

Service Date: May 20, 2019

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of MVP MOVING AND STORAGE LLC For Compliance with WAC 480-15-560 and WAC 480-15-570	DOCKET TV-170039 <i>(Consolidated)</i> ORDER 05
In the Matter of the Penalty Assessment Against MVP MOVING AND STORAGE LLC In the amount of \$6,100	DOCKET TV-170038 <i>(Consolidated)</i> ORDER 05 GRANTING STAFF'S RENEWED MOTION FOR CANCELLATION OF HOUSEHOLD GOODS PERMIT; CANCELLING PROVISIONAL HOUSEHOLD GOODS PERMIT; DENYING APPLICATION FOR PERMANENT AUTHORITY

BACKGROUND

- 1 On April 6, 2017, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Order of Consolidation; Order Upgrading Safety Rating; Order Imposing and Suspending Penalties (Order 01) in consolidated Dockets TV-170038 and TV-170039. Order 01, among other things, assessed a penalty of \$6,100 against MVP Moving and Storage LLC (MVP Moving or Company) for 61 violations of Commission safety rules, a \$3,100 portion of which was suspended for a period of two years subject to several conditions, including a requirement that the Company pay the \$3,000 portion that was not suspended nor filed jointly with Commission staff (Staff) a proposed payment arrangement by May 8, 2017.
- 2 The Commission subsequently entered Order 02, which imposed the suspended penalty for failure to comply with the payment requirements set out in Order 01, and Order 03, which approved a 10-month payment plan for the remaining balance due.
- 3 On April 26, 2018, Staff filed with the Commission a letter requesting enforcement of Order 03. Staff noted that MVP Moving made only three of nine required payments,

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requested that the remaining balance become immediately due and payable, and requested that the Commission cancel MVP Moving's household goods carrier permit for failing to comply with the terms of Order 03.

- 4 On May 9, 2018, Staff filed a Motion for Cancellation of MVP Moving's Household Goods Carrier Permit .On May 10, 2018, MVP Moving paid its \$1,900 remaining balance in full. That same day, Staff filed with the Commission a letter acknowledging that payment was received but maintaining its position that the Company's permit should be cancelled.
- 5 On June 5, 2018, the Commission conducted a hearing on Staff's Motion before Administrative Law Judge Rayne Pearson, and on June 7, 2018, the Commission entered Order 04 Denying Staff's Motion (Order 04), subject to the following conditions:
- a) MVP Moving must work with Staff to develop a safety management plan that is acceptable to Staff. The plan must address each of the violations cited in Order 01 in this docket, and provide specific explanations and documentation demonstrating how each violation has been corrected.
 - b) Commission Staff will conduct a non-rated follow-up compliance review at least six months from the date of this Order.
 - c) MVP Moving may not incur any repeat violations of critical regulations upon review.
 - d) MVP Moving must file its 2017 annual report and pay any required regulatory fee within 10 days of the date of this order.
 - e) MVP Moving must pay the \$500 penalty for failing to timely file its annual report within 15 days of the date of the Penalty Notice.
 - f) MVP Moving and all of its Staff must attend Commission-sponsored household goods carrier training on August 14, 2018, and again on November 7, 2018. Mr. Garcia must be present at both trainings, but may divide his staff's attendance between the two trainings so long as all staff members complete the training on one of those two dates.
 - g) MVP Moving must provide information and original documents to Consumer Protection Staff for all residential moves performed between April 1, 2018, and May 31, 2018, consistent with the data request Staff is hereby directed to issue within 10 days after the date of this Order. The purpose of this audit is to identify any deficiencies in the Company's compliance with consumer protection rules and Tariff 15-C, and to provide technical assistance to help bring the Company into compliance. Violations discovered during this audit will not constitute

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grounds to cancel the Company's permit unless fraudulent, unfair, or deceptive practices are discovered.

6 Order 04 explained that MVP Moving must meet these conditions within the required timeframes in order to maintain its permit, and expressly provided that "if the conditions are not met, Staff may again seek cancellation of the Company's permit by motion filed in these Dockets. The Company is cautioned that we will not be inclined to exercise the leniency shown here a second time."

7 In response to Order 04, the Company filed its annual report, paid the \$500 penalty, and submitted the required documents to Consumer Protection Staff.

