

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

DOCKET TV-230989

NICHOLAS HYLAN, D/B/A HYLAN
MOVING,

ORDER 01

For Compliance with WAC 480-15-
480 and WAC 480-15-560.

APPROVING SAFETY MANAGEMENT
PLAN; EXTENDING PROVISIONAL
PERIOD; IMPOSING AND
SUSPENDING PENALTIES

BACKGROUND

- 1 On January 9, 2024, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements in the Matter of the Investigation of Nicholas Hylan, d/b/a Hylan Moving, (Hylan Moving or Company) for compliance with Washington Administrative Code (WAC) 480-15 (NOIC). The NOIC set a hearing for January 30, 2024.
- 2 The Notice explained that on December 1, 2023, Commission staff (Staff) completed an investigation of the Company's compliance with the safety requirements in WAC 480-15. As a result of the compliance investigation, Staff documented 30 critical safety requirement violations and 71 total violations and proposed a conditional safety rating for the Company. The NOIC also required the Company to obtain Commission approval of its Safety Management Plan (SMP) by January 31, 2024.
- 3 On January 12, 2024, the Commission issued a Penalty Assessment (Penalty Assessment) against Hylan Moving in the amount of \$4,200 for the violations discovered in the investigation, including:
 - A \$3,800 penalty for 38 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified on 38 occasions,
 - A \$100 penalty for one violation of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification files,
 - A \$100 penalty for 30 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status using the appropriate method on 30 occasions,

- A \$100 penalty for one violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance, and
- A \$100 penalty for one violation of 49 C.F.R. § 396.17(a) for using a commercial vehicle not periodically inspected.

4 On January 22, 2024, the Company submitted an application for mitigation of the penalty (Application) and an SMP. On January 23, 2024, the Company submitted a waiver of its right to a hearing.

5 On January 24, 2024, Staff submitted its evaluation of the SMP and recommendation in response to the Application (Evaluation). In the Evaluation, Staff states that it believes the SMP is acceptable and meets the requirements of 49 C.F.R. § 385. Staff notes that the Company took all the required steps to bring its safety operations into compliance with Commission regulations. The SMP addresses each violation, identifies how the violations occurred, describes the steps taken to correct them, and put controls in place to ensure the Company maintains compliance. Accordingly, Staff recommends the Commission accept the SMP, maintain the Company's safety rating as conditional, and extend its provisional operating authority for good cause until such a time that the Company receives a satisfactory safety rating or the Commission finds good cause to cancel the Company's operating authority.

6 Staff further recommends that the Commission assess a reduced penalty of \$2,100 for the violations cited in the Penalty Assessment. Staff further recommends that the Commission suspend a \$1,100 portion of the penalty for two years and then waive it subject to the following conditions: a) Hylan Moving must maintain a conditional safety rating, b) the Company must not incur repeat violations of critical regulations upon reinspection, and 3) the Company timely pays the \$1,000 portion of the penalty that is not suspended. Staff recommends that the Commission conduct a follow-up safety investigation six months from the date of this Order. Staff stated further that the Company waived its right to a hearing and recommended the Commission cancel the brief adjudicative proceeding scheduled for January 30, 2024.

7 On January 25, 2024, the Commission issued a notice canceling the brief adjudicative proceeding.

DISCUSSION AND DECISION

8 **Hylan Moving's safety rating and operating authority.** Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff conducted a safety inspection concluding in December 2023 and

found 71 violations of these requirements. The Company subsequently submitted its Safety Management Plan addressing these violations.

