

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

SAFE-TO-GO-MOVERS, LLC,

Respondent.

DOCKET TV-200161

ORDER 01

COMPLAINT SEEKING TO
IMPOSE PENALTIES; NOTICE
OF TELEPHONIC PREHEARING
CONFERENCE
**(Set for April 27, 2020,
at 9:30 a.m.)**

1 The Washington Utilities and Transportation Commission (Commission), on its own
motion, and through its regulatory staff (Staff), alleges as follows:

I. PARTIES

2 The Commission is an agency of the state of Washington authorized by statute to regulate
the rates, services, facilities, and practices of public service companies, including household
goods carriers.

3 Safe-To-Go-Movers, LLC, (Safe-To-Go) is a Washington limited liability company
operating as a household goods carrier under permit THG066130.

II. BACKGROUND

4 In April 2017, Staff reviewed Safe-To-Go's operations and discovered numerous violations
of two federal regulations.¹ As relevant here, Staff documented 101 violations of one of
those regulations, 49 C.F.R. § 391.45(a), which governs the use of drivers who are not
medically examined and certified.²

¹ *In re Penalty Assessment Against Safe-To-Go-Movers, LLC, dba James & John Movers*, Docket TV-170233, Order 02, 1 ¶ 1 (June 5, 2017).

² *See id.* at 2 ¶ 6; *In re Penalty Assessment Against Safe-To-Go-Movers, LLC, dba James & John Movers*, Docket TV-170233, Order 01, 2 ¶ 6 (May 8, 2017).

- 5 In June 2019, Staff performed the follow-up review of Safe-To-Go's operations and discovered numerous critical and acute violations.³ One category of critical violations concerned Safe-To-Go allowing a driver who was not medically examined and certified to operate a commercial motor vehicle, which was a repeat violation from the Company's previous safety review.⁴ Safe-To-Go also, among other violations, allowed two drivers to operate commercial motor vehicles while their driver's licenses were suspended; failed to perform criminal background checks on prospective employees; and failed to retain periodic inspection reports of its vehicles for 14 months from the date of inspection.⁵
- 6 Staff's June 2019 review produced a proposed unsatisfactory safety rating for Safe-To-Go.⁶ Accordingly, Staff assessed penalties for the violations and the Commission notified Safe-To-Go of its intent to cancel the Company's household goods carrier permit.⁷ Safe-To-Go submitted a safety management plan and a request to upgrade its safety rating, which the Commission approved.⁸ The Commission affirmed the penalty imposed by the Penalty Assessment, but again suspended a portion of the penalty contingent upon Safe-To-Go's compliance with several conditions, one of which required that Safe-To-Go incur no repeat acute or critical violations in a follow-up review.⁹
- 7 Staff performed the follow up review required by the Commission in February and March 2020.
- 8 During its review, Staff examined the driver qualification file of John Wagura.¹⁰ Safe-To-Go signed off on Mr. Wagura's annual review on or about February 14, 2019, despite the fact that the Company did not receive Mr. Wagura's annual motor vehicle report, a necessary component of his driver qualification file, until on or about April 5, 2019.¹¹
- 9 Staff also discovered that Safe-To-Go employed two people, Maliki Cox and Jerome Jordan, who had criminal convictions.¹² Maliki Cox has criminal convictions for Assault in the

³ See generally *in re the Investigation of Safe-To-Go-Movers, LLC*, Dockets TV-190515 & TV-190514, Order 01 (Aug. 12, 2019).

⁴ *Id.* at 2 ¶¶ 3-4, 6 ¶ 21.

⁵ *Id.*

⁶ *Id.* at 3 ¶ 9.

⁷ *Id.* at 1 ¶ 1, 2 ¶ 3.

⁸ *Id.* at 4 ¶¶ 10-11.

⁹ *Id.* at 4-5 ¶¶ 14-17, 6 ¶¶ 23, 26.

¹⁰ Decl. of Sandra Yeomans at 1 ¶ 3.

¹¹ *Id.*

¹² *Id.* at 2 ¶ 4.

