

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

LET'S MOVE LLC

For Compliance with WAC 480-15-480,
WAC 480-15-555, WAC 480-15-560

DOCKET TV-240223

ORDER 01

APPROVING SAFETY
MANAGEMENT PLAN;
EXTENDING PROVISIONAL
PERIOD SUBJECT TO
CONDITIONS

BACKGROUND

- 1 On April 17, 2024, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel; Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements (NOIC) against Let's Move, LLC (Let's Move or Company). The NOIC, among other things, scheduled a brief adjudicative proceeding (BAP) for May 21, 2024.
- 2 On April 24, 2024, the Washington Utilities and Transportation Commission issued a Penalty Assessment of \$6,300 against Let's Move.
- 3 On May 7, 2024, the Company responded to the Penalty Assessment by admitting to the violations and requesting mitigation of fees.
- 4 On November 3, 2023, the Company submitted a waiver of hearing and admitted to all of the violations alleged in the NOIC.
- 5 On May 17, 2024, Commission staff (Staff)¹ informed the presiding administrative law judge by email that the Company had submitted a Safety Management Plan (SMP) which Staff would submit an evaluation of. Further, Staff indicated that the parties were in agreement as to next steps. That same day, the Company filed a waiver of hearing.

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

6 On May 20, 2024, Staff filed an evaluation of the Company's SMP. Staff notes that earlier on March 28, 2024, it completed a routine safety investigation of Let's Move that resulted in a proposed unsatisfactory safety rating. The proposed unsatisfactory safety rating was based on 69 violations of critical regulations. Pursuant to Title 49 Code of Federal Regulations (C.F.R.) § 385.17, a carrier that receives a conditional or unsatisfactory rating must take corrective action and request a change of safety ratings within 61 days of a conditional or unsatisfactory rating or cease operations.

7 In its evaluation (Staff's Evaluation), Staff proffers that the Company's SMP, submitted on May 17, 2024, is acceptable and meets the requirements of 49 C.F.R. Part 385. As described by Staff, "Documentation of driver qualifications, vehicle maintenance, hours of service records, and criminal background documents were included in the plan. The SMP states that the Company has submitted its MCS-150 biennial update report to the Federal Motor Carrier Safety Administration, though that update has yet to post to Let's Move's profile as of this evaluation. Additionally, the plan contains calendar reminders for future compliance due dates."

8 Staff therefore recommends the following:

- The Commission does not cancel Let's Move' provisional permit;
- Upgrade the safety rating from unsatisfactory to conditional; and
- The Commission extends the Company's provisional period until such a time that Let's Move achieves a satisfactory safety rating, or the Commission finds good cause to cancel the Company's operating authority.

9 On May 20, 2024, the Commission cancelled the hearing by notice and indicated that this matter would be decided on a paper record.

DISCUSSION

10 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's September 2023 compliance review of Let's Move found 69 violations of critical regulations, which resulted in a proposed unsatisfactory safety rating. We rule on whether the Company's SMP should be approved and whether its provisional period should be extended for good cause.

11 On May 17, 2024, the Company submitted its updated SMP. Staff determined that Let's Move' SMP addresses each violation, identified how each violation occurred, describes the steps taken to correct each violation, and describes the controls put in place to ensure

compliance going forward. Staff concludes that Let's Move' SMP is acceptable and satisfies the legal requirements of 49 C.F.R. Part 385. We agree.

12 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with 49 C.F.R. Part 385 by correcting the violations that led to the proposed unsatisfactory safety rating.

13 We also agree with Staff's recommendation to extend the Company's provisional period for its household goods operating authority. Washington Administrative Code (WAC) 480-15-305(1)(b) provides that, prior to a grant of permanent authority, an applicant must complete a provisional period of not less than six months and not more than 18 months unless the Commission determines for good cause that the provisional period should be extended. Good cause may include, among other things, a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating. In this case, Staff recommends that the Commission extend the Company's provisional period until such a time that Let's Move achieves a satisfactory safety rating, or the Commission finds good cause to cancel the Company's operating authority. We accept this recommendation.

14 Additionally, the Company has requested mitigation of some of the assessed \$6,300 penalty. The Company claims to have not received technical assistance prior to being penalized and claims ignorance of applicable regulations.

15 In Staff's Evaluation, Staff clarified that it did provide technical assistance, that the Company was cooperative, and that the Company had a duty to know and follow the cited regulations. Staff recommended that the fine be reduced and partially suspended.

