

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

AIRUS MOVERS LLC,

For Compliance with WAC 480-15-530,
WAC 480-15-550, WAC 480-15-555, WAC
480-15-560, and RCW 81.80.075.

DOCKET TV-240620

COMMISSION STAFF’S RESPONSE
TO AIRUS MOVERS LLC’S
REQUEST FOR
RECONSIDERATION AND
MITIGATION

I. INTRODUCTION

1 Airus Movers LLC (Airus or the Company) has made two requests of the Commission since the Commission cancelled its household goods carrier permit on October 21, 2024. Airus first requested mitigation of the fine imposed by the Commission and the possibility of setting up a payment plan. Secondly, Airus requested reconsideration of the Commission’s decision to cancel its permit. Commission Staff (Staff) supports the Company’s requests for mitigation of the fine and a payment plan on the terms identified in Staff’s evaluation of the Company’s safety management plan (SMP).¹ Staff further supports an upgrade to its safety rating to “conditional” and reinstatement of the Company’s permit.

II. STATEMENT OF FACTS

2 On September 5, 2024, in Docket TV-240620, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Permit as a Household Good Carrier (Permit)/Notice of Brief Adjudicative Proceeding against Airus Movers LLC. The Commission intended to cancel Airus’ permit to provide services as a

¹ *In re Investigation of Airus Movers LLC*, Docket TV-240620, Evaluation of Safety Management Plan, (Oct. 31, 2024).

household goods carrier effective October 13, 2024, for cause, following a hearing on the factual allegations Staff found as a result of its compliance investigations.²

3 On September 9, 2024, the Commission issued a Notice of Penalties Incurred and Due for Violations of Laws and Rules (Penalty Assessment) against Airus for \$15,600, which was immediately due.³

4 The Company did not pay the penalty assessment.⁴

5 On October 2, 2024, the Commission convened a Brief Adjudicative Proceeding (BAP). The Company did not attend the BAP. Staff moved to hold Airus in default and requested the Commission hear the merits of the case. The Commission granted Staff's motion and request.⁵

6 On October 10, 2024, Airus submitted an SMP. On October 11, 2024, Staff filed its Evaluation of the Company's SMP.⁶ Staff determined that Airus' SMP did not meet the legal requirements of 49 C.F.R. § 385 to justify an upgrade to the proposed unsatisfactory safety rating.⁷

7 The Commission also found, based on evidence presented by Staff at the BAP, that the Company committed critical violations⁸ and canceled the Company's household goods

² *In re Investigation of Airus Movers LLC*, Docket TV-240620, Order 01, 1 ¶1 (Oct. 21, 2024).

³ *Id.* at 1 ¶2.

⁴ *Id.* at 2 ¶4.

⁵ *Id.* at 2 ¶5.

⁶ *Id.* at 2 ¶6.

⁷ *Id.* at 4 ¶14.

⁸ *In re Investigation of Airus Movers LLC*, Docket TV-240620, Order 01, 4-5 ¶ 19 (Oct. 21, 2024).

carrier permit.⁹ The Commission also affirmed its previous penalty imposed against the Company for \$15,600.¹⁰

8 On October 24, 2024, the Company filed a request for reduction of the fine amount and a payment plan option.¹¹

9 On October 31, 2024, Staff filed an evaluation of the Company’s SMP and response to the Company’s mitigation request. Staff explained in that filing that the Company submitted an updated SMP addressing each violation noted during its investigation. Staff found that the updated SMP meets the legal requirements of 49 C.F.R. § 385 to justify an upgrade to the Company’s unsatisfactory rating. Staff indicated its support for the Company should it attempt to reinstate its household goods permit.¹²

10 On November 1, 2024, Airus filed a request for reconsideration. In this filing, the Company explained why it did not attend the BAP, indicating that the notice was sent to its spam email folder. The Company requested the Commission reconsider the cancellation of its permit based on Staff’s acceptance of its updated SMP.¹³

III. STATEMENT OF ISSUES

11 Should the Commission grant the Company’s request for mitigation of the \$15,600 fine and allow a payment plan? Should the Commission reinstate the Company’s household goods permit and upgrade its safety rating to conditional?

⁹ *Id.* at 6 ¶ 21.

¹⁰ *Id.* at 6 ¶ 22.

¹¹ *In re Investigation of Airus Movers LLC*, Docket TV-240620, Request for Mitigation (Oct. 24, 2024).

¹² *In re Investigation of Airus Movers LLC*, Docket TV-240620, Evaluation of Safety Management Plan, (Oct. 31, 2024).

¹³ *In re Investigation of Airus Movers LLC*, Docket TV-240620, Request for Reconsideration (Nov. 1, 2024).

IV. ARGUMENT

12 Staff views the Company's request for reconsideration as a motion contesting the order of default under WAC 480-07-450(2). Under that rule, a party that a presiding officer finds in default may contest the order of default by written motion within ten days after service of the order. A party found in default may request that that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.¹⁴ Staff believes that the Company's request for reconsideration may be treated as a timely motion filed under this rule.¹⁵

13 Staff agrees that the Commission should reopen the proceeding on the issue of the fine assessed against the Company. As explained in Staff's SMP evaluation, the Company was cooperative during the safety investigation, corrected its violations, which were first-time violations, and implemented procedures to prevent future occurrences.¹⁶ Therefore, Staff does not object to the Commission reducing the Company's penalty and allowing a payment schedule consistent with the agreed-upon payment schedule indicated in Staff's SMP evaluation.¹⁷

14 The issue of whether to reopen the proceeding with respect to the issue of the cancellation of the Company's permit is less straight forward. The Commission cancelled the Company's permit based on the evidence presented at the BAP, and not based on solely on the Company being held in default. The Company does not contest the factual basis for

¹⁴ WAC 480-07-450(2).

¹⁵ The Commission will liberally construe pleadings and motions with a view to effect justice among the parties. The Commission will consider pleadings and motions based primarily on the relief they request and will not rely solely on the name of the document. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties. WAC 480-07-395.

¹⁶ *In re Investigation of Airus Movers LLC*, Docket TV-240620, Evaluation of Safety Management Plan, 2-3 (Oct. 31, 2024).

¹⁷ *Id.* at 3.

the cancellation of its permit. Additionally, C.F.R. §385.13 prohibits a carrier from operating beginning on the 61st day after the date of the notice of the proposed “unsatisfactory” rating. In this case, Staff recommended approval the Company’s SMP well past the 61st day after the notice of unsatisfactory rating. Thus, arguably, the cancellation of the Company’s permit should stand.

15 Should the Commission agree that the proceeding should not be reopened with respect to cancellation of the Company’s permit, the Company is not without a path for reinstatement. Under WAC 480-15-450(4), if a company’s permit is canceled and the carrier corrects all conditions that led to the cancellation of the permit, the carrier may apply for reinstatement. The rule allows such a carrier to reinstate its permit within 30 days of cancellation by filing an application for reinstatement and paying the application reinstatement fee.¹⁸ A carrier that applies for reinstatement more than 30 days after cancellation will have its application treated as an application for new authority and will be subject to all terms and conditions that apply to new entrants.¹⁹ Staff has indicated it would support the Company should it attempt to reinstate its permit.

16 On the other hand, should the Commission be inclined to reopen the proceedings with respect to the Company’s cancellation, the Commission may consider that C.F.R. § 385.17(a) allows a motor carrier that has taken corrective action to correct the deficiencies that result in a proposed or final safety rating of “conditional” or “unsatisfactory” to request a rating change at any time. C.F.R. 385.17(g) permits the Commission to allow a motor carrier with a proposed safety rating of “unsatisfactory” to continue operations for up to 60 days beyond the 60 days specified in the proposed rating if the Commission finds that the

¹⁸ WAC-480-15-450(4)(a).

¹⁹ WAC-480-15-450(4)(b).

motor carrier is making a good faith effort to improve its safety status. The additional period would begin on the 61st day after the date of the notice of the proposed “unsatisfactory” rating.²⁰ As stated in its SMP evaluation, Staff does support an upgrade to the Company’s previous safety rating of “unsatisfactory” to “conditional” based on the corrective action the Company has taken.

V. CONCLUSION

17 In summary, Staff supports the Company’s request for mitigation of its penalty and entry of a payment plan on the agreed-upon terms indicated in Staff’s SMP evaluation. Furthermore, Staff would support Commission action to reinstate the Company’s permit and upgrade its safety rating to “conditional.”

DATED this 6th day of November 2024.

Respectfully submitted,

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²⁰ C.F.R. § 385.17(g).