

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-220241

PENALTY AMOUNT: \$5,700

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) 480-15-570, Driver Safety Requirements, which adopts 49 C.F.R. 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 30, 2022, Commission Motor Carrier Investigator Sandra Yeomans completed a follow-up safety investigation of Queen City and documented the following violations:

- **Fifty-seven violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed driver Andrew Averbek to operate a commercial motor vehicle (CMV) without a valid medical certificate on 57 occasions between September 1 and November 19, 2021.

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 use drivers that are not medically examined and certified put their customers' belongings and the traveling public at risk. These violations present 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.

The Company submitted applications to the Commission for household goods moving authority on October 17, 2013; April 7, 2014; and February 20, 2019. In each application, Johnathan Jorde acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On October 14, 2020, Staff completed a routine safety investigation of Queen City and discovered violations of 49 C.F.R. § 391.45(a). 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 cooperative throughout the follow-up safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified 11 violation types with a total of 68 individual occurrences during the follow-up safety investigation of Queen City. Of those violations, Staff identified one violation type with a total of 57 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Queen City reported traveling 50,000 miles in 2021. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company incurred repeat violations despite prior technical assistance. 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 permit.

On October 14, 2020, the Commission issued a Notice of Intent to Cancel the Company's household goods carrier permit in Docket TV-200870, after Staff's safety investigation of Queen City resulted in a proposed unsatisfactory safety rating. On October 26, the Company was penalized \$24,700 in Docket TV-200869 for safety violations of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570.

On December 8, 2020, the Commission entered Order 01, which consolidated Dockets TV-200870 and TV-200869; approved the Company's safety management plan; upgraded the Company's safety rating to conditional; mitigated the penalty to \$12,450; and suspended an \$8,000 portion of the reduced penalty for a period of two years, subject to conditions. Queen City paid the \$4,450 portion of the penalty that was not suspended in full.

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 CMV and employs two drivers. The Company reported \$348,998 in gross revenue for 2021.

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 by violation category, 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 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 \$5,700 (Penalty Assessment), calculated as follows:

- Fifty-seven violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$5,700.

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 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 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).

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

- 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 Penalty Assessment. 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 26, 2022.

/s/Michael Howard for
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-220241

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 \$5,700 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.”