

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

MARSIK MOVERS, LLC.

For Compliance with WAC 480-14-300,
WAC 480-15-560, and WAC 480-15-590

DOCKET TV-231020

ORDER 01

DISAPPROVING SAFETY
MANAGEMENT PLAN; CANCELING
PROVISIONAL AUTHORITY

BACKGROUND

- 1 Marsik Movers, LLC (Marsik Movers or Company) is a Washington company engaging in business as a household goods carrier. The Company currently holds Commission-issued provisional permit number THG-068754 and USDOT Number 3257682. Under its provisional authority, it has traveled over 130,000 miles, and conducted hundreds of moves, despite having never received a satisfactory rating in a safety audit.
- 2 On May 23, 2019, the Company began operations under a provisional permit of authority as an intrastate household goods carrier. Almost three years later, the Company had its first safety investigation on March 9, 2022.
- 3 On May 6, 2022, in dockets TV-220168 and TV-220169 (“First BAP”), the Commission found the Company committed dozens of regulatory violations. Nonetheless, the Company was permitted to submit a Safety Management Plan (SMP) outlining corrective actions taken; the Commission maintained the Company’s conditional safety rating and extended the provisional authority “for good cause.”¹
- 4 Following a second safety investigation, in docket TV-230061 (“Second BAP”), the Commission found the Company had committed five critical or acute regulatory violations.² Once again, the Company was permitted to submit an SMP describing the corrective actions it had taken. The investigator “provided a safety management plan

¹ *WUTC v. Marsik Movers, LLC.*, Dockets TV-220168 and TV-220169, Order 01 ¶ 20 (May 6, 2022).

² The presiding officer notes that the filings of TV-230061 do not appear to contain either the Company’s SMP or the final compliance review report that was noted as Exhibit TC-1 in the March 15, 2023, proceeding. Second BAP, Tr 10:16-11:5. Going forward we expect an improved approach to record keeping to ensure an effective adjudicatory process for all parties before the Commission.

guidance that [they] went over in detail together.” At the hearing, when asked by the presiding officer if the Company had any questions for the investigator, the company representative stated, “No, I don’t. I got familiar with all this regulation and, no, no questions at all.”³ He further represented that, “I went and started to read the book from the UTC to make sure, like, I know everything, how it’s going.”⁴

5 Accepting these representations, the Commission maintained the Company’s conditional safety rating and extended the provisional authority “for good cause.”⁵

6 On December 14, 2023, Commission staff (Staff)⁶ completed the third safety investigation of Marsik Movers which again resulted in a proposed conditional safety rating.⁷ As a result, the Company was again afforded the opportunity to present a SMP to demonstrate correction of the identified violations.⁸

7 On December 19, 2023, Marsik Movers submitted its initial, third SMP. Staff reviewed the plan and determined that it failed to demonstrate that the Company understood the regulatory requirements that were documented in the investigation report, nor did the plan show that Marsik Movers had established safety management controls to prevent future occurrences of violations.⁹

8 On December 28, 2023, the Commission issued a Notice of Intent to Cancel (NOIC).¹⁰ A Brief Adjudicative Proceeding (BAP) was scheduled for January 31, 2024. The notice instructed Marsik Movers to submit its proposed SMP no later than January 17, 2024. The NOIC further notified the Company that the Commission intended to cancel the permit and authority on February 13, 2024, unless Marsik Movers obtained Commission approval of a safety management plan prior to that date.

9 On January 18, 2024, after several drafts of the SMP was sent back to the Company, Staff notified Marsik Movers that the SMP was not accepted and provided a detailed response identifying deficiencies in the SMP.¹¹

³ Second BAP, Tr 16:2-11.

⁴ Second BAP, Tr 22.

⁵ *WUTC v. Marsik Movers, LLC.*, Docket TV-230061, Order 01 ¶ 27 (March 24, 2023).

⁶ 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.

⁷ Notice of Intent to Cancel, ¶ 5 (December 28, 2023).

⁸ Notice of Intent to Cancel, ¶ 8 (December 28, 2023).

⁹ Evaluation of Safety Management Plan, at 2-3 (February 9, 2024).

¹⁰ Notice of Intent to Cancel, ¶ 1 (December 28, 2023).

¹¹ Evaluation of Safety Management Plan, at 2-3 (February 9, 2024).

- 10 On January 31, 2024, the Commission held the scheduled BAP (“Third BAP”).¹² At the hearing, Staff testified to the discovered violations and explained how the safety rating was calculated.¹³ Further, Staff testified that Marsik Movers failed to submit an acceptable SMP, and thus, the Company was not compliant with the safety regulations.¹⁴ Staff stated that it would submit an evaluation to the docket if the Company submitted a new SMP prior to the cancellation of the permit.¹⁵
- 11 On February 9, 2024, the presiding officer issued a Bench Request seeking additional information related to the total number of miles traveled and recordable accidents by the Company.¹⁶ Staff responded on February 12, 2024, indicating that Company has reported driving over 131,000 miles.¹⁷
- 12 On February 9, 2024, Marsik Movers submitted an updated SMP addressing each violation identified during the safety investigation.¹⁸
- 13 That same day, Staff submitted its evaluation of Marsik Movers’ proposed SMP.¹⁹
- 14 Staff proffers that the Company’s SMP, submitted on February 9, 2024, is acceptable and meets the requirements of 49 C.F.R. Part 385. “Documentation of an updated accident register, hours of service, vehicle maintenance, interstate registrations, and company policy information were included in the plan. Additionally, The Company provided evidence that it has created a compliance tracking system using calendar reminders for future compliance dates.”²⁰
- 15 Staff therefore recommends the following:²¹
1. Marsik Movers owner, Marcel Filip, complete Commission sponsored household goods industry safety training, either through the Commission’s online learning system or the live virtual class provided by Staff, scheduled for March 20, 2024;
 2. Staff conduct a follow-up safety investigation at least six months from the date of an Order;

¹² Third BAP, Tr 1:1.