8 On August 9, 2018, Staff sent a letter to MVP Moving reminding the Company of its obligation to work with Staff to develop a safety management plan, and requested the Company file such a plan by August 31, 2018.

9 On April 24, 2019, Staff filed a Renewed Motion for Cancellation of MVP Moving's Household Goods Carrier Permit (Renewed Motion). In its Renewed Motion, Staff alleges that the Company has failed to comply with the following conditions set out in Order 04: (1) MVP Moving must work with Staff to develop an acceptable safety management plan, (2) MVP Moving must not incur any repeat critical violations during its next non-rated safety review, (3) MVP Moving must send all of its employees to Commission-sponsored household goods training.

10 Specifically, Staff alleges that MVP failed to submit a safety management plan until March 2019, when Staff prompted the Company to do so during a non-rated compliance review. Staff contends that the Company's safety management plan was incomplete and failed to meet the requirements set out in Order 04, condition (a). Staff further alleges that it discovered repeat critical violations during the non-rated compliance review it conducted pursuant to Order 04, condition (b) in March 2019, as follows:

- Using a motor vehicle that had not been periodically inspected
- Failing to obtain criminal background checks for seven of the Company's employees

Finally, Staff alleges that Mr. Garcia attended the two household goods training sessions as required, but that only one Company employee attended the second session with him despite the fact that six employees were registered.

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- 11 In support of its Renewed Motion, Staff filed declarations prepared by Jason Hoxit, compliance investigator, Sandra Yeomans, transportation special investigator, and Jason Sharp, motor carrier supervisor.
- 12 On May 16, 2019, the Commission conducted a hearing on Staff's Renewed Motion before Administrative Law Judge Rayne Pearson.
- 13 Jason Garcia, Company owner, testified on behalf of the Company. Mr. Garcia admitted that his conduct failed to comply with the conditions set out in Order 04, and offered explanations for each of the violations.
- 14 With respect to Order 04, condition (a), Mr. Garcia testified that he did not understand that he was required to work with Staff to develop a safety management plan. Instead, he believed he had fulfilled that requirement when he provided Consumer Protection Staff with move documents, as required by Order 04, condition (g). With respect to Staff's August 9, 2018, letter reminding Mr. Garcia about this requirement, he testified that he "didn't take the right steps to read the letter" and acknowledged he should have called and sought clarification.
- 15 Mr. Garcia further testified that he does not understand what is missing from the safety management plan he submitted to Staff in March 2019, but explained he is "making progress" and stated, "I guess I made a mistake."
- 16 With respect to Order 04, condition (c), Mr. Garcia testified that he did not have control over his employees, who were ultimately responsible for the violations Staff discovered in its follow-up compliance review. Mr. Garcia testified that he has since terminated all of his employees except an individual named Carlos.
- 17 Mr. Garcia further testified that he had obtained criminal background checks on five of the seven employees for which violations were cited, and stated he has no idea how Staff missed those in its review. With respect to the vehicle that was not periodically inspected, Mr. Garcia testified that he did not understand how that happened, because he routinely took the vehicle in for maintenance.
- 18 With respect to Order 04, condition (f), Mr. Garcia offered conflicting explanations. First, Mr. Garcia stated that his employees refused to attend either the August or November 2018 household goods training, and that he terminated all of his employees, with the exception of "Carlos," immediately following the November training. Mr. Garcia testified repeatedly that Carlos is his only employee; however, on cross-examination, Mr.

Garcia acknowledged that he has at least five additional employees, and that he has not “looked into” registering those employees for household goods training.

- 19 The presiding officer orally granted Staff’s Renewed Motion at the conclusion of the hearing and canceled the Company’s household goods permit effective immediately based on the Company’s failure to comply with the conditions set out in Order 04, the Company’s poor compliance history and inability to achieve a satisfactory safety rating, and the Company’s demonstrated overall lack of fitness to operate as a household goods carrier.
- 20 Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Commission staff (Staff). Jason Garcia, Owner, Kent, Washington, represents MVP Moving.

