

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint for
Penalties against:

CAN'T STOP MOVING, LLC

DOCKET TV- 190294

ORDER 01

ORDER INSTITUTING SPECIAL
PROCEEDING; COMPLAINT SEEKING
TO IMPOSE PENALTIES; NOTICE OF
INTENT TO DENY APPLICATION FOR
REINSTATEMENT; NOTICE OF
HEARING

(Set for June 6, 2019, at 9:30 a.m.)

1 The Washington Utilities and Transportation Commission (Commission) on its
own motion, and through Commission Staff (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 and household goods carriers, under the provisions of Title 81 of the
Revised Code of Washington (RCW). Pursuant to RCW 81.80.130, the Commission
regulates the safe operation of motor freight carriers, including household goods
carriers.

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

II. BACKGROUND

5 The Commission has information from which it believes and therefore alleges that
Can't Stop Moving has violated the Commission's safety regulations, namely,
Washington Administrative Code (WAC) 480-15-560 and WAC 480-15-570, which
adopt, among other provisions, Title 49 of the Code of Federal Regulations (C.F.R.),
§§ 387, 391, 392, 395, and 396.

6 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.

7 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.¹

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

9 **FACTUAL ALLEGATIONS.** On March 19, 2019, Commission Staff completed a compliance review of Can't Stop Moving pursuant to Order 04/02 in consolidated Dockets TV-170293/180319. The compliance review documented violations of WAC 480-15-530 and 49 C.F.R. §§ 391.23(b), 391.51(b)(1), 391.51(b)(2), 391.51(d), 392.4(a), 395.8(a)(1), 396.17(a), and 396.3(b)(2). Staff discovered a total of 36 violations, one of which was an acute violation, and 24 of which were critical violations.² Violations classified as acute are violations that are so severe they require immediate corrective actions by a motor carrier, regardless of the overall safety posture of the motor carrier. Critical violations are indicative of a breakdown in a carrier's management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls, and usually higher-than-average accident rates.³

10 Can't Stop Moving violated WAC 480-15-530 by operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. Can't Stop Moving allowed auto liability insurance to expire for two days in January 2019. This violation is classified as acute.

11 Can't Stop Moving violated 49 C.F.R. § 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 Linard Feaster on 21 separate occasions in August and September 2018. This is a repeat violation classified as critical.

¹ WAC 480-15-450(1)(e).

² One violation of 387.7(a), three violations of 391.23(b), two violations of 391.51(b)(1), one violation of 391.51(b)(2), two violations of 391.51(d), one violation of 392.4(a), twenty one violations of 395.8(a)(1), three violations of 396.17(a), and three violations of 396.3(b)(2). The violations of 395.8(a)(1) and 396.17(a) are critical violations. The violation of 387.7(a) is an acute violation.

³ Docket TV- 170293/180319, Order 04/02 at 6 ¶ 24 (June 11, 2018).

- 12 Can't Stop Moving violated 49 C.F.R. § 396.17(a) by using a commercial motor vehicle that was not periodically inspected. The Company failed to obtain an annual US Department of Transportation inspection for three of its vehicles. This is a repeat violation classified as critical.
- 13 Can't Stop Moving violated 49 C.F.R. § 391.51(b)(2) by failing to maintain inquiries into its driver's driving record in the Company's driver qualification file. Can't Stop Moving failed to acquire and maintain an initial driver abstract for Linard Feaster until after his termination. This is a repeat violation classified as critical.
- 14 Can't Stop Moving violated 49 C.F.R. § 391.23(b) by failing to investigate drivers' backgrounds within 30 days of employment. The driver abstracts for three drivers, Yurii Hlukhyi, Jonathan Hodge, and Brandon Mulhorn, were not on file until well after their first 30 days of employment. This is a repeat violation.
- 15 Can't Stop Moving violated 49 C.F.R. § 391.51(b)(1) by failing to maintain a driver's employment application in the driver qualification file for Linard Feaster and Yurii Hlukhyi. This is a repeat violation.
- 16 Can't Stop Moving violated 49 C.F.R. § 391.51(d) by failing to keep required records in the driver's qualification file for three years after the date of execution. The Company failed to retain previous medical certificates in Yurii Hlukhyi and Jonathan Hodge's driver qualification files.
- 17 Can't Stop Moving violated 49 C.F.R. § 392.4(a) when a driver, Linard Feaster, possessed a controlled substance, which renders the driver incapable of safely operating a motor vehicle while on duty. Staff does not seek a penalty for this violation. The Company could not prevent the violation, and took appropriate steps after the incident.
- 18 Can't Stop Moving violated 49 C.F.R. § 396.3(b)(2) by failing to keep minimum records of inspection and vehicle maintenance for three vehicles.
- 19 At the conclusion of its safety investigation, Staff gave the Company a conditional safety rating. Staff sent Can't Stop Moving notification that the compliance review resulted in a proposed conditional safety rating based on the acute and critical violations discovered.
- 20 On March 7, 2019, Staff filed a letter in consolidated Dockets TV-170293/180319 requesting that the Commission cancel the Payment Plan. Since the approval of the proposed Payment Plan in July 2018, Can't Stop Moving had not made any of the scheduled payments on time. At the time Staff filed the letter, the Company had only completed five of the eight payments due.