¹³ Third BAP, TR 12-14.

¹⁴ Third BAP, TR 19:18-22.

¹⁵ Third BAP, TR 29:1-5.

¹⁶ Bench Request 01, at 2 (February 9, 2024).

¹⁷ Staff’s Response to Bench Request 01 (February 12, 2024).

¹⁸ Evaluation of Safety Management Plan, at 3 (February 9, 2024).

¹⁹ Evaluation of Safety Management Plan, at 1 (February 9, 2024).

²⁰ Evaluation of Safety Management Plan, at 3-5 (February 9, 2024).

²¹ Evaluation of Safety Management Plan, at 4 (February 9, 2024) (“Staff recommends the Commission accept Marsik Movers SMP.”).

3. Marsik Movers must obtain a satisfactory safety rating following the investigation;
4. Upon reinspection, the Company may not incur repeat critical violations of 49 C.F.R. § 395.8(a)(1); and
5. Failure to meet any of these conditions would constitute grounds for cancellation of the Company's provisional permit.

- 16 On February 13, 2024, the presiding officer notified the parties of his intent to take official notice of certain federal government websites pertaining to the Company – and allowed the parties an opportunity to respond.²² This information includes records related to accidents, inspections, insurance, and operating authority. It is made available to the public by the Federal Motor Carrier Safety Administration (“FMCSA”). For ease of reading and accessibility purposes, hyperlinks will be used in some citations.
- 17 Staff responded on February 16, 2024, and provided additional context to the information the presiding officer identified.²³
- 18 We note that on February 27, 2024, Company's authority was cancelled in a separate docket, TV-240121. Subsequently, the cancellation was rescinded that day.²⁴

DISCUSSION

- 19 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's November 2023 compliance review of Marsik Movers found ten violations of safety regulations, which resulted in a proposed conditional safety rating. We rule on whether the Company's SMP should be approved and whether its provisional period should be extended for good cause.
- 20 On February 9, 2024, the Company submitted its updated SMP.²⁵ Staff determined that Marsik Movers' SMP addressed each violation, identified how each violation occurred, described the steps taken to correct each violation, and described the controls in place to

²² Notice of Intent to Take Notice; Opportunity to Respond (February 13, 2024).

²³ Staff's Response to Notice (February 16, 2024).

²⁴ Docket TV-240121, Cancellation of Provisional Household Goods Permit THG068754 Due To Insufficient Proof of Insurance, at 1 (February 26 2024); Docket TV-240121, Rescinding Cancellation of Permit, at 1 (February 26, 2024). The Commission will proceed and render its decision based on the facts and law set forth in this Order.

²⁵ SMP at 1.

ensure compliance going forward. Staff concluded that Marsik Movers' SMP was acceptable and satisfied the legal requirements of 49 CFR part 385.²⁶

21 We have reviewed the underlying SMP, and we disagree with Staff's conclusion that it sufficiently demonstrates compliance. Further, even if the SMP was sufficient, we would still disagree that there is "good cause" to believe that the Company "is making substantial progress towards a satisfactory rating." WAC 480-15-305. The Order will proceed by outlining the background information which has led the presiding officer to these conclusions.

22 Since Marsik Movers received their first provisional authority, the Company has had the affirmative duty to have the knowledge of and also be in compliance with the applicable regulations. 49 CFR § 390.3. This also includes the Safety Fitness Standards described in 49 CFR § 385.5. "To meet the safety fitness standard, the motor carrier must demonstrate it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

- (a) Commercial driver's license standard violations ([part 383 of this chapter](#)),
- (b) Inadequate levels of financial responsibility ([part 387 of this chapter](#)),
- (c) The use of unqualified drivers ([part 391 of this chapter](#)),
- (d) Improper use and driving of motor vehicles ([part 392 of this chapter](#)),
- (e) Unsafe vehicles operating on the highways ([part 393 of this chapter](#)),
- (f) Failure to maintain accident registers and copies of accident reports ([part 390 of this chapter](#)),
- (g) The use of fatigued drivers ([part 395 of this chapter](#)),
- (h) Inadequate inspection, repair, and maintenance of vehicles ([part 396 of this chapter](#))"

49 CFR § 385.5.²⁷

23 "***Safety management controls*** means the systems, policies, programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety ... regulations which ensure the safe movement of products and passengers through the

²⁶ Evaluation of Safety Management Plan, at 3 (February 9, 2024) ("Staff reviewed Marsik Movers' SMP and determined it is acceptable and meets the requirements of 49 CFR § 385.").

²⁷ See also 49 CFR Part 385 Appendix B. II.(f).

transportation system, and to reduce the risk of highway accidents ... resulting in fatalities, injuries, and property damage.” 49 CFR § 385.3.

- 24 In its almost 5 years of provisional authority, the Company has violated regulations in all the above listed Parts of Title 49. Often the violations represented were not a shortcoming of a good faith effort to comply – but the result of a total absence of critical safety management controls. The Order will proceed by describing some of the outcomes thus far produced by the Company’s safety management controls. Additionally, where applicable, the Order will note repeat critical violation and deficiencies in corrective actions claimed by Company.