16 Because the Company has admitted to the violations, there would appear to be no outstanding controversy except as to the appropriate amount of the penalty.

17 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.² The Commission also considers whether the violations were promptly corrected, a company's history of compliance, and the likelihood the violation will recur.³

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

³ Enforcement Policy ¶19.

- 18 We deny the Company's request for mitigation; we do not adopt Staff's recommendation to reduce the assessed penalty to \$3,300 and suspend a \$1,650 portion, subject to conditions. We find that Let's Move has been cooperative and taken corrective actions which Staff deems acceptable. The Company is small in size, and these are also the Company's first violations. These factors weigh towards a lesser penalty. However, the absence of safety management controls weighs significantly against the Company. It appears that prior to this investigation and corresponding technical assistance, that the Company did not have internal controls in place to ensure compliance with a variety of critical regulatory standards, including record keeping related to driver qualifications; records of duty stations; periodic inspections of vehicles; or filing annual reports. These appear to be the result of an absence of safety management controls. This weighs heavily towards a greater penalty. We find the Company's claims of ignorance as to applicable regulatory requirements unpersuasive.
- 19 In light of the above discussed factors, we find that a lesser penalty is sufficient to ensure compliance with WAC 480-15. As a result, we suspend half of the \$6,300 penalty.
- 20 Let's Move must either pay the \$3,150 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 20 days of the effective date of this Order.

FINDINGS AND CONCLUSIONS

- 21 (1) The Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 22 (2) Let's Move is a household goods carrier subject to Commission regulation.
- 23 (3) Let's Move committed fifty-six violations of 49 C.F.R. 391.45(a) (using a driver not medically examined and certified); two violations of 49 C.F.R. 391.51(a) (failing to maintain driver qualification file); four violations of WAC 480-15-555 (failure to complete a background check); sixty violations of 49 C.F.R. 395.8(a)(1) (failing to require driver to make record of duty station); one violation of 49 C.F.R. 390.19(b)(2) (failing to file MCS-150); one violation of 49 C.F.R. 391.31(g)(1) (failing to maintain a copy of road test in driver qualification file); one violation of 49 C.F.R. 396.17(a) (using a commercial motor vehicle not periodically inspected); and one violation of WAC 480-15-480 (failing to provide annual report to Commission).

- 24 (4) Let's Move cured the deficiencies that led to the unsatisfactory safety rating.
- 25 (5) Let's Move received technical assistance from Staff prior to being penalized.
- 26 (6) We find that Let's Move's arguments for mitigation, in so far as they rely on the Company's ignorance of the rules, are not persuasive.⁴
- 27 (7) Notwithstanding Staff's recommendation, we conclude mitigation is inappropriate in this case. Our review of the record and the enforcement principles articulated in Docket A-120061 weighs heavily against mitigation – due to the seriousness of the offenses, the number of offenses, and the overall lack of safety management controls to prevent such offenses from occurring prior to the investigation.
- 28 (8) We find suspension of half of the \$6,300 penalty to be an appropriate incentive for continued compliance. As a result, \$3,150 of the penalty shall be suspended for two years and waived, provided that Let's Move maintains a conditional or satisfactory safety rating. Staff shall conduct a follow-up safety investigation at least six months from the date of this Order.
- 29 (9) The updated SMP submitted by Let's Move on May 17, 2024 should be approved, and the Company's provisional period should be extended until the Commission finds good cause to cancel or upgrade the Company's operating authority.

ORDER

THE COMMISSION ORDERS:

- 30 (1) The Commission approves Let's Move, Inc.'s safety management plan and upgrades its safety rating to conditional.
- 31 (2) Let's Move Inc.'s provisional period is extended until the Commission finds good cause to cancel or upgrade the Company's operating authority.
- 32 (3) Let's Move Inc. shall either pay a penalty of \$3,150, or file jointly with Staff a proposed payment arrangement within 20 days of the effective date of this Order.

⁴ “Every employer shall be knowledgeable of and comply with all regulations contained in [the Federal Motor Carrier Safety Regulations] that are applicable to that motor carrier's operations.” 49 C.F.R. 390.3(e)(1).

- 33 (4) Staff shall perform a follow-up safety investigation at least six months from the date of this Order.
- 34 (5) If Let's Move Inc. receives anything other than a conditional or satisfactory safety rating in the two years following the date of this Order, the suspended \$3,150 penalty shall be due immediately.

DATED at Lacey, Washington, and effective May 28, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Bijan Hughes _____
Bijan Hughes
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 480-07-610(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*. 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.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

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).