21 On March 26, 2019, the Commission issued an order in granting extension of the Company's payment arrangement in consolidated Docket TV-170293/180319. The Commission warned the Company that:

“[F]uture delinquencies will not be met with similar leniency. In the event the Company is unable to honor the Payment Plan, the Commission will cancel the Payment Plan and may pursue additional enforcement action, up to and including canceling the Company's household goods permit for failure to comply with a Commission order.”⁴

The Company did not pay the \$5,400 due within 10 days, as required by Order 06/04.

22 On April 16, 2019, the Commission canceled Can't Stop Moving's provisional permit for failure to submit proof of insurance.⁵ The Company sent in an application for reinstatement on April 22, 2019.⁶

23 On April 23, 2019, the Commission issued a letter discontinuing the Payment Plan for violation of Order 06/04.

Compliance History

24 Can't Stop Moving first received a provisional household goods carrier permit in 2009.⁷ In 2011, the Company applied for permanent authority, which was granted in April 2013.⁸

25 In February 2014, Can't Stop Moving's permit was suspended for failure to provide acceptable proof of insurance with the Commission.⁹ The suspension was lifted two days later after the Company provided proof of insurance.¹⁰

⁴ Docket TV-170293/180319, Orders 06/04 at 4 ¶ 9 (March 27, 2019).

⁵ Docket TV-190281, Letter Cancelling Provisional Household Goods Permit THG-63768 Due to Insufficient Proof of Insurance. (April 16, 2019).

⁶ Docket TV-190294, Application to Reinstate Household Goods Moving Authority (April 22, 2019)

⁷ Docket TV-091360, Order 01 (October 23, 2009).

⁸ Docket TV-111506, Order 02 (April 30, 2013).

⁹ Docket TV-140254, Order 01 (February 18, 2014).

¹⁰ Docket TV- 140254, Order 02 (February 20, 2014).

- 26 In February 2015, Can't Stop Moving's permanent household goods permit was cancelled due to failure to maintain insurance on file with the Commission.¹¹ The Company corrected the issue and received a provisional permit four months later.¹² The Company has failed to receive a satisfactory safety rating in the three compliance reviews conducted by Staff since the Company was granted the provisional permit in June 2015.¹³
- 27 In May 2017, the Commission assessed a penalty of \$51,900 in Docket TV-170293 against Can't Stop Moving for 529 violations of WAC 480-15-555 and 480-15-570, which adopt by reference sections of Title 49 C.F.R.
- 28 In June 2017, the Commission entered an order imposing a \$25,400 penalty, and suspending \$15,400 on the condition that the Company not incur any repeat critical violations and pay the remaining penalty.¹⁴
- 29 In April 2018, Staff completed a compliance review of Can't Stop Moving and documented critical violations of 49 C.F.R. §§ 391.45(a), 391.51(b)(2), 392.2, 395.8(a)(1), 396.3(b), and 396.17(a), which resulted in a proposed conditional safety rating. There were 81 critical violations in total. The Commission set a hearing to assess penalties and consider cancellation of the Company's certificate.
- 30 Prior to the hearing, the Company submitted a safety management plan. The safety management plan was admitted as Exhibit JS-1 in consolidated Dockets TV-170293/180319. It was written by the owner of Can't Stop Moving, and outlined how the Company would ensure future compliance. The plan addressed medical certificates, driver qualification files, driver record of duty status, maintaining records, and ensuring vehicles are periodically inspected.
- 31 During the June 1, 2018, hearing, the Company's owner, Eric Michelson, stated that he hired a safety manager to focus on compliance issues.¹⁵ The owner acknowledged that Can't Stop Moving made several late payments in the payment plan entered in 2017. Mr. Michelson stated the Company was now current on payments, and pledged to ensure timely payments in the future.¹⁶