Commercial driver's license standard violations.

- 25 In 2022, a company driver was without a valid Washington state issued driver’s license.²⁸
- 26 The Company was notified of the need for the driver to get one.²⁹
- 27 In March of 2023, a driver was again found to have a deficient license.³⁰

Inadequate levels of financial responsibility.

- 28 On November 4, 2022, Company was found in an inspection to have deficient insurance.³¹
- 29 The Company nonetheless continued to operate a commercial motor vehicle without the required insurance until January 18, 2023.³²
- 30 At the Second BAP, the investigator stated: “Yes. There was one acute violation of WAC 480-15-530 for operating a motor vehicle without having in effect the required minimum financial responsibility.”³³

²⁸ First BAP, TC-1 at 13.

²⁹ First BAP, TC-1 at 13.

³⁰ [Safety Measurement System - Inspection WAW821002517 \(U.S. DOT# 3257682\).](#)

³¹ [Safety Measurement System - Inspection WAW804004656 \(U.S. DOT# 3257682\).](#)

³²., Docket TV-231020, Notice of Penalties, at 1 (February 8, 2023) (“The Company allowed its drivers to operate a commercial motor vehicle (CMV) without the required insurance on three occasions between November 4, 2022, and January 18, 2023.”).

³³ Second BAP, Tr at 13:24-14:8.

- 31 The Company acknowledged fault at the Second BAP, “And also my fault driving the truck with no commercial insurance on it.”³⁴
- 32 Once more, in March of 2023, the Company had an insurance violation.³⁵
- 33 It appears that these issues were not self-corrected by adequate safety management controls but instead were cured due to enforcement actions.
- 34 The record reflects that The Company engaged in interstate commerce on 35 occasions in 2023.³⁶ The Company did not contest this at the Third BAP. Marsik Movers authority to do so is not clearly established.³⁷
- 35 The Company has no listed history of insurance registered with FMCSA.³⁸ *But see* 49 CFR § 387.7(e) (requiring filing of evidence of financial responsibility with FMCSA).

The use of unqualified drivers.

- 36 Three years into its operations, the Company was found to have, “Four critical violations of WAC 480-15-555 ... when the carrier failed to conduct/retain paperwork containing criminal background checks or hiring an individual with a disqualifying conviction for a household goods carrier in the state of Washington.”³⁹ *See also* WAC 480-15-450(1)(k)(identifying failure to meet criminal background check requirements as good cause for authority cancelation).

³⁴ Second BAP, Tr. 22:16-17.

³⁵ [Safety Measurement System - Inspection WAW821002517 \(U.S. DOT# 3257682\).](#)

³⁶ Sharp, Exh. JS-1 at 4 (“The carrier conducted interstate HHG moves without the required interstate operating authority on 35 occasions during the sample period of May 1, 2023 through November 1, 2023 on the following days: [] May (2023) 15, 20, 30 (3 occasions)[;] June (2023) 3, 6, 13, 27, 30 (5 occasions)[;] July (2023) 9, 10, 12, 15, 26, 27, 39 (7 occasions)[;] August (2023) 11, 15, 16, 18, 19, 24 (6 occasions)[;] September (2023) 2, 11, 12, 20, 26, 27, 29, 30 (8 occasions)[;] October (2023) 2, 15, 20, 25, 27 (5 occasions)”[;] November (2023) 2”).

³⁷ Sharp, Exh. JS-1 at 10 (“Filip states that Marsik Movers LLC will be dispatched jobs from the two out of state HHG moving companies to load Washington customers household goods and take the contents to a local storage unit (Supreme Self Storage in Federal Way, WA) using Marsik Movers LLC trucks, drivers, USDOT number and operating authority, a different moving company is dispatched to pick up the stored household goods and deliver them out of state, which would still constitute an interstate move for Marsik Movers LLC.”).

³⁸ Presiding Officer queried DDOT Number 3257682 in the applicable federal database. [Insurance History \(dot.gov\).](#)

³⁹ First BAP, TS-1 at 14.

- 37 The Company failed to conduct background checks prior to the start date of several employees.
- 38 Further, the Company failed to ever conduct a criminal background check on one employee.⁴⁰
- 39 After terminating an employee, the Company failed to retain a “driver qualification file” of the terminated driver for at least three years.⁴¹

Improper use and driving of motor vehicles.

- 40 One week after the Company’s second SMP had been accepted, a company driver was found in possession of a narcotic while on duty.⁴²
- 41 On April 15, 2023, a Named Driver was terminated from the Company.⁴³
- 42 Two days later, on April 17, 2023, the Company took out a lease on a truck – but filed the rental paperwork without stating its intent to sublease the truck – which the rental company would have not allowed.⁴⁴
- 43 Several months later, on September 16, 2023, Named Ex-Driver picked up a truck leased to the Company from the same rental company that the Company had used in April.⁴⁵
- 44 The Company explains that the Named Ex-Driver had been terminated in April, but was allowed to use the Company’s name, in September, to receive a discount on a truck, so that the Named Ex-Driver could move his apartment.⁴⁶

⁴⁰ First BAP, TS-1 at 3.

⁴¹ First BAP, TS-1 at 3.

⁴² Sharp, Exh. JS-1 at 11; [Safety Measurement System - Inspection WAW821002517 \(U.S. DOT# 3257682\)](#).

