

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation of
MVP MOVING AND STORAGE LLC
For Compliance with WAC 480-15-560
And WAC 480-15-570

In the Matter of the Penalty Assessment
Against
MVP MOVING AND STORAGE LLC
In the amount of \$6,100

DOCKETS TV-170038 and
TV-170039 (Consolidated)

STAFF'S RENEWED MOTION FOR
CANCELLATION OF MVP MOVING
AND STORAGE LLC'S HOUSEHOLD
GOODS CARRIER PERMIT

I. INTRODUCTION

1 Last May, the Commission denied a motion made by its regulatory staff (Staff) requesting that it cancel the household goods carrier permit of MVP Moving and Storage LLC (MVP). The denial was, however, without prejudice and conditioned upon MVP's compliance with conditions meant to ensure its safe operation. MVP has failed to comply with those conditions. The Commission, accordingly, should cancel MVP's permit.

II. RELIEF REQUESTED

2 Staff requests that the Commission cancel MVP's household goods carrier permit for failure to comply with the terms of Order 04 in these dockets.

III. STATEMENT OF FACTS

3 In February 2017, the Commission issued notice of its intent to cancel MVP's household goods carrier permit in Docket TV-170038. That notice resulted from Staff's review of the company's operations, which disclosed violations that resulted in a proposed

unsatisfactory safety rating.¹ The Commission, at the same time and in a separate docket, TV-170039, issued to MVP a penalty assessment of \$6,100 for the violations giving rise to the proposed unsatisfactory safety rating.² The Commission consolidated the two dockets for hearing.

4 After hearing, the Commission allowed MVP to keep its permit but declined to mitigate the penalty assessment. The Commission did not cancel the company's permit because MVP had submitted an acceptable safety management plan.³ The Commission declined to mitigate the penalties based on the nature of the penalties and MVP's failure to offer compelling justifications for mitigation,⁴ but suspended a \$3,100 portion of the penalty subject to two conditions.⁵ The first required MVP to avoid incurring repeat critical violations for the next two years.⁶ The second required the company to pay the \$3,000 portion of the penalty not suspended within 10 days, or to agree to a Commission-approved payment plan with Staff.⁷

5 MVP did not pay the \$3,000 unsuspended portion of the penalty in a timely fashion; nor did it reach a payment plan with Staff.⁸ Accordingly, in May 2017, the Commission lifted the suspension of penalties by issuing Order 02 in these dockets, which made the full \$6,100 penalty due and payable.⁹

¹ *In re the Investigation of MVP Moving & Storage LLC For Compliance with WAC 480-15-560 and WAC 480-15-570; In re the Penalty Assessment Against MVP Moving and Storage LLC In the amount of \$6,100*, Dockets TV-170038 & TV-170039, Order 01, at 1 ¶ 1 (Apr. 6, 2017) (hereinafter Order 01).

² Order 01 at 1 ¶ 2.

³ *Id.* at 3-4 ¶¶ 13-14; *but see id.* at 4 ¶ 14 (extending MVP's provisional period due to the violations).

⁴ *Id.* at 4-5 ¶¶ 15-22.

⁵ *Id.* at 5-6 ¶ 23.

⁶ *Id.*

⁷ *Id.*

⁸ *In re the Investigation of MVP Moving & Storage LLC For Compliance with WAC 480-15-560 and WAC 480-15-570; In re the Penalty Assessment Against MVP Moving and Storage LLC In the amount of \$6,100*, Dockets TV-170038 & TV-170039, Order 02, at 1-2 ¶¶ 1-3 (May 31, 2017) (hereinafter Order 02).

⁹ *Id.* at 2 ¶ 3.

