

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TV-170178
PENALTY AMOUNT: \$10,200

Right Turn Moving LLC
4613 NE St. Johns Road, Suite A
Vancouver, WA 98661

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-15-560 Vehicle Safety Requirements and 480-15-570 Driver Safety Requirements, which adopt Title 49 CFR Parts 391, 395 and 396.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In February 2017, Commission Motor Carrier Investigator Wayne Gilbert conducted a compliance review of Right Turn Moving LLC (Right Turn Moving) and documented the following violations:

- **One-hundred violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Right Turn Moving allowed its driver Robert Tyler to operate a commercial motor vehicle on one-hundred occasions during the six months prior to the compliance review. Mr. Tyler drove 83 times in 2016 (19 times in September, 20 times in October, 23 times in November, and 21 times in December) and 17 times in 2017 (12 times in January and 5 times in February). Mr. Tyler's medical certificate had expired August 7, 2016.
- **One violation of CFR 395.8(a) – Failing to require driver to make a record of duty status.** Right Turn Moving driver Robert Tyler failed to provide a record of duty status on November 16, 2016.
- **One violation of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Right Turn Moving used both of its commercial vehicles after failing to have either vehicle periodically inspected.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies put the traveling public at risk by using drivers not medically examined and certified, failing to require drivers to report their hours of service, or using vehicles not periodically inspected. An undetected medical

condition, fatigued driver, or undetected vehicle defect all present serious safety concerns.

2. **Whether the violation is intentional.** Considerations include:

- Whether the company ignored Commission staff's (Staff) previous technical assistance; and
- Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

In the company's May 2014 application for household goods moving authority, Right Turn Moving owner Bryan Tyler acknowledged his company's responsibility to understand and comply with applicable motor carrier safety rules. Robert Tyler and Jennifer Tyler attended household goods movers' compliance training provided by Staff in November 2014. Bryan Tyler attended household goods movers' training in March 2015. The company knew, or should have known about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Right Turn Moving cooperated with the investigation and provided Staff with requested documentation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company expressed its intention to correct these violations. Mr. Tyler updated his medical certificate and both vehicles have had periodic inspections.
6. **The number of violations.** For a company this size, the number of critical violations noted is significant.
7. **The number of customers affected.** The company traveled 59,764 miles and reported \$216,728 in gross revenue for 2016. These safety violations likely affected a significant number of customers as well as members of the traveling public.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations, but the company is cooperative and has taken steps to correct these violations and prevent future occurrences.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first compliance review. The company has no history of previous violations or penalties.
10. **The company's existing compliance program.** Right Turn Moving has no formal compliance program.

11. **The size of the company.** Right Turn Moving is a small company, with two drivers and two commercial vehicles. In 2016 the company reported 59,764 miles traveled and \$216,728 in gross revenue.

These are first-time violations, but the Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Right Turn Moving \$10,200 for violations of WAC 480-15-560 Vehicle Safety Requirements, and 480-15-570 Driver Safety Requirements, which adopts Title 49 CFR Parts 391, 395 and 396, calculated as follows:

- One-hundred violations of CFR Part 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each of these critical violations, for a total of \$10,000.
- One violation of CFR 395.8(a) – Failing to require driver to make a record of duty status. The Commission assesses a penalty of \$100 for one critical violation of this type.
- One violation of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected. The Commission assesses a penalty of \$100 for one critical violation of this type.

This information, if proved at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective March 22, 2017.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-170178

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violation occurred and enclose \$_____ in payment of the penalty.
2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”