

## WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

### NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TV-170124

PENALTY AMOUNT: \$8,300

Gigantic Moving & Storage LLC  
d/b/a Gigantic Moving & Storage  
8633 S. 208th Avenue  
Kent, WA 98031

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-15-555 Criminal Background Checks for Prospective Employees, and WAC 480-15-570 Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers, and CFR Part 395 – Hours of Service of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On January 25, 2017, Commission Motor Carrier Investigator Wayne Gilbert conducted a compliance review of Gigantic Moving & Storage LLC d/b/a Gigantic Moving & Storage (Gigantic Moving or company) and documented the following violations of critical regulations:

- **Seventy-eight violations of CFR 391.45(a) – Using a driver not medically examined and certified.** Gigantic Moving allowed employees Johnson Rilometo, Juan Rocha, Jose Bahena, Scott Gockerell, and Matthew Zuraff to drive on 78 occasions during the month of August 2016 without having been medically examined and certified.
- **One violation of CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** Gigantic Moving failed to maintain a driver qualification file for its driver Jose Bahena.
- **One violation of CFR 395.3(b)(2) – Requiring or permitting a driver to drive after having been on duty more than 70 hours in 8 consecutive days.** Gigantic Moving allowed Juan Rocha to operate a commercial motor vehicle after being on duty for more than 70 hours. Mr. Rocha exceeded the 70 hour limit on August 15, 2016 at 1:30pm.
- **Ten violations of CFR 395.8(a) – Failing to require driver to make a record of duty status.** Gigantic Moving allowed employees Johnson Rilometo, Juan Rocha, Scott Gockerell, and Matthew Zuraff to drive without making a record of duty status while not under short haul exemption on 10 separate occasions during the six months prior to the compliance review.

- **Five violations of CFR 395.8(k)(1) – Failing to preserve driver’s record of duty status for 6 months.** Gigantic Moving failed to retain its drivers’ record of duty status documents to identify when employees Johnson Rilometo, Juan Rocha, Jose Bahena, Scott Gockerell, and Matthew Zuraff were operating a commercial motor vehicle.
- **One violation of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Gigantic Moving failed to retain a copy of the criminal background check for employee Jose Bahena. Mr. Bahena’s background check on file is dated December 16, 2016, however Mr. Bahena had been employed during the entire six months prior to the compliance review.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are very serious and potentially harmful to the public. Companies that use drivers not medically examined and certified, fail to require drivers to report their hours of service, and allow a driver to drive after having been on duty for more than 70 hours in 8 consecutive days put the traveling public at risk. An undetected medical condition or fatigued driver present serious safety concerns. In addition, an employee with an unknown criminal history raises concerns about the security of the customer’s belongings, as well as their personal safety.
2. **Whether the violation is intentional.** Considerations include:
  - Whether the company ignored Commission staff’s (Staff) previous technical assistance; and
  - Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

In the company’s September 2014 application for household goods moving authority, Neil Boden, director and part-owner of Gigantic Moving, acknowledged his company’s responsibility to understand and comply with applicable motor carrier safety rules.

Additionally, on November 12, 2014, Timothy Roberts, Chip Bratcher, and Neil Boden attended household goods training provided by Commission staff; and each attendee acknowledged that training was received pertaining to motor carrier safety regulations. The company knew, or should have known about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Gigantic Moving was cooperative throughout the entire scope of the investigation and did express a desire to be compliant with motor carrier safety regulations.

5. **Whether the company promptly corrected the violations and remedied the impacts.** Gigantic Moving has corrected some of the critical violations discovered from the compliance review. The company's drivers now have valid medical certificates, the company has a new procedure in place to complete a new employee's driver qualification file prior to allowing that employee to drive, and the company has a new system that records which driver is driving for the day.
6. **The number of violations.** For a company this size, the number of critical violations noted is significant.
7. **The number of customers affected.** The company traveled 20,000 miles and reported \$975,790 in gross revenue for 2016. A significant number of customers, as well as members of the traveling public were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations, however it does appear that the company has taken steps to correct some of the violations to prevent future occurrences.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first compliance review. The company has no history of previous violations or penalties.
10. **The company's existing compliance program.** Gigantic Moving has no formal compliance program.
11. **The size of the company.** Gigantic Moving is a small company with four drivers and three commercial vehicles. In 2016, the company reported \$975,790 in gross revenue and 20,000 miles traveled.

These are first-time violations, but the Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.<sup>1</sup> The Commission generally will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Gigantic Moving \$8,300 for violations of WAC 480-15-555 Criminal Background Checks for Prospective Employees, and WAC 480-15-570 Driver Safety Requirements, which adopts Title 49 CFR Parts 391 and 395, calculated as follows:

- Seventy-eight violations of CFR 391.45(a) – Using a driver not medically examined and certified. These are first-time violations, but they are violations of fundamental safety

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<sup>1</sup> Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

requirements, and thus the Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$7,800.

- One violation of CFR 391.51(a) – Failing to maintain a driver qualification file for each driver it employs. This is a first-time violation, and thus the Commission assesses a penalty at the statutory amount of \$100 per violation type, for a total of \$100.
- One violation of CFR 395.3(b)(2) – Requiring or permitting a driver to drive after having been on duty more than 70 hours in 8 consecutive days. This is a first-time violation but a violation of a fundamental safety requirement, and the Commission assesses a penalty at the statutory amount of \$100 per occurrence, for a total of \$100.
- Ten violations of CFR 395.8(a) – Failing to require driver to make a record of duty status. These are first-time violations, and thus the Commission assesses penalties at the statutory amount of \$100 per violation type, for a total of \$100.
- Five violations of CFR 395.8(k)(1) – Failing to preserve driver's record of duty status for 6 months. These are first-time violations, and thus the Commission assesses penalties at the statutory amount of \$100 per violation type, for a total of \$100.
- One violation of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required. This is a first-time violation but a violation of a fundamental safety requirement, and thus the Commission assesses a penalty at the statutory amount of \$100 per occurrence, for a total of \$100.

This information, if proved at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application

for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

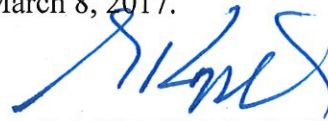
**You must act within 15 days after receiving this notice** to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

**If you do not act within 15 days**, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective March 8, 2017.



GREGORY J. KOPTA  
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TV-170124

**PLEASE NOTE:** You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

- 1. **Payment of penalty.** I admit that the violation occurred and enclose \$ \_\_\_\_\_ in payment of the penalty.
- 2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR  b) I ask for a Commission decision based solely on the information I provide above.

- 3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR  b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: \_\_\_\_\_ [month/day/year], at \_\_\_\_\_ [city, state]

\_\_\_\_\_  
Name of Respondent (company) – please print

\_\_\_\_\_  
Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”