

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-200869

PENALTY AMOUNT: \$24,700

Queen City Business Movers, LLC,
d/b/a Queen City Movers
661 W Nickerson St., Apt #2
Seattle, WA 98119

The Washington Utilities and Transportation Commission (Commission) believes Queen City Business Movers, LLC, d/b/a Queen City Movers, (Queen City or Company) violated Washington Administrative Code (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 396 – Inspection, Repair and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopts 49 CFR Part 382 – Controlled Substance and Alcohol Use and Testing, 49 CFR Part 383 – Commercial Driver’s License Standards, 49 CFR Part 391 – Qualification of Drivers, and 49 CFR Part 395 – Hours of Service 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. RCW 81.04.530 allows penalties of \$1,500 against carriers that conduct commercial motor vehicle operations without having a controlled substance and alcohol testing program in place.

On October 14, 2020, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Queen City and documented the following violations:

- **Eight violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire.** Queen City failed to conduct criminal background checks for employees Corey Brown, Deante Campbell, Jonathan Wright, Daniel Saunders, Nicholas Muhlhauser, Nicholas Lyndsey, Shane Nelson, and Timothy Kasnick.
- **One violation of 49 CFR § 382.115(a) – Failing to implement a random controlled substance and/or an alcohol testing program.** The Company failed to implement a controlled substance and alcohol testing program.
- **Two hundred twenty violations of 49 CFR § 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver does not have a current commercial learner’s permit (CLP) or commercial driver’s license (CDL) or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a commercial motor vehicle who violates any restriction on the**

driver's CLP or CDL. Queen City allowed drivers Johnathan Jorde, Deante Campbell, and Corey Brown to operate a commercial motor vehicle without a CDL on 220 occasions between March 1, 2019, and August 31, 2020.

- **Three violations of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Queen City failed to maintain driver qualification files for Johnathan Jorde, Deante Campbell, and Corey Brown.
- **Ninety violations of 49 CFR § 395.8(a)(1) – Failing to require driver to make a record of duty status.** The Company failed to maintain records of duty status for drivers Johnathan Jorde, Deante Campbell, and Corey Brown on 90 occasions between July 1 and July 30, 2020.
- **One violation of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Queen City failed to maintain a vehicle maintenance file for its commercial motor vehicle.
- **One violation of 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The Company failed to have an annual inspection performed on its commercial motor vehicle.

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) fail to conduct criminal background checks on their employees, (2) fail to implement a controlled substance and alcohol testing program, (3) allow drivers to operate commercial motor vehicles without the required CDLs, (4) fail to maintain driver qualification files, (5) fail to maintain records of duty status, (6) fail to keep minimum records of inspection and vehicle maintenance, and (7) use commercial motor vehicles that have not been inspected 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 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.

On February 13, 2013, Johnathan Jorde, owner of Queen City, attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On October 17, 2013, the Commission received Queen City's application for household goods moving authority. On February 10, 2014, the Commission dismissed the application after Queen City requested that the application be withdrawn.

On April 7, 2014, the Commission received the Company's application for household goods moving authority. On May 7, 2014, the Commission dismissed the application after the Company requested its application be withdrawn.

On February 20, 2019, the Commission received Queen City's application for household goods moving authority.

Johnathan Jorde acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations in all three applications. The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Queen City did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was responsive to Staff's requests for information; however, Queen City continued its operations without correcting the violations identified during the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Queen City has not provided Staff with evidence that it corrected any violations.
6. **The number of violations.** Staff identified 18 violation types with a total of 575 individual occurrences.
7. **The number of customers affected.** The Company operates one commercial motor vehicle, employs three drivers, and reported 31,800 miles traveled in 2019. 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 responsive to Staff's requests for information but continued to operate without remedying the violations identified throughout the safety investigation. Absent a significant commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On May 6, 2014, the Company was penalized \$5,000 in Docket TV-140339 for operating as a household goods carrier without the required household goods moving authority.

This is Queen City's first routine safety investigation and the Company has no history of safety violations.

10. **The Company's existing compliance program.** Johnathan Jorde is responsible for the Company's safety compliance program.

11. **The size of the Company.** Queen City currently operates one commercial motor vehicle and employs three drivers. The Company reported \$225,000 in gross revenue for 2019.

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 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 Queen City \$24,700, calculated as follows:

- Eight violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$800.
- One violation of 49 CFR § 382.115(a) – Failing to implement a random controlled substance and/or an alcohol testing program. The Commission assesses a penalty of \$1,500 for this acute violation.
- Two hundred twenty violations of 49 CFR § 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a commercial motor vehicle who violates any restriction on the driver's CLP or CDL. The Commission assesses a penalty of \$100 for each occurrence of this acute violation, for a total of \$22,000.
- Three violations of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a "per category" penalty of \$100 for these first-time violations.
- Ninety violations of 49 CFR § 395.8(a)(1) – Failing to require driver to make a record of duty status. The Commission assesses a "per category" penalty of \$100 for these first-time violations.
- One violation of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a penalty of \$100 for this violation.

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

- One violation of 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected. The Commission assesses a penalty of \$100 for this 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 October 26, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-200869

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 \$24,700 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.”