⁴³ Sharp, Exh. JS-1 at 11.

⁴⁴ Company has been found to have violated WAC 480-15-590 in all three proceedings. First BAP, TC-1 at 4; *WUTC v. Marsik Movers, LLC.*, Docket TV-230061, Order 01 3 (March 24, 2023); Sharp, Exh. JS-1 at 5.

⁴⁵ Sharp, Exh. JS-1 at 11.

⁴⁶ Sharp, Exh. JS-1 at 11.

- 45 Two months after the second SMP was approved, the Company was involved in its third career recordable accident.⁴⁷ This accident occurred somewhere along the approximately 450-mile length of I-70, in the state of Colorado.⁴⁸
- 46 The Company, authorized only for intrastate moves, engaged in interstate commerce under the claimed authority of another carrier.⁴⁹ *C.f.* WAC 480-15-380 (“Intrastate carriers may not allow others to transport household goods under their permit authority.”).
- 47 Operating without authority is not a critical or acute regulation under the CFR – because critical or acute regulations can be cured.⁵⁰ The penalty prescribed by the CFR for operating without authority is the immediate cessation of operations.⁵¹
- 48 The comprehensive review report indicates violations of 49 CFR 392.9a(a)(1) occurred.⁵²
- 49 The Safety Measurement System (SMS) indicates that Marsik Movers still does not have interstate authority.⁵³

Failure to maintain accident registers and copies of accident reports.

- 50 Within the Company’s accident register, marked as covering 2022, is a column labeled “Copy of State or Insurance report.”⁵⁴ Within that column, for two of the recorded accidents is an em dash (—), which the presiding officer interprets as not existing. Likewise, the “NA” listed next to the 2023 Colorado accident, the presiding officer interprets as “not applicable.” Accepting both to be true is difficult.

⁴⁷ Sharp, Exh. JS-1 at 11.

⁴⁸ SMP at 6.

⁴⁹ Third BAP, Tr. at 14:3-6 (“The files were found under a company called Flex Moving, which Marsik Movers conducted household goods moves for under their authority and DOT number.”). *But see also* 49 CFR § 375.205 (setting requirements for agents) 49 CFR § 375.101 (applying requirements to household goods motors carriers engaged in interstate transportation of household goods for a shipper).

⁵⁰ 49 CFR Appendix B to Part 385, § II(g) (describing point deductions).

⁵¹ 49 CFR § 392.9a(b) (“*Penalties.* Every motor carrier providing transportation requiring operating authority shall be ordered out of service if it is determined that the motor carrier is operating a vehicle in violation of paragraph (a) of this section. In addition, the motor carrier may be subject to penalties in accordance with 49 U.S.C. 14901.”). *But see* Third BAP, Tr. at 28:3-9 (stating correction of citation from WAC 480-14-300 to CFR “392.2” would have no impact on calculation of safety rating).

⁵² Sharp, Exh. JS-1 at 12.

⁵³ [Safety Measurement System - Overview \(U.S. DOT# 3257682\)](#).

⁵⁴ SMP at 6.

- 51 If we were to take the Company at its word that it was involved in three events in which there was either a fatality, a vehicle towed away, or an injury.⁵⁵ And further, accept both (1) the claim⁵⁶ that there was “no people injured,” and (2) the assumption that the parties would have notified the Commission of a fatality. Then the record implies that there have been two on-road incidents where a vehicle was towed away within Washington state.
- 52 In each case, since the cost of damage to one person was over \$1,000, there was a statutory compulsion to create a record.⁵⁷
- 53 The record indicates, “No police report.”⁵⁸
- 54 It indicates an absence of “supporting documents.”⁵⁹
- 55 The accident register identifies the drivers only by their first names.⁶⁰
- 56 There are no recordable crashes noted in SMS affiliated with the Company for the period which the Company reported recordable crashes to the state.⁶¹
- 57 Neither the Second BAP’s SMP or Comprehensive Report is available in the record.
- 58 As a result, the record is silent to both the extent and direction of liability in each of the 2022 intrastate accidents that the Company was involved in.
- 59 Given the absence of accident reports in the record of any of the proceedings, it would seem that the Company either (1) has an outstanding obligation under state law to file two reports and to list them in its accident register, or (2) was involved in intrastate accidents which required tows, but which also created under \$1,000 of “damage to the property of any one person.” WAC 445-85-010. The lack of detail is troubling in this regard.
- 60 For the 2023 Colorado incident – in which the record indicates a recordable accident occurred – the Company represents that the police decided to not make a report.⁶²

⁵⁵ See Third BAP, Tr 14:14-20 (defining recordable accident).

⁵⁶ Second BAP, Tr. at 22:11; Third BAP, Tr. 24:6-8.

⁵⁷ RCW 46.52.030; WAC 445-85-010.

⁵⁸ Second BAP, Tr. at 22:11.

⁵⁹ Third BAP, Tr. at 14:22.

⁶⁰ SMP at 6.

⁶¹ [Safety Measurement System - Complete SMS Profile \(U.S. DOT# 3257682\)](#).

⁶² Third BAP, Tr. at 24:3-4.

