

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against WISE CHOICE MOVERS, LLC, in the amount of \$22,900	DOCKET TV-180287 (<i>Consolidated</i>) ORDER 04
In the Matter of a Penalty Assessment Against WISE CHOICE MOVERS, LLC, in the amount of \$5,000	DOCKET TV-200711 (<i>Consolidated</i>) ORDER 02
In the Matter of a Penalty Assessment Against WISE CHOICE MOVERS, LLC In the amount of \$9,000	DOCKET TV-220773 (<i>Consolidated</i>) ORDER 01 CONSOLIDATING DOCKETS; DENYING MITIGATION; IMPOSING AND SUSPENDING PENALTIES SUBJECT TO CONDITIONS

BACKGROUND

- 1 On April 24, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$22,900 penalty (First Penalty Assessment) against Wise Choice Movers, LLC, (Wise Choice Movers or Company) in Docket TV-180287 for 235 critical violations of Washington Administrative Code (WAC) 480-15-555, and WAC 480-15-560 through 570, which adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹
- 2 On May 7, 2018, the Company responded to the First Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. On May 15, 2018, Commission staff (Staff) filed a response recommending the

¹ WAC 480-15-560 and -570 adopt by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

Commission reduce the \$21,900 penalty for 219 violations of 40 C.F.R. § 391.45(a) by half, to \$10,950, resulting in a total penalty of \$11,950. Staff further recommended that \$6,700 of the reduced penalty be suspended for a period of two years, and then waived, subject to the conditions that: (1) the Company does not incur any repeat violations of critical regulations; (2) Staff conducts a follow-up safety investigation in two years to review the Company's safety management practices, and (3) the Company pays the \$5,250 portion of the penalty that is not suspended.

3 On July 6, 2018, the Commission entered Order 01, Granting Mitigation to \$11,950; Suspending Penalty, in Part. Order 01 adopted Staff's recommendation in its entirety.

4 On July 10, 2018, the Company and Staff filed with the Commission a proposed payment plan, which the Commission granted on July 16, 2018, by Order 02. The Company paid the \$5,250 portion of the penalty that was not suspended in full.

5 In July 2020, Staff conducted a follow-up investigation as required by Order 01. Staff's investigation found 113 violations of critical regulations, 53 of which were repeat violations. On August 6, 2020, Staff filed with the Commission a Motion to Impose Suspended Penalty based on these repeat violations.

6 On August 10, 2020, the Commission issued a Notice of Opportunity to Respond to Motion to Impose Suspended Penalty.

7 On August 18, 2020, the Commission issued a \$5,000 penalty assessment (Second Penalty Assessment) against Wise Choice Movers in Docket TV-200711 for the 113 critical violations of WAC 480-15-560 and WAC 480-15-570 discovered during Staff's follow-up investigation.

8 On August 20, 2020, Wise Choice Movers responded to the Second Penalty Assessment, admitting the violations, and requesting mitigation of the penalty based on the written information provided. The Company additionally requested the Commission waive the suspended penalty in Docket TV-180287 based on its financial situation.

9 On September 11, 2020, the Commission issued Order 03/01, Consolidating Dockets; Imposing and Suspending Penalties Subject to Conditions (Order 03/01) in Dockets TV-180287 and TV-200711. Order 03/01 granted, in part, the Company's request for mitigation in Docket TV-200711, by reducing the \$5,000 penalty to \$2,650. In addition, Order 03/01 suspended a \$1,450 portion of the reduced penalty from Docket TV-200711 and extended the suspension of the \$6,700 penalty from Docket TV-180287, all for a period of two years, to be waived thereafter subject to the conditions that Wise Choice

paid the non-suspended portion of the penalty and the Company not incur any repeat violations of critical regulations upon re-inspection in two years.

- 10 On November 9, 2022, as a result of the Commission's follow-up inspection, the Commission issued a penalty assessment in Docket TV-220773 (Third Penalty Assessment) in the amount of \$9,000 for 90 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to make a record of duty status.
- 11 On November 23, 2022, the Commission issued a letter in consolidated Dockets TV-180287 and TV-200711 imposing the \$8,150 combined suspended penalties for failure to comply with the terms of Order 03/01.
- 12 On December 8, 2022, Wise Choice filed with the Commission an application for mitigation of penalties (Application) in Docket TV-200711. In its Application, Wise Choice admits the violations, states that the Company corrected the violations and implemented new procedures and asks that the new and imposed suspended penalties be reduced and further suspended.
- 13 On December 20, 2022, Staff filed a response (Response) to the Application, in which it recommends that the Commission deny any mitigation or suspension of the imposed suspended penalties from Dockets TV-180287 and TV-200711 and deny mitigation for the violations cited in the Third Penalty Assessment.

