

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of a Penalty Assessment Against</p> <p>CAN'T STOP MOVING, LLC</p> <p>in the amount of \$51,900</p>	<p>DOCKET TV-170293 <i>(consolidated)</i></p> <p>ORDER 03</p> <p>NOTICE OF CONSOLIDATION</p> <p>and</p> <p>NOTICE OF BRIEF ADJUDICATIVE PROCEEDING; SETTING TIME FOR ORAL STATEMENTS (Set for June 1, 2018, at 9:30 a.m.)</p>
<p>In the Matter of the Investigation of</p> <p>CAN'T STOP MOVING, LLC</p> <p>For Compliance with WAC 480-15-560 and WAC 480-15-570</p>	<p>DOCKET TV-180319 <i>(consolidated)</i></p> <p>ORDER 01</p> <p>NOTICE OF INTENT TO CANCEL CERTIFICATE; COMPLAINT SEEKING TO IMPOSE PENALTIES</p> <p>and</p> <p>NOTICE OF BRIEF ADJUDICATIVE PROCEEDING; SETTING TIME FOR ORAL STATEMENTS (Set for June 1, 2018, at 9:30 a.m.)</p>

1 The Washington Utilities and Transportation Commission (Commission) on its own motion, and through its Staff, alleges as follows:

I. PARTIES

2 The Commission is an agency of Washington state authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including motor freight carriers, household goods carriers, and solid waste collection companies under the

provisions of Title 81 RCW. Pursuant to RCW 81.80.130, the Commission regulates the safe operation of motor freight carriers, including household goods carriers.

3 Can't Stop Moving, LLC (Can't Stop Moving or Company) is a household goods carrier subject to Commission regulation.

II. BACKGROUND

4 The Commission has information from which it believes and therefore alleges that Can't Stop Moving has violated the Commission's safety regulations, namely, WAC 480-15-560 and WAC 480-15-570, which adopt, among other provisions, Title 49 of the Code of Federal Regulations (CFR), Parts 385, 391, 395, and 396.

5 RCW 81.04.110 authorizes the Commission to file a complaint on its own motion, setting forth any act or omission by a company subject to its regulation that violates any law, or any order or rule of the Commission. Under RCW 81.04.380, the Commission may impose financial penalties of up to \$1,000 for each violation. WAC 480-15-450(1) provides that the Commission may cancel a carrier's permit for good cause. A carrier's failure to comply with applicable laws and Commission rules, including those governing safe operations, constitutes good cause for canceling the carrier's permit. WAC 480-15-450(1)(e).

6 The following facts, set forth in Staff's Investigation Report, establish probable cause for the Commission to complain against Can't Stop Moving and to seek penalties in accordance with applicable law.

7 **FACTUAL ALLEGATIONS.** On April 24, 2018, the Commission's staff (Staff) completed a safety investigation of Can't Stop Moving and documented critical violations of 49 CFR Parts 391.45(a), 391.51(b)(2), 392.2, 395.8(a)(1), 396.3(b), and 396.17(a).

8 Can't Stop Moving violated Title 49 CFR Part 391.45(a) by using a driver not medically examined and certified. The Company's employee, Andrii Lepifanov, operated a company vehicle on 10 occasions between September 2017 and February 2018 without Mr. Lepifanov having been medically examined and certified.

9 Can't Stop Moving violated Title 49 CFR Part 391.51(b)(2) by failing to maintain inquiries into its driver's driving record in the Company's driver's qualification file. For both of its employees Andrii Glukhyi and Andrii Lepifanov, Can't Stop Moving failed to acquire and maintain motor vehicle reports (driving records).

10 Can't Stop Moving violated Title 49 CFR Part 392.2 by operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is

being operated. The Company allowed its employee, Michael Salcito, to operate a Company vehicle on 32 occasions between October 2017 and February 2018 without having a valid driver's license.

- 11 Can't Stop Moving violated Title 49 CFR Part 395.8(a)(1) by failing to require a driver to prepare a record of duty status using an appropriate method. Specifically, the Company failed to retain hours of service records for its employee Prince Austin.
- 12 Can't Stop Moving violated Title 49 CFR Part 396.3(b) by failing to keep minimum records of inspection and vehicle maintenance for any of its four vehicles.
- 13 Can't Stop Moving violated Title 49 CFR Part 396.17(a) by using a commercial motor vehicle not periodically inspected, as it failed to provide proof of periodic inspections for three of its four vehicles.
- 14 At the conclusion of its safety investigation, Staff proposed a "conditional" safety rating for the Company. On April 24, 2018, Staff notified Can't Stop Moving that the compliance investigation resulted in a proposed conditional safety rating for the Company based on the critical violations discovered.
- 15 The Company has failed to receive a satisfactory safety rating in either of the safety reviews conducted by Staff since the Company was granted a provisional permit in June 2015.