- 61 However, the “truck got damaged” such that the Company was unable to retrieve the lease agreement contained within it.⁶³
- 62 It would be difficult to verify this claim that a vehicle made inaccessible on the interstate did not trigger a police or insurance report, because the location indicated by the updated and approved accident register is “CO I-70,” a thoroughfare that bisects the state.⁶⁴
- 63 As the CFR and Company’s own SMP notes, an accident register must contain the “town and state where accident occurred.”⁶⁵
- 64 That is a challenge of retroactively applying safety management controls – it is difficult or impossible to retroactively gather certain data. If there are no controls in place to gather longitudinal data as it occurs, then down the road there is no meaningful way for the Company to be audited, which robs the public of the assurances safety regulations are meant to provide.
- 65 It is unclear the basis of Staff’s characterization of 49 CFR 390.15(b) as a mere “paperwork correction” that has no impact on Company’s Safety Rating.⁶⁶
- 66 A subsection of 49 CFR 390.15(b) is listed as a critical regulation in the relevant appendix.⁶⁷
- 67 Given (1) the charge is to the umbrella section 390.15(b), and not 390.15(b)(1);⁶⁸ (2) the mention of missing “supporting records” in the transcript,⁶⁹ (3) “copies of all accident reports” being mentioned in the investigator’s Requirements and/or Recommendations,⁷⁰ and (4) the absence of reference to accident reports in the SMP evaluations⁷¹; all suggest that both § 395.15(b)(1) and § 395.15(b)(2) were violated.

⁶³ SMP at 16.

⁶⁴ SMP at 6.

⁶⁵ SMP at 6; 49 CFR § 390.15(b)(1).

⁶⁶ Staff’s Response to Bench Request 01, at 3 (February 12, 2024). *See also*, Second BAP, Tr. at 14:9-23 (stating no critical violations but mentioning “CFR 390.15(b)(2)” and reportable accidents).

⁶⁷ 49 CFR Part 385 Appendix B.VII (“§ 390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (critical).”).

⁶⁸ Sharp, Exh. JS-1 at 3.

⁶⁹ Third BAP, Tr. at 13:22.

⁷⁰ Sharp, Exh. JS-1 at 7.

⁷¹ Evaluation of Safety Management Plan, at 3 (February 9, 2024) (referencing accident register but not reports); *WUTC v. Marsik Movers, LLC.*, Docket TV-230061, Evaluation of Safety Management Plan, at 3 (March 22, 2023) (referencing accident register but not reports).

68 The record appears to establish by a preponderance of evidence a violation of § 395.15(b)(1) and multiple violations of § 395.15(b)(2) has occurred. The record does not directly establish that corrective actions have cured these violations.

69 The record indicates that Marsik Movers received a rating of “Satisfactory” for the general safety fitness factor that § 395.15(b)(2) would affect.⁷²

Unsafe vehicles operating on the highways.

70 On November 6, 2022, a Company driver was found to have failed to obey a traffic control device.⁷³

71 In Docket TV-230061, the Company’s then yearly accident per million miles ratio was noted as 44.44.⁷⁴

72 The Company’s lifetime accidents per million miles is approximately, 22.8 accidents per million miles. The number is approximate because it is not inclusive of miles driven in 2023, however many interstate miles the Company traveled without authority, and because it relies on the number of accidents self-reported by the Company. Nonetheless, this lifetime average rate is an order of magnitude larger than the yearly 1.7 contemplated by the regulations.⁷⁵ While the Company’s previous accidents have been able to age out of the one-year Comprehensive Review criteria, it seems reasonable to evaluate a provisional authority for the entirety of its provisional period.

73 There is nothing in the record to suggest that this lifetime accidents per million-mile statistic for the Company is the result of statistical noise. It is challenging to infer that the accidents were a series of minor events in which the tow truck was a formality and for which the Company bears no fault, given that the party that would benefit most from that assumption being shown to be true is also the one that has apparently failed to create and maintain the records that would establish it to be so.

74 Much like the Company’s accident records, the miles driven by the Company is another safety metric that the Company has declined to track and report on diligently. The Company has been found to have violated 49 CFR § 390.19(b)(2), by failing to report miles driven through submission of Form MCS-150, in two previous proceedings.

⁷² Sharp, Exh. JS-1 at 15.

⁷³ [Safety Measurement System - Inspection WAW804004656 \(U.S. DOT# 3257682\)](#).

⁷⁴ *WUTC v. Marsik Movers, LLC*, Docket TV-230061, Evaluation of Safety Management Plan, at 1 (March 22, 2023).

⁷⁵ 49 CFR Part 385 Appendix A § III.B (“An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. . . .The rates are the result of roughly doubling the national average accident rate in Fiscal Years 1994, 1995, and 1996.”).

Inadequate inspection, repair, and maintenance of vehicles.

- 75 In the latest audit, over four years into operations, the Company “was unable to demonstrate compliance with the [Driver Vehicle Inspection Report] process” – and appears to have admitted to not undergoing this mandatory daily process –instead dealing with repairs ad hoc.⁷⁶
- 76 The inspector’s report explains that “The carrier was not in compliance with the DVIR reporting and documentation requirements, however no violations were recorded due to a lack of documentation as proof that a DVIR was required.”⁷⁷ It is unclear what was meant by this, given the violation is itself defined as a lack of documentation.
- 77 Section 396.11(a)(1) of Title 49 states that “every driver shall prepare a report in writing at the completion of each day’s work on each vehicle operated”⁷⁸ The section goes on to describe a variety of information which must be included.⁷⁹
- 78 Section 396.11(a)(3) of Title 49, mandated the Company to require repairs of defects or deficiencies identified in the report.⁸⁰
- 79 In the relevant appendix, 49 CFR 396.11(a) is listed as a critical regulation, with subsection (a)(3) being an acute violation.⁸¹
- 80 In the most recent audit, the Company – which appears to have never engaged in the mandatory DVIR process - received a satisfactory score for the Vehicle factor.⁸²
- 81 The most recently submitted SMP does not contain any information related to DVIR.⁸³

⁷⁶ Sharp, Exh. JS-1 at 13.

