

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of a Penalty Assessment Against</p> <p>WISE CHOICE MOVERS, LLC,</p> <p>in the amount of \$22,900</p>	<p>DOCKETS TV-180287, TV-200711, TV-220773 (<i>Consolidated</i>)</p> <p>FINAL ORDER 05/03/02</p>
<p>In the Matter of a Penalty Assessment Against</p> <p>WISE CHOICE MOVERS, LLC,</p> <p>in the amount of \$5,000</p>	<p>AFFIRMING ORDER 04/02/01; DENYING PETITION FOR REVIEW; APPROVING PAYMENT PLAN</p>
<p>In the Matter of a Penalty Assessment Against</p> <p>WISE CHOICE MOVERS, LLC</p> <p>In the amount of \$9,000</p>	

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 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.

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.

- 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 (Order 03), Consolidating Dockets, Imposing and Suspending Penalties Subject to Conditions in Dockets TV-180287 and TV-200711. Order 03 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 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. A total of \$8,150 was suspended for a period of two years and waived thereafter subject to certain conditions including that the Company must not incur any repeat violations of critical regulations upon re-inspection in two years.²
- 10 On November 9, 2022, as a result of Staff'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.
- 12 On December 8, 2022, Wise Choice filed with the Commission an application for mitigation of penalties in Docket TV-200711, which the Commission interpreted as a request for mitigation of the \$8,150 imposed penalty from consolidated Dockets TV-180287 and TV-200711, as well as a request for mitigation of the \$9,000 penalty assessed in Docket TV-220773. Wise Choice admitted the violations, stated that the Company corrected the violations and implemented new procedures, and asked that the new and imposed suspended penalties be reduced and further suspended.
- 13 On February 7, 2023, the Commission entered Order 04/02/01 (Order 04), Consolidating Dockets (TV-180287, TV-200711, and TV-220773), Denying Mitigation, Imposing and Suspending Penalties Subject to Conditions. Order 04 imposed the \$8,150 suspended penalty from Dockets TV-180287 and TV-200711 and suspended the \$9,000 penalty in

² Order 03 at 6, ¶ 26.

Docket TV-220773 for a period of two years, and thereafter waived it, subject to the following conditions: (1) the Company may not incur any repeat violations of critical regulations upon reinspection in two years; and (2) the Company must either pay the \$8,150 penalty that is not suspended or file a payment plan with Staff by February 17, 2023.³

- 14 On February 15, 2023, Wise Choice submitted to the Commission a request to appeal Order 04 (Petition), arguing that the Company was in full compliance with Commission regulations except for the violations of 49 C.F.R. § 395.8(a)(1), and that the imposition of the \$8,150 suspended penalty would “greatly affect [its] already struggling small business.”⁴
- 15 On February 23, 2023, Staff filed with the Commission a letter in response to the Petition recommending the Commission uphold Order 04 and approve a 24-month payment plan to avoid creating an insurmountable financial hardship for the Company (Response).

DISCUSSION AND DECISION

- 16 We affirm Order 04 and approve the payment plan proposed by Staff for the reasons explained below.
- 17 The Secretary of the Commission has delegated authority to enter orders resolving contested violations or requests for mitigation of penalty assessments.⁵ Order 04 is such an order. The Commission considers requests for administrative review using the same process and requirements applicable to initial orders.⁶ A party may challenge any finding, conclusion, remedy, or result of such an order by petitioning for administrative review.⁷
- 18 Here, Wise Choice does not dispute that the 90 critical violations of 49 C.F.R. § 395.8(a)(1) occurred. Wise Choice instead requests review of Order 04, challenging the denial of its requests to mitigate the imposition of the \$8,150 suspended penalty from Dockets TV-180287 and TV-200711 and the \$9,000 penalty assessed in Docket TV-

³ Order 04 at 6, ¶¶ 28-30.

⁴ Petition at ¶ 6.

⁵ WAC 480-07-915(7).

⁶ WAC 480-07-915(7); *see also* WAC 480-07-825.

⁷ WAC 480-07-825(2); *see also* WAC 480-07-915(7).