DISCUSSION AND DECISION

1. Consolidation

- 14 Because the same violations gave rise to both Staff's recommendation to impose the suspended penalty in consolidated Dockets TV-180287 and TV-200711 and the Third Penalty Assessment issued in Docket TV-220773, the Commission exercises its discretion to consolidate these proceedings. Accordingly, Docket TV-180287, Docket TV-200711, and Docket TV-220773 are consolidated. Additionally, the Commission interprets the Application filed in TV-200711 as a plea to mitigate the penalties from all three dockets.

2. Penalties

- 15 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.² We address the penalties assessed in each docket in turn.

16 First, we agree with Staff's recommendation and decline to mitigate the \$9,000 penalty for the violations cited in Docket TV-220773. Staff correctly notes that these are repeat critical violations of 49 C.F.R. § 395.8(a)(1) that the Company could have avoided if it had followed Staff's technical advice or the procedures the Company itself implemented following the Second Penalty Assessment. Accordingly, we find that no mitigation is warranted.

17 Second, we deny the Company's request to reduce or further suspend the imposed \$8,150 penalty in consolidated Dockets TV-180827 and TV-200711. The conditions of suspension set out in Order 03/01 were clear, and the Company admits that it failed to meet them. Accordingly, we find that imposing the \$8,150 penalty is reasonable. We are aware that the penalty, though warranted, may create a substantial financial hardship for the Company, and it is not the Commission's goal to create an insurmountable financial hurdle. We therefore authorize Staff to work with the Company to file an agreed schedule for the Company to pay the penalty in installments. Such payment plan should be filed by 5 p.m., February 17, 2023.

3. Penalty Suspension

18 The Commission considers several factors in determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations, and whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future, such as purchasing new technology, making system changes, or training company personnel. The Commission will also consider whether the Company can demonstrate other circumstances exist that convince the Commission to suspend the penalties.³

19 In this case, penalties in the Third Penalty Assessment were assessed for repeat violations, but the Company has demonstrated that it has taken action to prevent the violations from reoccurring. In addition, both Wise Choice Movers and the household goods moving industry as a whole are still recovering from the economic impact of the

² Enforcement Policy ¶19.

³ *Id.* at ¶20.

COVID-19 pandemic. In light of these circumstances, we exercise our discretion to suspend the \$9,000 penalty in Docket TV-220773 for two years, and then waive it, subject to the following conditions: (1) the Company may not incur any repeat violations of critical regulations; (2) the Company must either pay the \$8,150 imposed penalty or file an agreed payment plan with Staff by February 17, 2023, and (3) Staff will conduct a follow-up safety investigation in two years to review the Company's safety management practices. If the Company fails to comply with any of these conditions, the \$9,000 suspended penalty will become immediately due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 20 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 21 (2) Wise Choice Movers is a household goods carrier subject to Commission regulation.
- 22 (3) Wise Choice Movers committed 90 critical violations of WAC 480-15 and Title 49 C.F.R., which violated the terms of Order 03/01 in consolidated Docket TV-180827 and TV-200711 and gave rise to the penalty assessed in Docket TV-220773.
- 23 (4) Wise Choice Movers does not dispute that the violations occurred.
- 24 (5) The Commission should assess a total penalty of \$9,000 for 90 critical violations of WAC 480-15 and 49 C.F.R. in Docket TV-220773.
- 25 (6) The Commission should deny Wise Choice Movers' request to waive or further suspend the \$8,150 suspended penalty in consolidated Dockets TV-180827 and TV-200711.
- 26 (7) The Commission should suspend the \$9,000 penalty in Docket TV-220773 for period of two years, and then waive it, subject to the conditions set out in paragraph 19, above.

ORDER

THE COMMISSION ORDERS:

- 27 (1) Docket TV-220773 is consolidated with Dockets TV-180287 and TV-200711.
- 28 (2) Wise Choice Movers, LLC's request for mitigation of the \$9,000 penalty assessed in Docket TV-220773 is DENIED.
- 29 (3) Wise Choice Movers, LLC's request to mitigate or suspend the \$8,150 suspended penalty in Dockets TV-180827 and TV-200711 is DENIED. Wise Choice Movers, LLC, must either pay the penalty or file an agreed payment plan no later than February 17, 2023.
- 30 (4) The Commission suspends the \$9,000 penalty in Docket TV-220773 for a period of two years, and then waives it, subject to the following conditions: (1) Wise Choice Movers, LLC, may not incur any repeat violations of critical regulations upon reinspection in two years; and (2) Wise Choice Movers, LLC, must either pay the \$8,150 penalty that is not suspended or file a payment plan with Staff by February 17, 2023.
- 31 (5) If Wise Choice Movers, LLC, fails to satisfy any of the conditions in paragraphs 19 and 30 of this Order, the entire unpaid balance of the \$9,000 penalty will become immediately due and payable without further Commission order.
- 32 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective September February 7, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for

Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.