⁷⁷ Sharp, Exh. JS-1 at 13.

⁷⁸ 49 CFR § 396.11(a)(1).

⁷⁹ 49 CFR § 396.11(a)(1)(“(i) Service brakes including trailer brake connections; (ii) Parking brake; (iii) Steering mechanism; (iv) Lighting devices and reflectors; (v) Tires; (vi) Horn; (vii) Windshield wipers; (viii) Rear vision mirrors; (ix) Coupling devices; (x) Wheels and rims; (xi) Emergency equipment.”).

⁸⁰ 49 CFR § 396.11(a)(3) (“Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of the vehicle.”).

⁸¹ 49 CFR Part 385 Appendix B.VII (“§ 390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (critical).”).

⁸² Sharp, Exh. JS-1 at 13.

⁸³ SMP.

82 The recent violation was not the first time the absence of a Company inspection program is noted in the record. In the First BAP, the record states:

“Description of violation: The carrier failed to retain annual vehicle inspections for 14 months, the current annual inspection was conducted on February 22, 2022, and no previous annual inspection to satisfy the months of December 2021 or January 2022 was presented for review.”⁸⁴

“The carrier failed to provide a vehicle maintenance file for review at the time of this investigation. The vehicle was operated and used for HHG moves in the previous 365 days.”⁸⁵

83 As an apparent result of these loose to non-existing safety controls, over the course of various inspections, the Company was found operating: without an ABS malfunction circuit⁸⁶ or a working horn,⁸⁷ and with an inoperable required lamp,⁸⁸ a damaged windshield,⁸⁹ and an improperly secured fuel tank.⁹⁰

84 Had the Company maintained DVIRs the Commission would be able to evaluate when problems were identified by the Company, and how long the Company took to fix them. Such records enable evaluation of safety management controls.

85 Indeed, the failure to conduct periodic review appears to have allowed the Company to operate for a period of time with a sticker that incorrectly identified the Company’s vehicle as being associated with another company. As the Company explained:

I have failed to have a valid period inspection for review at the time of this investigation due to a technical issue occurred at the time of Annual inspection. The inspector got back with the notes about truck inspection and wrote me the original Annual inspection passed and got to put the sticker what he prepared with company information. By mistake I haven’t pay enough attention to, got the sticker on the truck and copy on hands, at the audit inspection found out that the inspection paper and sticker from the truck had my truck VIN number . . . but instead of company name Marsik Movers and address was name of the other company. This violation occurred because I failed to double check and my lack of acknowledge of DOT inspections requirements, I took their word instead to verify and

⁸⁴ First BAP, TS-1 at 6.

⁸⁵ First BAP, TS-1 at 5.

⁸⁶ [Safety Measurement System - Inspection WAU013000272 \(U.S. DOT# 3257682\).](#)

⁸⁷ [Safety Measurement System - Inspection WAU013000125 \(U.S. DOT# 3257682\).](#)

⁸⁸ [Safety Measurement System - Inspection WAU013000124 \(U.S. DOT# 3257682\).](#)

⁸⁹ [Safety Measurement System - Inspection WAU013000273 \(U.S. DOT# 3257682\).](#)

⁹⁰ [Safety Measurement System - Inspection WAW804004656 \(U.S. DOT# 3257682\).](#)

double check before living the shop if the information match with my company information.⁹¹

86 Even if this explanation was accepted as true, it isn't clear that it excuses the absence of controls to prevent its occurrence. *But c.f.* 49 CFR § 390.35 (barring the use of false records to comply). *See also* 49 USC § 14906 (setting fine for evasion of regulation)

The Use of Fatigued Drivers

87 In the First BAP, three years into operations, the record establishes that “[t]hirty-seven critical violations of 395.8(a)(1) occurred when the carrier failed to require drivers to make a record of duty status and failed to maintain accurate and true time records.”⁹²

88 Again, in the Third BAP, the Company has acknowledged it has persistently failed to create these records.⁹³ The Company has promised to improve this time.⁹⁴

89 Given our assessment of the Company's overall history of safety management controls, the Commission declines to find that the Company “is making substantial progress toward a satisfactory rating.” WAC 480-15-305. Therefore, for the reasons set forth in this Order, the Commission is canceling Marsik Movers' provisional authority and dismissing the Company's application for permanent authority.

FINDINGS AND CONCLUSIONS

90 (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.

91 (2) Marsik Movers has been a household goods carrier subject to Commission regulation for almost five years.

92 (3) Marsik Movers has a history of inadequate safety management controls and repeat violations. The Commission has provided Marsik Movers with many

⁹¹ SMP at 11.

⁹² First BAP, TS-1 at 4.

⁹³ Third BAP, Tr. 24:9-12 (“the hour of service, it was as well from my -- from my fault and the lack of accuracy to -- to maintain them and keep them on file for at least six months.”); Third BAP, Tr. 22:21-22 (“I totally understand my violations, what they occurred, about the hours of service and the accident of the trucks, and I know how important it is.”).

⁹⁴ Third Bap, Tr. 22:23-25.

opportunities to succeed. Marsik Movers has continued to have repeated violations. Marsik Movers has not contested any of the violations contained in the NOIC.

