

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of	DOCKET TV-240620
AIRUS MOVERS LLC	ORDER 02
For Compliance with WAC 480-15-530, WAC 480-15-550, WAC 480-15-555, WAC 480-15-560, and RCW 81.80.075	INITIAL ORDER GRANTING REQUEST FOR MITIGATION; REQUEST FOR RECONSIDERATION

**BACKGROUND**

- 1 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 (NOIC)/Notice of Brief Adjudicative Proceeding against Airus Movers LLC (Airus Movers or Company).<sup>1</sup> The NOIC provided notice of Commission staff's (Staff) intent to cancel Airus Movers' Permit to provide services as a household goods carrier effective October 13, 2024.
- 2 On September 9, 2024, the Commission issued a notice of penalty assessment (Penalty Assessment) against Airus Movers for \$15,600, which was immediately due and payable. The Penalty Assessment included 202 violations of WAC 480-15 as follows:
  - Nine violations of WAC 480-15-555(1) - Failure to complete a criminal background check for every person the carrier intends to hire.
  - One hundred forty-three violations of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified.
  - Four violations of 49 C.F.R. § 391.51(a) - Failing to maintain driver qualification file on each driver employed.

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<sup>1</sup> *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 Notice of Intent to Cancel Certificate, Notice of Brief Adjudicative Proceeding (September 5, 2024).*

- Forty-two violations of 49 C.F.R. § 395.8(a)(1) - Failing to require a driver to prepare a record of duty status using the appropriate method.
- Two violations of 49 C.F.R. § 396.3(b) - Failing to keep minimum records of inspection and vehicle maintenance.
- Two violations of 49 C.F.R. § 396.17(a) - Using a commercial motor vehicle not periodically inspected.

3 On October 2, 2024, the Commission convened a Brief Adjudicative Proceeding before Administrative Law Judge M. Hayley Callahan. The Company did not attend the Brief Adjudicative Proceeding. Assistant Attorney General Cassandra Jones represented Staff. Staff moved to hold Airus Movers in default and requested the Commission to hear the merits of the case. The Commission granted Staff's motion and request.

4 On October 10, 2024, Airus submitted a safety management plan (SMP).<sup>2</sup> On October 11, 2024, Staff filed its Evaluation of the Company's SMP (First SMP Evaluation).<sup>3</sup> According to the First SMP Evaluation, the SMP submitted on October 10, 2024, did not meet the requirements of 49 C.F.R. § 385 to justify an upgrade of the Company's unsatisfactory safety rating. Therefore, Staff reiterated its recommendation that the Company's provisional household goods permit be cancelled.

5 On October 21, 2024, the Commission entered Order 01 in this docket, finding the Company in default for not appearing at the Brief Adjudicatory Proceeding, accepting Staff's recommendation to cancel, and assessing the penalty contained in the Penalty Assessment of \$15,600.<sup>4</sup>

6 On October 24, 2024, within the ten (10) day period for requesting reconsideration, Airus Movers submitted a Request for Mitigation, requesting a reduction of the penalty, a payment plan, and explaining the Company's absence at hearing was due to the Notice of Brief Adjudicatory Proceeding being sent to the Company's spam folder.

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<sup>2</sup> Staff's Evaluation of Airus Movers LLC's Safety Management Plan (Evaluation), filed October 11, 2024.

<sup>3</sup> First SMP Evaluation at 1.

<sup>4</sup> *In re the Investigation of Airus Movers, LLC*, Docket TV-240620, ¶¶20-22 (Oct. 21, 2024).

- 7 On October 31, 2024, Staff submitted a Second SMP Evaluation. The Second SMP Evaluation stated that on October 30, 2024, Airus Movers submitted an updated SMP addressing each violation noted throughout the investigation.<sup>5</sup> Staff stated that the updated SMP meets the legal requirements of 49 C.F.R. § 385 and that Staff would support Airus Movers if the Company attempted to reinstate its permit.<sup>6</sup>
- 8 In the Second SMP Evaluation, Staff also responds to Airus Movers' Request for Mitigation. Staff states that the Company was cooperative, provided Staff with evidence the Company took corrective action to address first-time violations, and implemented procedures to prevent violation recurrence.<sup>7</sup> Accordingly, Staff recommends the \$15,600 penalty be reduced to \$7,800, that \$3,900 of the \$7,800 be suspended for two years and then waived subject to conditions, and notified the Commission that Staff and Airus Movers had agreed to a payment plan.<sup>8</sup> Staff recommends the Commission grant reduction, mitigation, and a payment plan for the penalties. Staff's recommended conditions for mitigation of the \$3,900 portion of the penalty are as follows:
1. Airus Movers maintains a conditional safety rating [for two years];
  2. Staff perform a follow-up safety investigation at least six months from the date of the order;
  3. The Company may not incur repeat violations upon reinspection; and
  4. Airus Movers pay the \$3,900 that is not suspended [according to the payment plan over twelve (12) months].<sup>9</sup>
- 9 On November 1, 2024, Airus Movers filed a Request for Reconsideration, requesting reconsideration of Order 01 and reinstatement of the Company's permit. The Company reiterates its earlier statement in its request for mitigation that the Company was not aware of the hearing due to the notice going to a spam folder and further committing to address the concerns of the Commission.
- 10 On November 7, 2024, Staff filed a Response to Airus Movers' Request for Reconsideration (Response). In Staff's Response, Staff reiterates its support for the Company's mitigation request and entry of a payment plan. Further, Staff supports the

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<sup>5</sup> Second SMP Evaluation at 1.

<sup>6</sup> Second SMP Evaluation at 2.

<sup>7</sup> Second SMP Evaluation at 3.

<sup>8</sup> Second SMP Evaluation at 3.

<sup>9</sup> Second SMP Evaluation at 3.

Commission taking action to reinstate the Company's permit and upgrade its safety rating to "conditional."

### DISCUSSION

- 11 There are two issues which the Commission must address. First, whether Airus Movers' Request for Mitigation should be granted. Second, is whether Airus Movers' Request for Consideration should be granted. Staff supports both requests from Airus Movers and recommends the Commission grant mitigation and upgrade the Company's safety rating to conditional, reinstating the Company's provisional permit.
- 12 We agree with the parties as to the first issue. 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.<sup>10</sup> The Commission also considers whether the violations were promptly corrected, a company's history of compliance, and the likelihood the violation will recur.<sup>11</sup> In considering whether to suspend a portion of the penalty, the Commission considers several factors, including but not limited to: whether it was a first-time violation; whether the Company has taken specific actions to remedy violations; whether Staff and the Company agree to a follow-up investigation; and whether the Company can demonstrate other circumstances exist warranting suspension.<sup>12</sup>
- 13 Here, Staff notes the Company was cooperative, provided Staff with evidence the Company took corrective action to address first-time violations, and implemented procedures to prevent violation recurrence.<sup>13</sup> The Company further commits to pay penalties in a timely manner, takes responsibility for the violations, explains its absence from the Brief Adjudicatory Proceeding, and commits to follow through on actions to avoid recurring penalties and take corrective action.

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<sup>10</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

<sup>11</sup> Enforcement Policy ¶ 19.

<sup>12</sup> Enforcement Policy ¶ 20.

<sup>13</sup> Second SMP Evaluation at 3.

- 14 All of this weighs in favor of reducing the \$15,600 penalty to \$7,800, suspending \$3,900 of the \$7,800 unmitigated penalty for two years and then waiving the suspended \$3,900 subject to conditions proposed by Staff, and approving the agreed upon payment plan.
- 15 Accordingly, the Commission finds the Request for Mitigation should be granted consistent with Staff's recommendation because the factors stated herein.
- 16 Regarding the second issue involving Airus Movers' Request for Reconsideration, WAC 480-07-450(2) provides that a dismissed party found in default may, within ten days after service of the order, request that the order be vacated and, if the order is dispositive, that the proceeding be reopened.
- 17 Additionally, WAC 480-07-395 provides the Commission will liberally construe pleadings and motions with a view to effect justice.
- 18 Here, the Company filed a Request for Mitigation on October 24, 2024, two days after entry of Order 01. The Company subsequently filed a Request for Reconsideration eleven days after entry of Order 01. A strict reading of WAC 480-07-450(2) would suggest that the Motion for Reconsideration was not timely filed. However, Staff cites WAC 480-07-395, in support of its belief that the motion may be treated as timely filed. We agree.
- 19 Pursuant to WAC 480-07-395, the Commission shall liberally construe pleadings and motions to effect justice. Here, Airus Movers timely filed a Request for Mitigation within the ten (10) day period. That Request for Mitigation first states the reasoning supporting the Request for Reconsideration and can be read to be seeking relief which is more explicitly sought in its Request for Reconsideration. Specifically, the email states "I understand that I have made several mistakes, and I want to take responsibility for correcting them and *continuing* to work safely."<sup>14</sup>
- 20 In the Company's email, the Company states it would like to continue working safely. Staff subsequently filed its Second SMP Evaluation, which effectively put the Company on notice that further action would be needed for reinstatement of the Company's permit. The next day, the Company formally filed its Request for Reconsideration.
- 21 Taking these facts together, the Commission finds the Company, which is filing *pro se*, made good faith efforts to timely seek reconsideration and that the Request for Reconsideration was timely filed.