Third Degree and Assault in the Fourth Degree within the past five years.¹³ Jerome Jordan has criminal convictions for Assault in the Third Degree and Robbery within the past five years.¹⁴

- 10 Further, Staff's investigation disclosed that Safe-To-Go allowed a driver, Dartanium Cox, to operate a commercial motor vehicle on numerous occasions while his driver's license was suspended.¹⁵ Specifically, Mr. Cox operated a commercial motor vehicle for Safe-To-Go 27 times between September 4, 2019, and October 20, 2019, while his license was suspended.¹⁶ Staff also discovered in its June 2019 review that Safe-To-Go allowed a driver to operate a commercial motor vehicle during the period their license was suspended, making this a repeat violation.¹⁷
- 11 Staff also reviewed the driver qualification file of Tyler Bell and discovered that Safe-To-Go failed to investigate Bell's background within 30 days of employment, and also that the Company allowed him to operate a commercial motor vehicle without first being medically examined and certified.¹⁸ Mr. Bell operated a commercial motor vehicle without medical certification six times between August 31, 2019, and September 29, 2019.¹⁹ On two previous occasions, Staff discovered that Safe-To-Go had allowed drivers who were not medically examined and certified to operate commercial motor vehicles, making this another repeat violation.²⁰
- 12 Staff's review also discovered a number of violations related to vehicle maintenance and the records of such maintenance, only two of which are relevant here.²¹ First, Safe-To-Go failed to adequately maintain the brakes on one of its vehicles, which resulted in Staff placing the

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 2 ¶ 5.

¹⁶ *Id.*

¹⁷ *See generally in re the Investigation of Safe-To-Go-Movers, LLC*, Dockets TV-190515 & TV-190514, Order 01, 2 ¶¶ 3-4.

¹⁸ Decl. of Sandra Yeomans at 2 ¶ 6.

¹⁹ *Id.*

²⁰ *In re Penalty Assessment Against Safe-To-Go-Movers, LLC d.b.a James & John Movers*, Docket TV-170233, Order 02, 2 ¶ 6; *in re the Investigation of Safe-To-Go-Movers, LLC*, Dockets TV-190515 & TV-190514, Order 01, 2 ¶¶ 3-4.

²¹ Staff also discovered that Safe-To-Go failed to record required information in its vehicle files and failed to certify that it had repaired defects or deficiencies noted in driver vehicle inspection reports, or that such repairs were not necessary. Decl. of Sandra Yeomans at 2 ¶¶ 8-9.

vehicle out of service.²² Second, Safe-To-Go failed to maintain the periodic inspection report for one of its vehicles for 14 months from the date of inspections as required.²³

III. JURISDICTION

13 The Commission has jurisdiction over the subject matter of this complaint under chapter 34.05 RCW, RCW 80.01.040, RCW 80.01.060, RCW 81.01.010, RCW 81.04.010, RCW 81.04.020, RCW 81.04.110, RCW 81.04.380, RCW 81.04.460, RCW 81.04.510, RCW 81.80.130, RCW 81.80.211, RCW 81.80.290, RCW 81.80.360, WAC 480-15-560, and WAC 480-15-570.

IV. APPLICABLE LAW

14 The Commission regulates public service companies pursuant to a delegation of authority from the legislature. *See* RCW 80.01.040(2); RCW 81.01.010.

15 Household goods carriers are common carriers, RCW 81.04.010(11), and therefore public service companies. RCW 81.04.010(16).

16 The Commission may promulgate rules for the safe operation of household goods carriers. RCW 81.80.130, .290.

17 The Commission has promulgated rules related to equipment and driver safety for household goods carriers. WAC 480-15-560, -570. WAC 480-15-560 adopts by reference, as relevant here, 49 C.F.R. Parts 390, 391, 392, and 396. WAC 480-15-570 adopts by reference, as relevant here, 49 C.F.R. Parts 390, and 391.

18 49 C.F.R. § 390.35(a) provides that “[n]o motor carrier, its agents, officers, representatives, or employees shall make or cause to make . . . [a] fraudulent or intentionally false statement on any application, certificate, report, or record required by . . . this subchapter.” The relevant subchapter contains 49 C.F.R. Part 391. That Part requires carriers to maintain driver qualification files containing certain information, including “a copy of the motor vehicle record received from each State record pursuant to § 391.23(a)(1).” 49 C.F.R. § 391.51(b)(2). Violations of 49 C.F.R. § 390.35(a) are classified as acute. 49 C.F.R. Part 385 App’x B (VII).

19 49 C.F.R. § 392.2 requires that “[e]very commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.” WAC 480-15-555 forbids household goods carriers from “hir[ing] a person who

²² *Id.* at 3 ¶ 11.

²³ *Id.* at 3 ¶ 10.

has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance within the past five years.” A violation of 49 C.F.R. § 392.2 is classified as critical. 49 C.F.R. Part 385 App’x B (VII).

- 20 49 C.F.R. § 391.15(a) provides that “a driver who is disqualified shall not drive a commercial motor vehicle.” Where the state has suspended or revoked a driver’s license, the “driver is disqualified for the duration of the . . . loss of privilege to operate a commercial motor vehicle on public highways.” 49 C.F.R. § 391.15(b)(1). A violation of 49 C.F.R. § 391.15(a) is classified as acute. 49 C.F.R. Part 385 App’x B (VII).
- 21 49 C.F.R. § 391.23(a)(2) requires carriers to investigate a “driver’s safety performance history with Department of Transportation regulated employers during the preceding three years.” A carrier must place the replies it receives to its inquiries under 49 C.F.R § 391.23(a)(2) in the driver qualification file within 30 days of the date of employment. 49 C.F.R. § 391.23(b).
- 22 49 C.F.R. § 391.11(a) provides that “[a] person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle.” 49 C.F.R. § 391.11(b)(4) provides that a person must be “physical qualified to drive a commercial motor vehicle in accordance with subpart E – Physical Qualifications and Examinations” in order to be qualified to drive a commercial motor vehicle. A provision in subpart E, 49 C.F.R. § 391.45(a) requires that persons be medically examined and certified prior to operating a commercial motor vehicle.
- 23 49 C.F.R. § 396.3(a)(1) requires carriers to maintain “parts and accessories” affecting the safe operation of a motor vehicle “in safe and proper operating conditions at all times.” The list of the parts which must be maintained in this fashion includes the vehicles brakes. 49 C.F.R. § 391(a)(1); 49 C.F.R. §§ 393.1, 40-55.
- 24 49 C.F.R. § 396.21(b)(1) requires carriers to maintain periodic vehicle inspection reports for a period of 14 months from the date of the inspection report. An original or a copy of the report must be maintained where the vehicle is housed or maintained, 49 C.F.R. § 396.21(b)(1), and made available to federal, state, or local officials for inspection. 49 C.F.R. § 396.21(b)(2).
- 25 The Commission may file a complaint upon its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. RCW 81.04.110.
- 26 A public service company that violates a rule promulgated by the Commission is subject to a penalty of up to \$1,000 for each and every violation. RCW 81.04.380; RCW 81.80.360.

V. FIRST CAUSE OF ACTION

27 The Commission re-alleges paragraphs 2 through 27, above.

28 The Commission alleges that Safe-To-Go committed one violation of WAC 480-15-560 and 49 C.F.R. § 390.35(a) when it signed off on John Wagura's annual review on or about February 14, 2019, despite the fact that it had not obtained Mr. Wagura's motor vehicle report from the state of Washington until on or about April 5, 2019.

VI. SECOND CAUSE OF ACTION

29 The Commission re-alleges paragraphs 2 through 27, above.

30 The Commission alleges that Safe-To-Go committed two violations of WAC 480-15-555 and 49 C.F.R. § 392.2 by employing Maliki Cox and Jerome Jordan despite Cox's two assault convictions and Jordan's convictions for assault and robbery, each of which occurred within the previous five years.

VII. THIRD CAUSE OF ACTION

31 The Commission re-alleges paragraphs 2 through 27, above.

32 The Commission alleges that Safe-To-Go committed 27 violations WAC 480-15-570 and 49 C.F.R. § 391.15(a) when it allowed Dartaniun Cox to operate a commercial motor vehicle between September 4, 2019, and October 20, 2019, while his driver's license was suspended.

VIII. FOURTH CAUSE OF ACTION

33 The Commission re-alleges paragraphs 2 through 27, above.

34 The Commission alleges that Safe-To-Go committed one violation of WAC 480-15-570 and 49 C.F.R. § 391.23(c) when it failed to obtain a background check for Tyler Bell, including obtaining an initial motor vehicle report, within 30 days of his employment.