- 93 (4) Marsik Movers has reported driving over 134,000 miles; it reported making \$412,000 gross in 2022; it has engaged in hundreds of household good moves.⁹⁵
- 94 (5) Marsik Movers has never received a satisfactory score in a Commission safety investigation.⁹⁶
- 95 (6) Over the years, Marsik Movers has been in approximately three recordable accidents, and has admitted to committing numerous critical and acute violations. It has been fined a lifetime total of \$1,500, which represents under 1% of the Company's 2022 gross income.
- 96 (7) The Company is not entitled to additional time to lower these averages, or to retain the expertise required to engage in this regulated industry. Marsik Movers was responsible for knowledge and compliance of the regulations from day one. The Commission declines to extend the authority beyond the over 1,500 days Marsik Movers has already had to meet those responsibilities.
- 97 (8) Safety regulations are not aspirational. They are safeguards written and designed to protect the public. Participants in this regulated market must receive Commission approval to operate in Washington.
- 98 (9) The investigator's assessment of the Company acknowledged that the owner "chose to talk around the questions and provide excuses and/or confusing information to justify a situation or non-compliance issue instead of initially taking responsibility for the facts being presented." Further, the investigator proffered that while the owner does "demonstrate the desire to come into compliance . . . [but] there is an element of [Marsik Movers] wanting to do it an easier way or a way that competes against regulatory compliance."⁹⁷
- 99 (10) Submitting inaccurate information is good cause for cancelation.⁹⁸

⁹⁵ Evaluation of Safety Management Plan, at 4 (February 9, 2024).

⁹⁶ Staff's Response to Bench Request 01, at 3 (February 12, 2024).

⁹⁷ Sharp, Exh. JS-1 at 14.

⁹⁸ WAC 480-15-450(1) ("Good cause includes . . . (g) Submitting false, misleading or inaccurate information.").

- 100 (11) Marsik Movers has a history of not reporting miles operated. In the First BAP, Marsik Movers “failed to update the MCS-150 registration form with the current principal place of business address, business email, vehicle miles travelled, correct number of drivers and vehicles, and the correct company official’s name.”⁹⁹ In the Second BAP, Marsik Movers was found to have violated “49 C.F.R. § 390.19(b)(2) for failing to file the MCS-150 registration form each 24 months according to schedule.”¹⁰⁰
- 101 (12) The federal website indicates that for 2023, Marsik Movers reported driving a single mile.¹⁰¹ *Cf* 49 USC § 14907 (describing recordkeeping and reporting violations).
- 102 (12) Marsik Movers has identified three recordable accidents it was involved in, to the Commission, but does not appear to have informed the FMCSA.¹⁰²
- 103 (13) Marsik Movers misled a car rental company by entering into a lease without disclosing the Company’s intent to sublease the vehicle – which would not have been permitted. The Company did not maintain a copy of this lease, which it was required to do.¹⁰³
- 104 (14) Lapses in insurance coverage is good cause for cancellation.¹⁰⁴
- 105 (15) Marsik Movers’ insurance has been discovered to have been insufficient at least twice during its provisional period.¹⁰⁵
- 106 (16) Failing to comply with applicable laws is good cause for cancellation.¹⁰⁶

⁹⁹ First BAP, TC-1 at 5.

¹⁰⁰ *WUTC v. Marsik Movers, LLC.*, Docket TV-230061, Order 01 ¶ 3 (March 24, 2023).

¹⁰¹ The presiding officer queried the Company’s DDOT Number “3257682” on the FMCSA’s SAFER database. [SAFER Web - Company Snapshot MARIK MOVERS LLC \(dot.gov\)](https://safer.fmcsa.dot.gov/snapshot/3257682).

¹⁰² [Safety Measurement System - Overview \(U.S. DOT# 3257682\)](https://safer.fmcsa.dot.gov/snapshot/3257682).

¹⁰³ Sharp, Exh. JS-1 at 5.

¹⁰⁴ WAC 480-15-450(1) (“Good cause includes... (c) Failing to maintain evidence of required liability insurance coverage for all areas of its operations as required by WAC 480-15-530.”).

¹⁰⁵ Evaluation of Safety Management Plan, at 5 (February 9, 2024).

¹⁰⁶ WAC 480-15-450(1) (“Good cause includes... (e) Failing to comply with applicable laws and commission rules pertaining to operations of household goods carriers, including safety requirements set in law or rule.”).

- 107 (17) There was evidence in the record of serious violations which Staff did not specifically cite to the Company: 49 CFR §§ 390.15(b)(2) (failure to retain accident reports), 396.11(a) (failure to keep minimum records of Driver Vehicle Inspection Reports), WAC 480-15-900 (operating without interstate authority). The first two are critical regulations. It is not clear if the persistent lapses in record keeping practices have been excused as a matter of prosecutorial discretion.¹⁰⁷ In any event, the prescribed penalty for operating without authority is cessation of operations.¹⁰⁸
- 108 (18) Marsik Movers cured some of the deficiencies that led to the conditional safety rating. One of those regulations was cited as “49 CFR 390.15(b).” This regulation sets two record keeping requirements, that are listed in two subsections. The critical portion of 49 CFR 390.15(b) is the second subsection, which requires the retention of accident reports required by (i) state law, or (ii) insurance policy. The first part of the subsection requires the creation of an index for the sorting of such reports and the memorialization of data contained within. The Company’s SMP demonstrates an attempt to comply with (b)(1), and proffers an accident register “FROM 01 Jan, 2022, to December, 2022.” One of the few pieces of information required to be in the register is the name of the “town” that recorded accidents took place in. The place that the 2022 register lists for the 2023 accident is “CO I70.”
- 109 (19) The record does not demonstrate that either subsection of 49 CFR 390.15(b) has been cured.¹⁰⁹
- 110 (20) Failing to cure is good cause for cancelation.¹¹⁰