220773, which was suspended by Order 04 and waived after a period of two years subject to Wise Choice not incurring any repeat violations of critical regulations upon reinspection and its payment of the \$8,150 penalty. We construe the Company's request as a petition for administrative review under WAC 480-07-825(2).⁸

19 We consider several factors when a company requests mitigation. These include 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.⁹

20 Wise Choice introduces no new mitigating information or factors that the Commission may not have considered when assessing the penalty. In addition, we are unconvinced that a lesser penalty amount will be equally or more effective in ensuring the Company's compliance. The 90 critical violations of 49 C.F.R. § 395.8(a)(1) are repeat critical violations for which the Company has been penalized, granted mitigation, and provided technical assistance in 2018 and 2020. Wise Choice could have avoided these repeat critical violations if it had followed the technical assistance provided by Staff or the procedures the Company implemented after the prior safety inspections. Accordingly, we determine that Order 04's denial of the Company's request to mitigate the \$9,000 penalty arising from the 90 critical violations of 49 C.F.R. § 395.8(a)(1) should be affirmed.

21 Similarly, we find that the \$8,150 penalty suspended by Order 03 should be imposed. The conditions outlined in Order 03 were clear, as were the consequences of failing to comply with those conditions. The \$8,150 portion of the penalty assessment was suspended on the condition, among other things, that the Company incur no repeat critical violations.¹⁰ Wise Choice does not deny that it incurred the 90 repeat critical violations. Imposing the \$8,150 penalty is, therefore, reasonable and fair. We consider, however, the financial

⁸ The Commission liberally construes pleadings and motions with a view to effect just results, considering such submissions based primarily on the relief they request and not solely on the name or form of the document. WAC 480-07-395(4). Accordingly, the Commission construes Wise Choice's request for review of Order 04 as a petition for administrative review pursuant to WAC 480-07-825(2) and WAC 480-07-915(7).

⁹ *In re Enforcement Policy of the Wash. Utils. & Transp. Comm'n*, Docket A-120061, Enforcement Policy of the Wash. Utils. & Transp. Comm'n, 10-11, ¶ 19 (Jan. 7, 2013) [hereinafter Enforcement Policy].

¹⁰ Order 03 at 6, ¶ 26.

burden this penalty might place upon the Company and the lingering economic impacts to the entire household goods moving industry of the COVID-19 pandemic. We find that Staff’s proposed 24-month payment plan, which includes monthly payments of \$340, is a reasonable accommodation and justified under the circumstances presented by this case. Accordingly, we determine that Order 04’s imposition of the \$8,150 suspended penalty should be affirmed and in consideration of the financial burden placed on the Company, we approve a 24-month payment plan, outlined below, consistent with Staff’s proposal.

#	Date	Amount
1	April 20, 2023	\$340
2	May 20, 2023	\$340
3	June 20, 2023	\$340
4	July 20, 2023	\$340
5	August 20, 2023	\$340
6	September 20, 2023	\$340
7	October 20, 2023	\$340
8	November 20, 2023	\$340
9	December 20, 2023	\$340
10	January 20, 2023	\$340
11	February 20, 2023	\$340
12	March 20, 2023	\$340
13	April 20, 2024	\$340
14	May 20, 2024	\$340
15	June 20, 2024	\$340
16	July 20, 2024	\$340
17	August 20, 2024	\$340
18	September 20, 2024	\$340
19	October 20, 2024	\$340
20	November 20, 2024	\$340
21	December 20, 2024	\$340
22	January 20, 2025	\$340
23	February 20, 2025	\$340
24	March 20, 2025	\$340

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If Wise Choice misses one payment, the entire balance will become due and payable immediately. Wise Choice may make additional payments in advance of the payment due dates or pay an increased amount on the due dates, but no additional payment or

increased amount will relieve the Company of its obligation to make timely monthly installments of \$340 until the full amount of \$8,150 is satisfied.