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<sup>14</sup> Request for Mitigation.

- 22 Next, Staff recommends the Commission take action to upgrade Airus Movers' safety rating from unsatisfactory to conditional.
- 23 49 C.F.R. § 385.17(g) allows for a motor carrier with an unsatisfactory safety rating to continue operating for up to 60 days beyond the 60 days specified in the proposed rating, if that carrier is found to be making good faith efforts to improve its safety status.
- 24 49 C.F.R. § 385.17(h), which appears immediately after 49 C.F.R. § 385.17(g), allows for a determination that the motor carrier has taken corrective actions required and for the Company's safety rating to be upgraded accordingly.
- 25 Reading the provisions of 49 C.F.R. § 385.17 in context, the Commission finds that despite the initial 60-day period specified in the proposed safety rating leading up to cancellation, the Company continued its efforts to improve its safety status as allowed under 49 C.F.R. § 385.17(g).
- 26 Staff has concluded the Company's updated SMP meets the requirements of 49 C.F.R. §§ 385.5 and 385.7 and recommends upgrading Airus Movers' safety rating to conditional. The Commission agrees.
- 27 The Commission reads 49 C.F.R. §§ 385.17(g) and 385.17(h) together, to allow the Company time to improve its safety rating, and for its safety rating to be upgraded if the Company succeeds in its efforts. The Company, as verified by Staff, has done both. Therefore, the matter should be reopened, allowing for Airus Movers' safety rating to be upgraded to "conditional" and for the Company's conditional permit to be reinstated.

### **FINDINGS AND CONCLUSIONS**

- 28 (1) The Commission is an agency of the state of Washington vested by statute with authority to regulate passenger transportation companies, and the Commission has jurisdiction over the parties and subject matter of this proceeding.
- 29 (2) Airus Movers is a transportation company subject to Commission regulation.
- 30 (3) Airus Movers timely filed a Request for Mitigation.
- 31 (4) Having considered all relevant pleadings and motions, and the facts presented, the

Commission finds Airus Movers timely filed a Request for Reconsideration.

- 32 (5) After reviewing Airus Movers' Request for Mitigation, and giving due consideration to all relevant evidence and argument presented, the Commission finds that Airus Movers' Request for Mitigation should be granted.
- 33 (6) Airus Movers' \$15,600 penalty shall be reduced to \$7,800, of which \$3,900 of the remaining \$7,800 will be suspended for two years and then waived subject to conditions that (1) Airus Movers maintains a conditional safety rating for two years; (2) Staff shall perform a follow-up safety investigation at least six months from the date of the order; (3) The Company shall not incur repeat violations upon reinspection; and (4) Airus Movers will pay the \$3,900 that is not suspended according to the payment plan over twelve (12) months.<sup>15</sup>
- 34 (7) After reviewing Airus Movers' Request for Reconsideration, and giving due consideration to all relevant evidence and argument presented, the Commission finds Airus Movers' Request for Mitigation should be granted, with Airus Movers' safety rating being upgraded to "conditional," and the Company's conditional permit being reinstated pursuant to this Order.
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### **ORDER**

#### **THE COMMISSION ORDERS:**

- 35 (1) Airus Movers LLC's request for mitigation of the \$15,600 penalty is GRANTED, and the penalty is reduced to \$7,800, of which \$3,900 is suspended for two years subject to the conditions in paragraph 33 of this Order, and the payment plan is APPROVED.
- 36 (2) Airus Movers LLC's request for reconsideration is GRANTED, and Airus Movers LLC's safety rating is upgraded to "conditional," and Airus Movers LLC's conditional permit is reinstated.

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<sup>15</sup> Pursuant to the Payment Plan, Airus Movers will pay \$325 each month, for twelve (12) months, with the first payment due on or before December 16, 2024, with the last payment made on or before November 17, 2025.

DATED at Lacey, Washington, and effective November 18, 2024.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

*/s/Connor Thomson*

CONNOR A. THOMPSON

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).