III. JURISDICTION

- 16 The Commission has jurisdiction over the subject matter of this complaint under RCW 80.01.040, RCW 80.01.060, RCW 81.01.010, RCW 81.04.020, RCW 81.04.110, RCW 81.04.160, RCW 81.04.380, RCW 81.04.460, chapter 81.80 RCW, chapter 81.80 RCW, and chapter 34.05 RCW.

IV. APPLICABLE LAWS AND REGULATIONS

- 17 Household goods carriers, freight carriers, and solid waste collection companies are common carriers. RCW 81.04.010(11). For the purposes of Title 81 RCW, every common carrier is a public service company under RCW 81.04.010, and therefore subject to Commission regulation. See RCW 80.01.040(2); RCW 81.01.010.
- 18 The Commission may adopt rules regarding the services provided by public service companies that are subject to its regulation. RCW 81.04.160.
- 19 WAC 480-15-560 and WAC 480-15-570 provide the Commission's rules regarding safety of operations for household goods carriers. The Commission has also incorporated

by reference specified safety regulations found in Title 49 CFR regarding the safety of household goods carriers. WAC 480-15-560; WAC 480-15-570; WAC 480-15-999.

- 20 The general penalty provisions in chapter 81.04 RCW apply to violations of the provisions of chapter 81.80 RCW unless those provisions specify otherwise. RCW 81.80.360. Chapter 81.04 RCW prescribes penalties of up to \$1,000 for a violation of any Commission order or rule. RCW 81.04.380.

V. COMPLAINT

- 21 The Commission, through its Staff, realleges the allegations contained in paragraphs 7 through 15 above.

VI. REQUEST FOR RELIEF

- 22 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380 and RCW 81.80.360, assess penalties of up to \$1,000 against Can't Stop Moving for each violation of WAC 480-15-560, WAC 480-15-570, and Title 49 CFR.
- 23 Staff also requests that the Commission order such other or additional relief as is appropriate under the circumstances.

VII. PROBABLE CAUSE

- 24 Based on a review of the Staff Assignment Report documenting the violations alleged above, and consistent with RCW 80.01.060, RCW 81.01.010, and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

VIII. NOTICE OF INTENT TO CANCEL

- 25 WAC 480-15-450(1) provides that the Commission may cancel a household goods carrier permit and authority for cause. Staff recommends the Commission cancel the Company's permit and operating authority for cause due to Can't Stop Moving's ongoing failure to comply with applicable laws and Commission rules pertaining to operations of household goods carriers, including safety requirements.
- 26 Federal law incorporated into the Commission's rules prohibits motor carriers from operating beginning on the 61st day after the date of the notice of a proposed unsatisfactory rating. A carrier that receives a proposed unsatisfactory safety rating may request a change in its safety rating based on evidence that the company has taken corrective actions to address the identified violations and that company operations currently meet the safety fitness standard as specified in 49 CFR 385.5 and 385.7.

- 27 Can't Stop Moving was provided notice of its proposed conditional rating on April 24, 2018. In the circumstances presented in this case, the Commission determines that it will afford the Company the same opportunity as companies that receive a proposed unsatisfactory safety rating to provide evidence, in the form of an approved safety management plan, showing that the Company has taken corrective actions to address the identified violations.
- 28 Can't Stop Moving must come into compliance with applicable laws by obtaining Commission approval of a safety management plan no later than June 22, 2018. If Can't Stop Moving fails to come into compliance by that date, the Commission will cancel its household goods carrier permit effective June 22, 2018. Can't Stop Moving would thereafter be prohibited from engaging in the business of a household goods carrier.
- 29 **THE COMMISSION GIVES NOTICE That it intends to cancel the permit and authority of Can't Stop Moving to provide services as a household goods carrier effective June 22, 2018, for cause, following a hearing on the factual allegations set out above, unless Can't Stop Moving obtains Commission approval of a safety management plan prior to that date.**

