

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of UPLIFT MOVERS, LLC, for Compliance with WAC 480-15-555, WAC 480-15-560, and WAC 480-15- 570	DOCKETS TV-200668 & TV-200669 <i>(Consolidated)</i> ORDER 02
In the Matter of the Penalty Assessment Against UPLIFT MOVERS, LLC, in the Amount of \$18,500	DENYING MITIGATION; IMPOSING SUSPENDED PENALTY

BACKGROUND

- 1 On July 28, 2020, 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 Uplift Movers, LLC, (Uplift Movers or Company) for Compliance with Washington Administrative Code (WAC) WAC 480-15-560, WAC 480-15-570, and WAC 480-15-555 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Uplift Movers’ operations on July 20, 2020, and, on August 18, 2020, cited the Company for 226 violations of federal and state safety regulations, which resulted in a proposed “unsatisfactory” safety rating. Based on its review, Staff recommended that the Commission cancel Uplift Movers’ household goods carrier permit unless the Company obtained Commission approval of a safety management plan. The Notice directed Uplift Movers to file a proposed safety management plan by August 26, 2020.
- 3 On August 18, 2020, the Commission assessed an \$18,500 penalty (Penalty Assessment) against Uplift Movers for the safety violations discovered during Staff’s compliance review. The Penalty Assessment included:

- A \$500 penalty for five violations of WAC 480-15-555 for failing to complete a criminal background check for every person the carrier intends to hire.
- A \$17,600 penalty for 176 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- A \$100 penalty for four violations of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file for each driver employed.
- A \$100 penalty for 35 violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to prepare records of duty status.
- A \$100 penalty for three violations of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
- A \$100 penalty for three violations of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

4 On August 19, 2020, Uplift Movers filed with the Commission a request for mitigation of the penalty based on the written information provided, admitted the violations, and waived its right to a hearing in Docket TV-200668.

5 On August 13, 2020, Uplift Movers submitted a proposed safety management plan. On August 20, 2020, Staff filed with the Commission its evaluation of the Company's safety management plan and penalty recommendation.

6 On September 9, 2020, the Commission entered Order 01, Consolidating Dockets; Approving Safety Management Plan; Upgrading Safety Rating; Imposing and Suspending Penalties (Order 01). Order 01 approved the Company's safety management plan, upgraded the Company's safety rating to "conditional," and assessed a reduced \$8,050 penalty against Uplift Movers, LLC, \$5,000 of which was suspended for a period of two years, subject to the conditions that: a) the Company pay the \$3,050 portion of the penalty that was not suspended, and b) the Company not incur any repeat violations upon reinspection six months from the date of Order 01.

7 On September 10, 2020, Uplift Movers paid the \$3,050 portion of the penalty that was not suspended.

8 On June 3, 2021, Commission staff (Staff) filed a letter in these dockets informing the Commission that during the six-month follow-up review Staff identified one repeat violation of WAC 480-15-555 for failing to complete a criminal background check for a new employee. Staff recommended that the Commission impose \$5,000 suspended portion of the penalty.

- 9 On June 7, 2021, Uplift Movers filed a response to Staff’s letter admitting the violation and requesting leniency.
- 10 On June 14, 2021, the Commission issued a Notice Requiring Staff Response that interpreted the Company’s request as one for mitigation and directed Staff to respond.
- 11 On June 21, 2021, Staff filed a response reiterating its recommendation to impose the suspended penalty and deny mitigation.

DISCUSSION AND DECISION

- 12 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections.
- 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 convince the Commission that a lesser penalty will be equally or more effective in ensuring the company’s compliance.¹ The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur.²
- 14 The Penalty Assessment in Docket TV-200668 assessed an \$18,500 penalty for 226 critical violations of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570. Order 01 assessed a reduced violation of \$8,050 for the violations and suspended \$5,000 on the condition that the Company refrain from incurring any repeat violations upon reinspection in six months. Uplift Movers incurred a repeat violation of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.
- 15 Staff recommends no further mitigation of the penalty. We agree. An employee with an unknown criminal history raises serious concerns about personal safety and the security of customer belongings. Uplift Movers owner stated that the employee at issue was a friend of theirs and that they knew that the employee “would not be a threat to the customers or to the coworkers,” and provided proof that the violation had been corrected. But the Company was on notice of the severity of the previously cited violations and was aware that incurring further violations within two-year suspension period would result in imposition of the \$5,000 suspended portion of the penalty. Under those circumstances,

¹ Enforcement Policy ¶19.

² Enforcement Policy ¶15.

the fact that the Company “forgot” to complete a background check on a new employee is cause for serious concern.

- 16 Because Uplift Movers failed to fulfill the conditions upon which the Commission suspended a \$5,000 portion of the penalty, the suspended penalty is now due and payable. The Company may work with Staff to establish a mutually agreeable payment arrangement.

ORDER

THE COMMISSION ORDERS:

- 17 (1) Uplift Movers, LLC’s request for mitigation is DENIED.
- 18 (2) The \$5,000 suspended portion of the penalty is due and payable.
- 19 (2) Uplift Movers, LLC, must either pay the \$5,000 penalty or file an agreed payment plan no later than July 28, 2021.

DATED at Lacey, Washington, and effective July 14, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Samantha Doyle
SAMANTHA DOYLE
Administrative Law Judge