- 9 Staff evaluated the SMP and found that it identifies how each violation occurred, describes the steps taken to correct each violation, and describes the controls the Company has put in place to ensure compliance going forward. Staff concludes that the SMP is acceptable and satisfies applicable legal requirements. We agree with Staff's conclusions.
- 10 Based on Staff's Amended Evaluation, the Commission approves the Company's Safety Management Plan and accepts Staff's proposed conditional safety rating for the Company.
- 11 We likewise agree with Staff's recommendation to extend the Company's provisional period for its household goods carrier permit. 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. Here, the Company has corrected the violations at issue and demonstrated that it has taken significant steps to ensure its operations comply with applicable safety regulations. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time as the Company achieves a satisfactory rating.
- 12 **Penalty Assessment.** Violations discovered during safety inspections are subject to penalties of \$100 per violation.¹ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Acute and critical violations meet this standard.³
- 13 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

¹ See RCW 80.04.405.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. § 385, Appendix B.

convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.⁴

14 Here, Staff recommends the Commission assess a reduced penalty of \$2,100. We agree with Staff's recommendation. The Company provided a comprehensive SMP that details the steps it has taken to bring its operations into compliance with applicable regulations. Accordingly, we are satisfied that Hylan Moving has cured the violations that gave rise to the Penalty Assessment and has put adequate controls in place to prevent the violations from reoccurring.

15 **Suspended Penalty.** The Commission considers several factors in determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations, and whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future, such as purchasing new technology, making system changes, or training company personnel.⁵ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁶

16 In this case, the Company has taken action to cure the violations and prevent each of the violations from reoccurring. Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we agree with Staff's recommendation and suspend a \$1,100 portion of the penalty for a period of two years and then will waive it if the Company complies with the following conditions:

- a) Hylan Moving must maintain a conditional safety rating;
- b) Staff must conduct a follow-up investigation at least six months from the effective date of this Order;
- c) Hylan Moving may not incur any repeat acute or critical violations of WAC 480-15 upon re-inspection; and
- d) Hylan Moving must pay the remaining \$1,000 of the penalty that is not suspended within 10 days of the effective date of this Order.

⁴ Enforcement Policy ¶19.

⁵ *Id.* at ¶20.

⁶ *Id.*

FINDINGS AND CONCLUSIONS

- (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.
- (2) Hylan Moving is a household goods carrier subject to Commission regulation.
- (3) Hylan Moving committed 71 violations of chapter 480-15 WAC, including incorporated federal regulations.
- (4) Hylan Moving corrected the violations identified in the December 2023 safety investigation. Accordingly, the Commission should give Hylan Moving a conditional safety rating.
- (5) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend Hylan Moving's provisional period until the earlier of the following: (a) the Company achieves a satisfactory safety rating and permanent operating authority or (b) the Commission finds good cause to cancel the Company's operating authority.
- (6) The Commission should penalize Hylan Moving \$2,100 for 71 violations of Chapter 480-15 WAC and Title 49 C.F.R. The Commission should suspend a \$1,100 portion of this penalty for two years and then waive it if the Company complies with the conditions set out in paragraph 16, above.

ORDER

THE COMMISSION ORDERS:

- (1) The Commission approves Nicholas Hylan, d/b/a Hylan Moving's Safety Management Plan.
- (2) The Commission sets Nicholas Hylan, d/b/a Hylan Moving's safety rating as conditional.
- (3) The Commission extends Nicholas Hylan, d/b/a Hylan Moving's provisional period until the earlier of the following: (a) Nicholas Hylan, d/b/a Hylan Moving achieves a satisfactory safety rating and permanent operating authority or (b) the Commission finds good cause to cancel Nicholas Hylan, d/b/a Hylan Moving's operating authority.

- (4) The Commission assesses a \$2,100 penalty against Nicholas Hylan, d/b/a Hylan Moving. The Commission suspends a \$1,100 portion of the penalty for a period of two years and then waives it if Nicholas Hylan, d/b/a Hylan Moving complies with the conditions set out in paragraph 16, above.
- (5) Nicholas Hylan, d/b/a Hylan Moving must pay the \$1,000 portion of the penalty that is not suspended within 10 days of the effective date of this Order.
- (6) If Nicholas Hylan, d/b/a Hylan Moving fails to meet any of the conditions set out in paragraph 16, or fails to timely pay the \$1,000 portion of the penalty that is not suspended, then the entire penalty will become immediately due and payable without further Commission order.

Dated at Lacey, Washington, and effective January 31, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Paige Doyle
PAIGE DOYLE
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).