- 23 We consider several factors when determining whether to suspend a portion of a penalty. These include whether it is a first-time penalty for the same or similar violations, 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, and whether the company can demonstrate other circumstances exist that convince the Commission to suspend the penalties.¹¹
- 24 While the \$9,000 penalty assessed for 90 critical violations of 49 C.F.R. § 395.8(a)(1) are repeat violations, we agree with Order 04 that this penalty amount should be suspended subject to certain conditions. We consider that Wise Choice has taken action to prevent the violations from reoccurring, that Wise Choice as well as the entire household goods moving industry is still recovering from economic impacts resulting from the COVID-19 pandemic, and that imposing the \$9,000 penalty in addition to the previously suspended \$8,150 penalty constitutes a significant financial burden for the Company.
- 25 Accordingly, we determine that under these circumstances it is appropriate to suspend the \$9,000 penalty for 90 critical violations of 49 C.F.R. § 395.8(a)(1) for a period of two years, and then waive it thereafter, subject to the following conditions: (1) Wise Choice must pay the \$8,150 penalty according to the payment plan outlined in Paragraph 21; (2) Staff will conduct a follow-up safety investigation in two years to review the Wise Choice's safety management practices; and, (3) Wise Choice must not incur any repeat violations of critical regulations. If Wise Choice 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

- 26 (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.

¹¹ Enforcement Policy at 11, ¶ 20.

- 27 (2) Wise Choice is a household goods carrier subject to Commission regulation.
- 28 (3) Order 04 denied mitigation to the Company and imposed a previously suspended \$8,150 penalty, assessed a new total penalty of \$9,000 for 90 critical violations of WAC 480-15 and Title 49 C.F.R., and suspended the \$9,000 penalty for a period of two years, waiving it thereafter, subject to certain conditions.
- 29 (4) Wise Choice does not dispute that the critical violations occurred.
- 30 (5) Wise Choice requests review of Order 04's denial of its requests for mitigation or further suspension of the penalty amounts, stating its compliance with all other regulations and the great effect the penalty amounts would have on its business.
- 31 (6) When determining if a request for mitigation is appropriate, the Commission considers whether the company: demonstrates that the facts considered by the Commission underlying the assessment were incorrect or do not support the penalty assessed; demonstrates that mitigating information or factors exist that the Commission may not have considered in setting the assessed penalty amount; and, explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring compliance by the company with applicable statutory and regulatory requirements.
- 32 (7) The Commission determines that no mitigation of the previously suspended penalty amount of \$8,150 or of the \$9,000 penalty amount for 90 repeat critical violations of 49 C.F.R. § 395.8(a)(1) is warranted.
- 33 (8) When determining if a request to suspend a penalty is appropriate, the Commission considers whether: this is a first-time penalty for this or a similar violation; the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future; the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties; Staff and the company have agreed that Staff will conduct a follow-up investigation at the end of the suspension period and that if a repeat violation is found, the suspended penalties are re-imposed; and, the company can demonstrate other circumstances exist that convince the Commission to suspend the penalties.
- 34 (9) The Commission determines that the \$9,000 penalty amount for 90 repeat critical violations of 49 C.F.R. § 395.8(a)(1) should be suspended for a period of two

years, and then waived thereafter, subject to the conditions outlined in Paragraph 25.

- 35 (10) The Commission finds it reasonable and justified, in consideration of the financial burden the \$8,150 penalty might place upon the Company and the lingering economic impacts to the entire household goods moving industry from the COVID-19 pandemic, to approve a 24-month payment plan consistent with Staff's proposal and identified in Paragraph 21.
- 36 (11) The Commission determines that Wise Choice's Petition should be denied.
- 37 (12) The Commission determines that Order 04 should be affirmed.

ORDER

THE COMMISSION:

- 38 (1) Affirms Order 04/02/01.
- 39 (2) Denies Wise Choice Movers, LLC's Petition for Administrative Review challenging Order 04/02/01.
- 40 (3) Approves the 24-month payment plan identified in Paragraph 21 for the \$8,150 penalty amount or, alternatively, requires Wise Choice Movers, LLC to pay the \$8,150 according to the payment schedule set out in Paragraph 21 of this Order.

DATED at Lacey, Washington, and effective March 23, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner