

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-200271

PENALTY AMOUNT: \$2,900

Joel Cisneros
d/b/a Always Movin' Moving Company
17003 9th Ave. SE
Mill Creek, WA 98012

The Washington Utilities and Transportation Commission (Commission) believes Joel Cisneros, d/b/a Always Movin' Moving Company, (Always Moving or Company) violated Washington Administrative Code (WAC) 480-15-530, Public Liability and Property Damage Insurance; WAC 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 393 – Parts and Accessories Necessary for Safe Operation; and WAC 480-15-570, Driver Safety Requirements, which adopts 49 CFR Part 391 – Qualification of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On March 23, 2020, Commission Motor Carrier Investigator Edward Steiner completed a routine safety investigation of Always Moving and documented the following violations:

- **Twenty-five violations of WAC 480-15-530 – Operating a motor vehicle without the required minimum levels of financial responsibility coverage.** Always Moving operated a commercial motor vehicle on 25 occasions between August 13, 2019, and February 5, 2020, without the required minimum levels of insurance.
- **Two violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Always Moving failed to conduct criminal background checks for employees Desi Salazar and Latchizare Loutichov.
- **One violation of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** The Company failed to maintain proof of inquiries into the driving record of Joel Cisneros.
- **One violation of 49 CFR § 393.75(a)(3) – Tire-flat and/or audible air leak.** Commission staff (Staff) discovered a commercial motor vehicle with a flat tire to an inner dual tire on axle two.¹ This commercial motor vehicle was placed out-of-service.

¹ Equipment Identification Number 1.

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

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Household goods moving companies that: (1) operate commercial motor vehicles without the required minimum levels of insurance, (2) fail to conduct criminal background checks on their employees, (3) fail to maintain inquiries into drivers' driving records, and (4) use commercial motor vehicles that are in need of repairs put their customers, their customers' belongings, and the traveling public at risk. These violations present significant safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored Staff's 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.

On May 21, 2018, the Commission received the Company's application for household goods moving authority. In the application, Joel Cisneros, owner of Always Moving, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On November 7, 2018, Joel Cisneros attended household goods training provided by Staff, and acknowledged receiving training pertaining to motor carrier safety regulations.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Always Moving did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation, and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Always Moving has not provided Staff with evidence that it has corrected these violations.
6. **The number of violations.** Staff identified nine violation types with a total of 34 individual occurrences.
7. **The number of customers affected.** The Company employs one driver and operates two commercial motor vehicles. Always Moving reported 857 miles traveled in the 12 months preceding the routine safety investigation. These safety violations present a public safety risk.
8. **The likelihood of recurrence.** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe

operations and how to begin improving its safety performance. The Company was cooperative with Staff, and expressed a desire to come into compliance. In light of these factors, Staff believes the likelihood of recurrence is low.

9. **The Company's past performance regarding compliance, violations, and penalties.** On August 7, 2018, Always Moving was penalized \$5,000 in Docket TV-180520 for operating as a household goods carrier without first having obtained a permit from the Commission. The Commission suspended a \$4,750 portion of the penalty for a period of two years, subject to conditions. Always Moving paid the \$250 non-suspended portion of the penalty in full.
10. **The Company's existing compliance program.** Joel Cisneros is responsible for the Company's safety compliance program.
11. **The size of the Company.** Always Moving currently operates two commercial motor vehicles, employs one driver, and reported \$32,461 in gross revenue.

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.² The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Always Moving \$2,900, calculated as follows:

- Twenty-five violations of WAC 480-15-530 – Operating a motor vehicle without the required minimum levels of financial responsibility coverage. The Commission assesses a penalty of \$100 for each occurrence of this acute violation, for a total of \$2,500.
- Two violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$200.
- One violation of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file. The Commission assesses a penalty of \$100 for this violation.

² Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- One violation of 49 CFR § 393.75(a)(3) – Tire-flat and/or audible air leak. The Commission assesses a penalty of \$100 for this out-of-service violation.

This information, if proven 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 through evidence presented at a hearing or in writing. Alternatively, 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 the 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 to contest the violation(s) or for mitigation of the penalty 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 their 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 violation(s).
- Admit the violations but request mitigation of the penalty amount.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

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 Lacey, Washington, and effective April 6, 2020.

/s/Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-200271

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 violations occurred and enclose \$2,900 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

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 violations, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

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.”