

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of the	DOCKET TV-171185
URBAN DELIVERY SERVICE LLC	ORDER 01
For Compliance with WAC 480-15-560 and WAC 480-15-570	ORDERING RESPONDENT TO CEASE AND DESIST; CANCELLING CERTIFICATE; DEFAULT ORDER

**BACKGROUND**

- 1 On January 16, 2018, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate as a Household Goods Carrier; Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements, In the Matter of the Investigation of Urban Delivery Service LLC (Urban Delivery Service or Company) For Compliance with WAC 480-15-560 and WAC 480-15-570 (Notice). The Commission scheduled the brief adjudicative proceeding on its own initiative to determine whether it should cancel Urban Delivery Service's household goods carrier permit.
- 2 Also on January 16, 2018, the Commission assessed a penalty of \$6,500 (Penalty Assessment) in Docket TV-171184 against Urban Delivery Service for 133 critical violations of WAC 480-15-555 related to criminal background checks for prospective employees; WAC 480-15-560 related to equipment safety requirements; and WAC 480-15-570, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Part 391 related to qualifications of drivers; Part 395 related to hours of service of drivers; and Part 396 related to inspection, repair, and maintenance of vehicles.<sup>1</sup> The Company failed to contest the violations or request mitigation of the penalty within the required timeframe.<sup>2</sup> Accordingly, the penalty is due and payable.

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<sup>1</sup> WAC 480-15-560 and 570 adopt by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

<sup>2</sup> The Penalty Assessment provided that Urban Delivery must contest the violations or request mitigation of the penalty within 15 days of receipt. The Penalty Assessment was electronically served on January 16, 2018. As such, Urban Delivery's deadline to respond was February 1, 2018.

**Pursuant to RCW 80.01.060(3)  
This packet is the final order  
In this docket.**

3 On February 23, 2018, the Commission convened the brief adjudicative proceeding before Administrative Law Judge Laura Chartoff. Commission staff (Staff) was the only party that appeared at the hearing. Staff moved for default pursuant to RCW 34.05.440(2) and WAC 480-07-450. Staff also requested that it be allowed to present a prima facie case demonstrating that the Commission should cancel Urban Delivery Service's household goods carrier permit and order the Company to cease and desist operations.<sup>3</sup>

4 RCW 34.05.440(2) allows the presiding officer discretion to enter a "default or other dispositive order" if a party fails to appear at the hearing. Based on the failure of Urban Delivery Service to appear, the Administrative Law Judge granted Staff's request to enter a default order and allowed Staff to present its prima facie case.

5 Staff presented the testimony of Wayne Gilbert, Motor Carrier Safety Investigator. Mr. Gilbert provided documentation related to the critical violations that resulted in Staff's proposed unsatisfactory safety rating for Urban Delivery Service. Following a December 2017 compliance review, Mr. Gilbert documented four violations of 49 C.F.R. 391.45(a), which requires drivers to be medically examined and certified. Mr. Gilbert testified that Urban Delivery allowed four employees to drive on 59 occasions without having been medically examined and certified.

6 Mr. Gilbert also documented four violations of 49 C.F.R. 391.51(a), which requires carriers to maintain a driver qualification file for each employed driver. Mr. Gilbert testified that the Company did not maintain any driver qualification files.

7 Mr. Gilbert also documented three violations of WAC 458-15-555, which requires carriers to conduct criminal background checks for prospective employees. Mr. Gilbert testified that the Company failed to conduct or provide evidence of criminal background checks for three of its employees.

8 Mr. Gilbert also documented 120 violations of 49 C.F.R. 395.8(a)(1), which requires drivers to prepare a record of duty status using an appropriate method. Mr. Gilbert testified that the Company failed to maintain any record of duty status for its drivers.

9 Mr. Gilbert also documented two violations of 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance; one violation of 49 C.F.R. 392.2 for operating a motor vehicle not in accordance with the law, ordinances, and regulations of

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<sup>3</sup> Staff also argued that the Penalty Assessment in Docket TV-171184 should be upheld. Because the Company failed to respond to the Penalty Assessment we need not address the issue of mitigation.

the jurisdiction in which it is being operated; and one violation of 49 C.F.R. 396.17(a) for using a motor vehicle that was not periodically inspected.

10 Mr. Gilbert further testified that after his initial visit with the Company on November 3, 2017, and a phone conversation on November 20, 2017, the Company ceased communicating with Staff. Mr. Gilbert documented several attempts to reach the Company by phone and email.

11 Mr. Gilbert sent a copy of the report and notice of unsatisfactory safety rating to the Company on December 27, 2017, by email and certified mail. On December 29, 2018, Staff received confirmation via certified mail that Urban Delivery Service had received Staff's report and notice of the proposed unsatisfactory safety rating.