6 MVP and Staff agreed to a payment plan soon thereafter, and the Commission later approved it.¹⁰ In the order approving the plan, the Commission provided that any failure by MVP to comply with the plan's terms would result in cancellation of the company's permit.¹¹

7 In February 2018, Staff conducted a follow-up safety investigation of MVP.¹² In the course of that investigation, Staff discovered that MVP had used a driver not medically examined and certified.¹³ This was not only a critical violation, it was a repeat violation given that Staff found a number of such violations in the safety review that gave rise to the Commission's notice of intent to cancel.¹⁴ Staff also discovered that MVP had used a motor vehicle that had not been periodically inspected, a critical violation, although not a repeat one, and various repeat and new violations not of the critical or acute type.¹⁵

8 In May 2018, Staff moved to cancel MVP's permit based on its failure to pay the penalty imposed in Order 02 in accordance with the payment plan approved in Order 03.¹⁶ The Commission denied Staff's motion without prejudice by entering Order 04 in these

¹⁰ See generally *in re the Investigation of MVP Moving & Storage LLC For Compliance with WAC 480-15-560 and WAC 480-15-570*; *In re the Penalty Assessment Against MVP Moving and Storage LLC In the amount of \$6,100*, Dockets TV-170038 & TV-170039, Order 03 (July 12, 2017).

¹¹ *Id.* at 2, 3 ¶¶ 7, 10.

¹² *In re Investigation of MVP Moving & Storage LLC for compliance with WAC 480-15-560 & WAC 480-15-570*; *In re Penalty Assessment Against MVP Moving & Storage LLC in the amount of \$6,100*, Dockets TV-170038 & TV-170039, Declaration of Sandra Yeomans, at 1-3 ¶ 2-13 (Mar. 26, 2019) (hereinafter Yeomans Decl.); see generally *in re the Investigation of MVP Moving & Storage LLC for Compliance with WAC 480-15-560 and WAC 480-15-570*, Docket TV-180160, Notice of Penalties Incurred and Due for Violations of Laws and Rules (March 2, 2018).

¹³ Yeomans Decl. at 2 ¶ 9.

¹⁴ Order 01 at 4-5 ¶¶ 17-18.

¹⁵ Yeomans Decl. at 1-3 ¶¶ 3-13.

¹⁶ See generally *in re the Investigation of MVP Moving & Storage LLC For Compliance with WAC 480-15-560 and WAC 480-15-570*; *In re the Penalty Assessment Against MVP Moving and Storage LLC In the amount of \$6,100*, Dockets TV-170038 & TV-170039, Staff's Motion for Cancellation of MVP Moving & Storage's Household Goods Carrier Permit (May 9, 2018).

dockets (Order 04) after MVP belatedly paid the full penalty.¹⁷ However, in denying the motion, the Commission imposed “several conditions on MVP Moving that must be met within the required timeframes in order” for MVP “to maintain” its permit.¹⁸ As relevant here, these conditions required MVP to work with Staff to develop an acceptable safety management plan; refrain from incurring repeat critical violations in its next non-rated safety review; and send all of its staff to at least one of the next two Commission-sponsored household goods trainings, which occurred August 14, 2018, and November 7, 2018, with MVP’s owner required to attend both trainings.¹⁹

9 The Commission served Order 04 in early June 2018. Staff provided technical assistance as to how to complete an adequate safety management plan within a week of the service of the order.²⁰ By August, MVP had not submitted a safety management plan.²¹ To prod the company into action, Staff contacted it by letter and directed it to submit a safety management plan by the end of the month.²² Staff also filed its letter to the company in the consolidated dockets.²³ MVP, however, did not submit a safety management plan as requested, nor did it respond to Staff’s communications.²⁴

¹⁷ *In re the Investigation of MVP Moving & Storage LLC For Compliance with WAC 480-15-560 and WAC 480-15-570; In re the Penalty Assessment Against MVP Moving and Storage LLC In the amount of \$6,100*, Dockets TV-170038 & TV-170039, Order 04, at 3 ¶ 12 (June 7, 2019) (hereinafter Order 04).

¹⁸ *Id.* at 3 ¶ 14.

¹⁹ *Id.* at 4 ¶ 16, 5 ¶ 17.

²⁰ Yeomans Decl. at 5-6 ¶¶ 28-29.

