safety rating within 45 days, as required. Accordingly, Royal Moving’s safety rating should be maintained as “conditional.”
- 30 (4) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend Royal Moving’s provisional period until such time as the Company achieves a satisfactory safety rating.
- 31 (5) Royal Moving committed 77 critical violations of WAC 480-15 and Title 49 C.F.R.
- 32 (6) Royal Moving does not dispute that the violations occurred.
- 33 (7) Royal Moving should be penalized \$4,800 for 77 violations of WAC 480-15 and Title 49 C.F.R. The Commission should suspend a \$2,200 portion of the

penalty for two years, and then waive it, subject to the conditions set out in paragraph 25, above.

ORDER

THE COMMISSION ORDERS THAT:

- 34 (1) The Commission approves Jake Theis d/b/a Royal Moving's safety management plan.
- 35 (2) Jake Theis d/b/a Royal Moving's safety rating is conditional.
- 36 (3) The Commission assesses a \$4,800 penalty against Jake Theis d/b/a Royal Moving. The Commission suspends a \$2,200 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 25, above.
- 37 (4) With 10 days of the effective date of this Order, Jake Theis d/b/a Royal Moving must either pay the \$2,600 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement.
- 38 (5) Jake Theis d/b/a Royal Moving's provisional period is extended until such time as the Company achieves a satisfactory safety rating.

DATED at Lacey, Washington, and effective May 17, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Samantha Doyle
SAMANTHA DOYLE
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).