¹⁰⁷ Cf. Staff’s Response to Bench Request 01, at 3 (February 12, 2024) (“This paperwork correction does not factor into the Marsik Movers’ safety rating as it is neither an acute or critical violation.”); Sharp, Exh. JS-1 at 13 (“The carrier was not in compliance with the DVIR reporting and documentation requirements, however no violations were recorded due to a lack of documentation as proof that a DVIR was required.”).

¹⁰⁸ 49 CFR 392.9a (“**Penalties.** Every motor carrier providing transportation requiring operating authority shall be ordered out of service if it is determined that the motor carrier is operating a vehicle in violation of paragraph (a) of this section.”).

¹⁰⁹ The Commission has concerns that these accidents appear to have not been reported in accordance with the 49 CFR§ 390.15(b)(2); and it appears that RCW 46.52.030 and WAC 445-85-010 may have been triggered as well. Additionally, the Commission is concerned that violations of critical DVIR regulations were determined to be not applicable.

¹¹⁰ WAC 480-15-450(1) (“Good cause includes . . . (b) Failing to correct, within the time frame specified in the suspension order, all conditions that led to the suspension of a permit.”).

- 111 (21) Even if every assumption was made in the carrier's favor such that the above described sum of unsafe actions and outcomes amounted to no more than a prolonged, unsuccessful good faith effort to comply with the Safety Fitness Standards – then the carrier has demonstrated a lack of knowledge and expertise which the regulations charge it to maintain. Certainly, the owner of Marsik Movers need not be an expert in everything – so long as Marsik Movers acquires, retains, and utilizes the expertise the owner lacks. But that is not what has happened here, despite the ample notice provided by the previous proceedings.
- 112 (22) 49 CFR § 390.3(e) states:
- (1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter that are applicable to that motor carrier's operations.
 - (2) Every driver and employee involved in motor carrier operations shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.
 - (3) All motor vehicle equipment and accessories required by this chapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.¹¹¹
- 113 (23) At all times, Marsik Movers was responsible to comply with 49 CFR § 390.3(e).¹¹²
- 114 (24) Marsik Movers has acknowledged its knowledge deficiencies numerous times.¹¹³
- 115 (25) The Commission has been lenient. Pursuant to WAC 480-15-450, the Commission had grounds for cancelation at any time during this collection of proceedings.¹¹⁴

¹¹¹ 49 CFR § 390.3(e).

¹¹² 49 CFR § 390.3(e).

¹¹³ First BAP, Tr.23:20-25. ("I'm going to try to do my best. But since it's something new for me - like, I didn't know -- like, I have the book with the regulatory satisfactory, like, driving record and all this stuff. I then checked very well, and all these mistakes -- I didn't have time to fix them yet."); Second BAP, Tr. 22:1-2 ("I'm going to try to do my best. But since it's something new for me -- like, I didn't know -- like, I have the book with the regulatory satisfactory, like, driving record and all this stuff. I then checked very well, and all these mistakes -- I didn't have time to fix them yet."); Third BAP Tr: 24:14-18, ("And I don't know for sure, like, I have to have the accident on my accident register. I had the old one for the previous accidents, but I -- I didn't have the new one, because I was not sure."); SMP at 7 ("This violation occurred due to unintentionally misunderstanding of the requirements."); SMP at 10 ("All moving jobs provided for Flex Moving INC was operated under their paperwork and also had a truck sign with their MC and DOT number, I was thinking that is enough but because of my lack of acknowledge did a mistake.").

¹¹⁴ WAC 480-15-450.

- 116 (25) The Commission finds Marsik Movers does not meet the requirements of 49 CFR § 390.3(e), despite being given ample opportunity to acquire or retain the expertise necessary to participate in this regulated market.
- 117 (26) The Commission declines to find “good cause” that Marsik Movers “is making substantial progress toward a satisfactory rating.” WAC 480-15-305.
- 118 (27) Marsik Movers’ updated SMP submitted on February 9, 2024, should not be approved, and the Company’s provisional period should not be extended.

ORDER

THE COMMISSION ORDERS:

- 119 (1) The Commission does not approve Marsik Movers, LLC’s safety management plan.
- 120 (2) Pursuant to WAC 480-15-540, Marsik Movers, LLC’s provisional authority is canceled.
- 121 (3) Marsik Movers, LLC’s application for permanent household goods authority is dismissed.¹¹⁵
- 122 (4) Pursuant to WAC 480-15-450, Marsik Movers shall immediately CEASE all operations associated with this permit, including advertising.
- 123 (5) Pursuant to WAC 480-15-450(3), Marsik Movers shall provide notice to every customer that its permit has been canceled, and shall provide proof of such notice to the Commission within 30 days.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

¹¹⁵ **You may apply to reinstate your permit.** You must reinstate within 30 days of cancellation, otherwise you may not reapply for 12 months per WAC 480-15-302(11). Download the reinstatement application at www.utc.wa.gov. To locate application instructions, type “File Your Transportation Application Electronically” in the site search bar, and select this link. Then, click on the appropriate industry application.

/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).