DISCUSSION AND DECISION

- 21 The presiding officer granted Staff’s Renewed Motion and canceled MVP Moving’s provisional household goods carrier permit. We expand on that ruling here and also deny MVP Moving’s application for permanent authority. We explain the bases for our decision below.
- 22 WAC 480-15-450 provides that the Commission may cancel a permit without the carrier’s authorization for good cause, which includes, but is not limited to: failing to comply with applicable laws and Commission rules pertaining to operations of household goods carriers, including safety requirements set in law or rule; failing to supply information necessary to the Commission for the performance of its regulatory functions when the Commission requests the carrier to do so; and failing to meet the requirements of WAC 480-15-555, criminal background checks for prospective employees.
- 23 Here, the Company’s failure to comply with Order 04 by incurring repeat safety violations, failing to supply Staff with an adequate safety management plan that addresses how it will improve its operations, and failing to conduct criminal background checks for its employees each constitute “good cause” to cancel the Company’s provisional household goods permit. Although the Company disputes the number of employees for which it failed to obtain criminal background checks, it admits the violation occurred. Moreover, Mr. Garcia’s statements that he “doesn’t understand” what is required of him as it relates to the safety management plan and each of the violations Staff found in its follow-up compliance review does not satisfactorily rebut Staff’s evidence that the violations occurred. Accordingly, we find that good cause exists to

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cancel MVP Moving's provisional household goods permit and conclude that it should be cancelled.

- 24 In addition, WAC 480-15-305(1), which governs applications for permanent authority to conduct household goods moves, provides that the Commission will grant permanent authority to any applicant that meets certain criteria, including, as relevant to this proceeding: 1) when the applicant has provided commission staff with evidence that the applicant has completed a criminal background check on each person it employs or intends to employ; and 2) when the applicant has received a satisfactory safety rating in a safety review conducted by commission safety Staff.
- 25 Here, MVP Moving has failed to provide evidence that it has completed a criminal background check on each of its employees despite being provided extensive technical assistance related to this requirement and receiving and paying penalties for this same violation in the past. Moreover, MVP Moving has failed to achieve a satisfactory safety rating, instead incurring several repeat violations of critical safety regulations, including repeat violations of the rules related to criminal background checks. Accordingly, we find that the Company has not met the criteria for obtaining permanent authority.
- 26 If a carrier has not completed the requirements for permanent authority within 18 months of the date the provisional permit was issued, the Commission will cancel the provisional permit and dismiss the application for permanent authority unless the Commission determines that for good cause the provisional period should be extended beyond 18 months. Good cause may include, among other circumstances, a carrier that has not yet made an intrastate move or a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating.¹ No such circumstances exist here. Mr. Garcia offered no evidence that he is making progress towards a satisfactory safety rating. Instead, he made contradictory statements about the number of people he employs, blamed his employees for the violations that occurred, and repeatedly stated that he "didn't understand" what was required of him. We conclude that this failure to complete the requirements to obtain permanent authority constitutes additional grounds to cancel the Company's provisional permit and dismiss its application for permanent authority.
- 27 MVP Moving must immediately cease and desist from providing, advertising, or offering to provide household goods moves regulated by the Commission. Pursuant to WAC 480-15-450(3), MVP Moving also must immediately notify all of its customers that its permit

¹ WAC 480-15-305(3).

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has been cancelled and provide proof to the Commission within 10 days of the date of this Order that such notice has been provided.

ORDER

THE COMMISSION ORDERS THAT:

- 28 (1) Staff's Renewed Motion for Cancellation of MVP Moving and Storage LLC's household goods permit is GRANTED.
- 29 (2) MVP Moving and Storage LLC's provisional household goods permit is CANCELLED. MVP Moving and Storage LLC must immediately cease and desist providing, advertising, or offering to provide household goods moves subject to Commission regulation.
- 30 (3) MVP Moving and Storage LLC must immediately notify its customers that its permit is cancelled and provide proof of such notice to the Commission within 10 days of the date of this Order.
- 31 (4) MVP Moving and Storage LLC's application for permanent authority is DENIED.

DATED at Olympia, Washington, and effective May 20, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge

NOTICE: Pursuant to WAC 480-15-450(4)(a), a carrier whose household goods permit has been cancelled involuntarily may apply for reinstatement if the carrier corrects all conditions that led to cancellation of the permit. To reinstate the permit within thirty (30) days of cancellation, the carrier must file an application for reinstatement and pay the applicable reinstatement fees as stated in WAC 480-15-230. If the carrier files an application for reinstatement after thirty (30) days of cancellation, the application will be considered in all aspects to be an application for

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new authority and will be subject to all terms and conditions specified in WAC 480-15-302 for new entrants.