IX. NOTICE OF CONSOLIDATION

- 30 **MOTION.** On April 27, 2018, Commission Staff (Staff) filed a Motion to Impose Suspended Penalties in Docket TV-170293. In its motion, Staff relies upon a Declaration of Special Investigator Wayne Gilbert and his Assignment Report documenting safety violations discovered during the safety investigation of Can't Stop Moving completed on April 24, 2018.
- 31 In Docket TV-170293, the Commission entered Order 01 on June 19, 2017, Order Denying Request for Hearing; Granting Mitigation; Imposing and Suspending Penalties.¹ Order 01 assessed a reduced penalty of \$25,400 and suspended a \$15,400 portion of that reduced penalty for a period of two years subject to the conditions that Can't Stop Moving not incur any repeat critical violations of WAC 480-15 and Title 49 C.F.R. and that the Company pay the remaining \$10,000 penalty.² It is this \$15,400 in suspended penalties to which Staff's motion pertains.
- 32 **CONSOLIDATION.** Because the issues raised by Staff's Motion to Impose Suspended Penalties, the Notice of Intent to Cancel the Company's operating authority, and the

¹ *In the Matter of a Penalty Assessment Against Can't Stop Moving, LLC in the amount of \$51,900, Docket TV-170293, Order 01 (Jun. 19, 2017).*

² *In the Matter of a Penalty Assessment Against Can't Stop Moving, LLC in the amount of \$51,900, Docket TV-170293, Order 01, ¶ 43 (Jun. 19, 2017).*

Commission's Complaint for penalties are based on related facts and principles of law, the Commission exercises its discretion to consolidate Dockets TV-170293 and TV-180319 pursuant to WAC 480-07-320 and hear all matters concurrently.

33 **THE COMMISSION HEREBY GIVES NOTICE That it exercises its discretion to consolidate Dockets TV-170293 and TV-180319.**

X. ORDER AND NOTICE OF BRIEF ADJUDICATIVE PROCEEDING

34 The Company has the right to request a hearing in this matter. Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission schedules a hearing on its own initiative and determines that a brief adjudicative proceeding is appropriate to determine whether the Commission should: cancel Can't Stop Moving's household goods carrier permit; assess penalties for violations of the Commission's safety regulations; and impose the suspended penalty amount of \$15,400 from Docket TV-170293.

35 **THE COMMISSION GIVES NOTICE That it will conduct a brief adjudicative proceeding in these matters at 9:30 a.m., on June 1, 2018, in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

36 **THE COMMISSION ORDERS Can't Stop Moving to appear before the Commission in this proceeding on June 1, 2018, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington, to give testimony and evidence under oath.**

37 The record in this case will consist of any documents regarding the matters that are considered by or prepared for the presiding officer for the brief adjudicative proceeding and a transcript of any oral statements given at the hearing, which statements will be given under oath.

38 Written notice of any other stage in the proceeding or other formal proceedings that the Commission may deem appropriate will be given during the course of this case. The Commission will provide at its offices in Olympia, Washington copies of documents in the current record for use by the parties or others who may want to review them.

39 **Can't Stop Moving must submit its proposed safety management plan no later than 5:00 p.m. on Friday, May 18, 2018.** Parties wishing to submit any other documents for consideration at the brief adjudicative proceeding must file with the Commission a list enumerating and describing any such documents **no later than 5:00 p.m. on May 25, 2018**, and bring an original and three (3) copies of those documents to the hearing. Filing shall be in accordance with WAC 480-07-140 and -145.

40 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the brief adjudicative proceeding set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

41 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Can't Stop Moving, LLC
Eric Michelson, Owner
4253 22nd Ave W
Seattle, WA 98199

Commission: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Representative: Andrew J. O'Connell
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1192
andrew.oconnell@utc.wa.gov

42 Administrative Law Judge Laura Chartoff, from the Commission's Administrative Law Division, will preside during this proceeding.

DATED at Olympia, Washington and effective May 1, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

Director, Administrative Law Division

NOTICE

Hearing facilities are accessible to persons with disabilities. Smoking is prohibited. If limited English-speaking, hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please fill out this form and return it to Washington State Utilities and Transportation Commission, Attention: Mark L. Johnson, 1300 S. Evergreen Park Drive SW, P. O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket : _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired (Yes) _____ (No) _____

Do you need a certified sign language interpreter:

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____) _____