IX. FIFTH CAUSE OF ACTION

35 The Commission re-alleges paragraphs 2 through 27, above.

36 The Commission alleges that Safe-To-Go committed six violations of WAC 480-15-570 and 49 C.F.R. §391.45(a) when it allowed Tyler Bell to operate a commercial motor vehicle

between August 31, 2019, and September 29, 2019, despite the fact that he was not medically examined and certified.

X. SIXTH CAUSE OF ACTION

37 The Commission re-alleges paragraphs 2 through 27, above.

38 The Commission alleges that Safe-To-Go committed one violation of WAC 480-15-570 and 49 C.F.R. § 396.3(a)(1) when it failed to maintain the brakes of one of its vehicles in safe and proper operating condition.

XI. SEVENTH CAUSE OF ACTION

39 The Commission re-alleges paragraphs 2 through 27, above.

40 The Commission alleges that Safe-To-Go committed one violation of WAC 480-15-560 and 49 C.F.R. § 396.21(b) when it failed to keep the periodic inspection report for one of its vehicles for 14 months after the date of the inspection.

XII. REQUEST FOR RELIEF

41 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380 and RCW 81.80.360, assess penalties of up to \$1,000 for each violation of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570.

42 Staff further requests that the Commission order such other or further relief as is appropriate under the circumstances.

XIII. PROBABLE CAUSE

43 Based on a review of the Declaration of Sandra Yeomans and all supporting documents, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this complaint.

XIV. NOTICE OF PREHEARING CONFERENCE

44 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission will also follow its procedural rules in WAC 480-07 in this proceeding.

45 **THE COMMISSION GIVES NOTICE** That it will hold a telephonic prehearing conference in this matter at 9:30 a.m. on April 27, 2020. To participate by phone, dial (360) 407-3810 and enter the conference ID: 1979795; to participate online via Skype, please use the following link:

<https://lync.wa.gov/utc.wa.gov/meet/aldcalendar/G226JLY3>.

46 The purpose of the prehearing conference is to consider requests for intervention, resolve scheduling matters including establishing dates for distributing evidence, identify the issues in the proceeding, and determine other matters to assist the Commission in resolving the matter, as listed in WAC 480-07-430.

47 **INTERVENTION:** Persons who wish to intervene should file a petition to intervene in writing at least three business days before the date of the prehearing conference. *See* WAC 480-07-355(a). The Commission will consider oral petitions to intervene during the conference, but strongly prefers written petitions to intervene. Party representatives must file a notice of appearance with the Commission no later than the business day before the conference. *See* WAC 480-07-345(2). Parties with more than one representative must identify one individual as the “lead” for purposes of official service. Any party or witness in need of an interpreter or other assistance should fill out the form attached to this notice and return it to the Commission. The Commission will set the time and place for any evidentiary hearings at the prehearing conference, on the record of a later conference or hearing session, or by later written notice.

48 **THE COMMISSION GIVES NOTICE** that any party who fails to attend or participate in the prehearing conference set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.

49 The names and mailing addresses of all known parties and their known representatives are as follows:

Carrier: Safe-To-Go-Movers, LLC,
James Mwangi,
Governor and Registered Agent
8012 153rd Street Court SE
Puyallup, WA 98375

Complainant: Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Jeff Roberson
Office of the Attorney General
P.O. Box 40128
Olympia, WA 98504-7250
(360) 664-1188
jeff.roberson@utc.wa.gov

50 Administrative Law Judge Michael Howard, from the from the Commission's
Administrative Law Division, will preside during this proceeding.²⁴

51 The Commission will give parties notice of any other procedural phase of the proceeding in
writing or on the record, as appropriate during this proceeding.

DATED at Lacey, Washington, and effective March 26, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Director

Inquiries may be addressed to :

Mark L. Johnson
Executive Director and Secretary
621 Woodland Square Loop S.E.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

²⁴ Judge Howard can be reached by phone at (360) 664-1139, or by email at michael.howard@utc.wa.gov.

NOTICE

Hearing facilities are accessible to persons with disabilities. Smoking is prohibited. If limited English-speaking, hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please fill out and return this form to:

Washington Utilities and Transportation Commission
Attention: Mark L. Johnson
P.O. Box 47250
Olympia, WA 98504-7250

(PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter:

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone (_____) _____