12 Commission Staff also presented the testimony of Matthew Perkinson, Motor Carrier Safety Manager. Mr. Perkinson stated that he reviewed the safety investigation report and concurred with the unsatisfactory rating and the imposition of the penalty.

13 Brett Shearer, Assistant Attorney General, Olympia, Washington, represents Staff.

## DISCUSSION AND DECISION

### A. Default

14 The Notice of brief adjudicative proceeding states that any party who fails to attend or participate in the hearing may be held in default in accordance with the terms of RCW 34.05.440 and WAC 480-07-450. RCW 34.05.440(2) provides: "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding ... the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order." WAC 480-07-450(1) provides that the Commission may find a party in default if the party fails to appear at the time and place set for a hearing.

15 Urban Delivery Service was properly and legally served with the Notice of Brief Adjudicative Proceeding and provided due and proper notice of the February 23, 2018, hearing. Urban Delivery Service did not appear at the hearing and is hereby held in default.

16 WAC 480-07-450(2) states: "A party who is dismissed from a proceeding or found in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be

reopened for further process.” A notice appearing at the end of this order provides instructions for filing such a notice with the Commission.

**B. Household Goods Carrier Certificate**

- 17 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff’s December 2017 compliance review of Urban Delivery Service found 133 violations of critical regulations, which resulted in a proposed unsatisfactory safety rating. Violations classified as “critical” are indicative of a breakdown in a carrier’s management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.
- 18 Urban Delivery Service received notice of its proposed unsatisfactory safety rating on December 29, 2017. A carrier may request a change in its safety rating based on evidence that the Company has taken corrective actions to address the identified violations and currently meets the safety fitness standard.<sup>4</sup> Carriers that receive proposed unsatisfactory safety ratings have 60 days to request and receive a change to the proposed rating.<sup>5</sup> Urban Delivery Service’s deadline for requesting and receiving an upgrade to its safety rating is February 27, 2018.
- 19 The Company failed to submit a proposed safety management plan or request the Commission upgrade its safety rating. Based on the testimony and evidence presented at the hearing, the Commission finds that the Company failed to take corrective action to address the violations within the 60-day time period provided by federal law. Accordingly, the Commission finds good cause to cancel the Company’s household goods carrier certificate effective February 28, 2018. The Company must cease and desist all operations, including advertising and offering its services, unless and until the Company’s certificate is reinstated or the Company applies for and obtains a new certificate from the Commission.

**FINDINGS AND CONCLUSIONS**

- 20 (1) The Commission is an agency of the State of Washington vested by statute with authority to regulate persons engaged in the business of transporting household goods for compensation over public roads in Washington.

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<sup>4</sup> 49 C.F.R. 385.5 and 385.7.

<sup>5</sup> 49 C.F.R. 385.17.

- 21 (2) Urban Delivery Service is a household goods carrier subject to Commission regulation.
- 22 (3) Urban Delivery Service failed to cure the deficiencies that led to its unsatisfactory safety rating within 60 days, as required. Accordingly, Urban Delivery Service's household goods carrier certificate should be cancelled.
- 23 (4) Pursuant to RCW 45.05.440(2), Urban Delivery Service is held in default for failing to appear at the February 23, 2018, hearing.
- 24 (5) The Commission should order Urban Delivery Service to cease and desist from conducting operations requiring permit authority unless or until its certificate is reinstated or it applies for and obtains a new certificate from the Commission.

**ORDER**

**THE COMMISSION ORDERS:**

- 25 (1) Urban Delivery Service LLC is held in default. Should Urban Delivery Service LLC fail to respond to this Order by filing a written motion within ten (10) days requesting that the order be vacated pursuant to WAC 480-07-450(2), the default in this proceeding shall remain in place.
- 26 (2) Urban Delivery Service LLC's household goods carrier certificate THG-67060 is cancelled. Urban Delivery Service LLC must cease and desist all operations unless and until its certificate is reinstated or it applies for and obtains a new certificate from the Commission.
- 27 (3) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective February 27, 2018.

**LAURA CHARTOFF**  
Administrative Law Judge

### NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

**WAC 480-07-450(2) states that a party held in default has 10 days after service of a default order to file a written motion requesting the order be vacated and the proceeding reopened for further process. The party held in default must state the grounds relied upon, including its reasons for failing to appear.**

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. **A party held in default must file a written motion requesting the order be vacated pursuant to WAC 480-07-450(2) within 10 days after service in order to have the Commission consider a Petition for Administrative Review from that party.** What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).