²¹ *In re Investigation of MVP Moving & Storage LLC for compliance with WAC 480-15-560 & WAC 480-15-570; In re Penalty Assessment Against MVP Moving & Storage LLC in the amount of \$6,100*, Dockets TV-170038 & TV-170039, Declaration of Jason Sharp, at 2 ¶ 5 (Apr. 15, 2019) (hereinafter Sharp Decl.); Yeomans Decl. at 6 ¶ 30.

²² Sharp Decl. at 2 ¶ 5; Yeomans Decl. at 6 ¶ 30.

²³ Sharp Decl. at 2 ¶ 5.

²⁴ Yeomans Decl. at 6 ¶ 30; *see* Sharp Decl. at 2 ¶¶ 5-6.

10 MVP's owner attended the first of the two Commission-designated trainings, but no other MVP employees attended with him.²⁵ Staff informed the owner that he and all of his staff therefore needed to attend the next Commission-designated training to comply with Order 04.²⁶ Based on that reminder, MVP's owner registered six company employees for that training.²⁷ However, MVP's owner attended the training with only one of the six registered employees.²⁸ When Staff inquired why the other employees were not at the training, the owner stated that "a situation came up that did not allow his employees to attend."²⁹

11 In March 2019, Staff completed another safety investigation of MVP's operations.³⁰ In the course of that investigation, Staff discovered that MVP had again used a motor vehicle that had not been periodically inspected, a repeat critical-type violation.³¹ Staff also found that MVP had not performed criminal background checks on seven of its employees, failures that were again repeat critical-type violations.³² Alarming, Staff also discovered that MVP had made or caused to be made a fraudulent or intentionally false entry on a record in a driver qualification file, an acute violation.³³ And Staff found a number of repeat violations not of the critical or acute type.³⁴

²⁵ *n re Investigation of MVP Moving & Storage LLC for compliance with WAC 480-15-560 & WAC 480-15-570; In re Penalty Assessment Against MVP Moving & Storage LLC in the amount of \$6,100*, Dockets TV-170038 & TV-170039, Declaration of Jason Hoxit, at 2 ¶ 3 (Apr. 19, 2019) (hereinafter Hoxit Decl.).

²⁶ *Id.* at 2 ¶ 5.

²⁷ *Id.* at 2 ¶ 6.

²⁸ *Id.* at 3 ¶ 9.

²⁹ *Id.*

³⁰ Yeomans Declaration at 3 ¶ 14.

³¹ *Id.* at 4 ¶ 21.

³² *Id.* at 5 ¶ 27.

³³ *Id.* at 3 ¶ 16.

³⁴ *Id.* at 3-5 ¶¶ 14-27.

12 When closing the March 2019 investigation, Staff inquired about the safety management plan required by Order 04.³⁵ Staff's prompt worked to some extent: MVP finally submitted what it styled as its safety management plan that same day.³⁶ However, the document MVP submitted was haphazardly assembled and did not explain why the company permitted the violations to occur.³⁷ Nor did it contain a certification from MVP's owner that the company's operations meet the safety standards set forth in the Federal Motor Carrier Safety Administration's regulations.³⁸ Indeed, the documentation submitted with the plan included a time card with incomplete entries for one of MVP's drivers.³⁹ MVP's failure to properly fill out the time card would have formed the basis for two violations of critical regulations if discovered during a Staff review of the company's operations.⁴⁰

13 Staff, accordingly, now renews its motion to cancel MVP's household goods carrier permit.

IV. STATEMENT OF ISSUES

14 Should the Commission cancel MVP's household goods carrier permit for failure to comply with the terms of Order 04 in these dockets?

V. EVIDENCE RELIED UPON

15 Staff relies on the declarations of Sandi Yeomans, Jason Sharp, and Jason Hoxit, which Staff is filing concurrently with this motion, and the evidence already in the record in these dockets.

³⁵ *Id.* at 6 ¶ 31.

³⁶ *Id.* at 6 ¶ 32

³⁷ Sharp Decl. at 2-3 ¶¶ 6-7, 10.

³⁸ *Id.*

³⁹ *Id.* at 3 ¶ 11.

⁴⁰ *Id.*

VI. ARGUMENT

16 The Commission, by order, imposed several conditions when allowing MVP to keep
its household goods carrier permit. MVP failed to comply with those conditions. The
Commission should therefore cancel its permit.

17 The Commission may cancel a household goods carrier permit without the carrier's
authorization where it has good cause to do so.⁴¹ Good cause includes the failure to comply
with a Commission order.⁴²

18 MVP has failed to comply with the conditions imposed in Order 04 in three
significant ways.

19 First, MVP failed to comply with the provision of Order 04 requiring it to work with
Staff to develop an acceptable safety management plan.⁴³

20 MVP, in fact, did not work with Staff at all. Within a week of service of Order 04,
Staff provided guidance to the company as to how to submit an acceptable safety
management plan. Staff, however, heard nothing back from the company. Nearly two
months later, in August 2018, Staff sent MVP a letter reminding it of its obligation and
asking it to submit the required safety management plan by the end of that month. MVP did
not do so. MVP ultimately did not submit anything until March 2019, when it submitted an
incomplete and haphazardly assembled document to Staff.

21 Nor did MVP submit an acceptable safety management plan. The Commission
ordered MVP to submit a plan that "address[es] each of the violations cited in Order 01 in
this docket . . . [and] provide[s] specific explanations and documentation demonstrating how

⁴¹ WAC 480-15-450(1).

⁴² Order 04 at 3 ¶ 12.

⁴³ Order 04 at 4 ¶ 16.

each violation has been corrected.”⁴⁴ MVP’s plan does not explain how or why it allowed the violations discovered by Staff to occur, nor does it provide “specific explanations” explaining how it has corrected each violation. And some of the corrections it cited were deficient. For example, the documents MVP attached to its safety management plan included a time card with incomplete entries. Staff would have cited MVP for two violations of critical hours-of-service regulations violations if it had found the time card during a review.

22 MVP’s failure to produce an acceptable plan leaves the Commission with no way to ensure that MVP will not incur repeat violations in its next review. Or the review after that. This is troubling given the company’s history of incurring repeat critical-type violations because those violations are “indicative of breakdowns in a carrier’s management controls”⁴⁵ and linked to “higher than average accident rates.”⁴⁶

23 Second, as just discussed, MVP Moving failed to comply with the condition forbidding it from incurring any repeat critical-type violations in the non-rated compliance investigation that followed the service of Order 04. Specifically, in its March 2019 non-rated review, Staff discovered that MVP had used a driver not medically certified or examined and had also failed to perform criminal background checks on seven of its employees. These were repeat critical-type violations.⁴⁷ MVP’s repeated violations show a worrying indifference to the Commission’s enforcement of the public service laws and the

⁴⁴ Order 04 at 4 ¶ 16.

⁴⁵ 49 C.F.R. Part 385 Appx. A § III(c).

⁴⁶ 49 C.F.R. Part 385 Appx. A § III(e).

⁴⁷ The March 2019 violation for use of a driver not medically examined and certified was actually the second repeat violation of this type because Staff cited MVP for a repeat violation of the same type in its February 2018 review. Order 01 in these dockets had required MVP to avoid repeat violations in both of these reviews as a condition of the suspension of the imposed penalty.

Commission's regulations. That these repeat violations were of critical regulations extends MVP's indifference to significant threats to public safety, as discussed above.

24 Third, MVP failed to comply with the condition concerning the attendance of MVP personnel at Commission-sponsored household goods trainings. MVP's owner successfully attended both trainings, as required by Order 04. MVP registered six of its employees for the second Commission-designated trainings, but only one of those six showed up to the training because "a situation came up."⁴⁸ The Commission holds those trainings to ensure that carriers operate within the law. MVP's failure to ensure its Staff's attendance shows another form of indifference, indifference to MVP's obligations under the public service laws and the Commission's regulations.

VII. CONCLUSION

Commission Staff requests that the Commission grant its motion and cancel MVP's household goods carrier permit.

DATED this 24th day of April 2019.

Respectfully submitted,

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⁴⁸ Hoxit Decl. at 3 ¶ 9.