¹¹ Docket TV-150269, Order 01 (February 18, 2015).

¹² Docket TV-151180, Order 01 (June 11, 2015).

¹³ Compliance Reviews on March 19, 2019, April 27, 2018, and April 20, 2017 all resulted in conditional safety ratings.

¹⁴ Docket TV-170293, Order 01 (June 19, 2017).

¹⁵ Docket TV- 170293/180319, Order 04/02 at 4 ¶ 16.

¹⁶ *Id.* at 4 ¶ 17.

32 On June 11, 2018, the Commission issued Order 04/02 in consolidated Docket TV-170293/180319 (Order 04/02).¹⁷ The order re-imposed the \$15,400 suspended penalty, and assessed a new \$28,600 penalty for violations discovered during the April 2018 compliance review.

33 Order 04/02 extended Can't Stop Moving's provisional permit "until such time as it receives a satisfactory safety rating." The Commission found good cause to extend Can't Stop Moving's provisional household goods permit:

"We are concerned by the Company's failure to prevent repeat violations, especially in light of the \$15,400 suspended penalty that was conditioned on the Company's ability to refrain from incurring repeat violations. We are, however, satisfied that Mr. Michelson now understands the seriousness of the violations and, that by hiring a safety manager, the Company is more likely to achieve a satisfactory rating in the future."¹⁸

III. JURISDICTION

29 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

30 Household goods carriers and freight carriers are common carriers.¹⁹ 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.²⁰

31 The Commission may adopt rules regarding the services provided by public service companies that are subject to its regulation.²¹

32 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

¹⁷ *Id.*

¹⁸ *Id.* at 7 ¶ 27.

¹⁹ RCW 81.04.010(11).

²⁰ *See*, RCW 80.01.040(2); RCW 81.01.010.

²¹ RCW 81.04.160.

incorporated by reference specified safety regulations found in Title 49 C.F.R. regarding the safety of household goods carriers.²²

- 33 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.²³ Chapter 81.04 RCW prescribes penalties of up to \$1,000 for a violation of any Commission order or rule.²⁴ WAC 480-15-145 outlines the Commission's enforcement authority.
- 34 Under WAC 480-15-305(3), the Commission may extend a provisional permit past 18 months upon a finding of good cause. Good cause may include that a carrier that has not yet achieved a satisfactory safety rating but is making substantial progress toward a satisfactory rating.
- 35 Under WAC 480-15-450(2)(a), the Commission has the authority to cancel a household goods permit for failure to maintain evidence of current liability insurance as required by WAC 480-15-530. Cancellation for this reason may occur without holding a hearing prior cancellation. Under WAC 480-15-450(4), If the permit is canceled and the carrier corrects all conditions that led to cancellation of the permit, the carrier may apply for reinstatement. WAC 480-15-450(4)(a) states: "To reinstate the permit within thirty days of cancellation, the carrier must file an application for reinstatement and pay the applicable reinstatement fees as stated in WAC 480-15-230."
- 36 Under RCW 81.80.170, the Commission may issue temporary permits only after the Commission finds that issuance of a temporary permit is consistent with the public interest.

V. COMPLAINT

- 37 The Commission, through its Staff, re-alleges the allegations contained in paragraphs 9 through 33 above.
- 38 The Company's provisional permit is currently canceled due to failure to maintain evidence of insurance. Can't Stop Moving has applied for reinstatement within 30 days of the cancellation of its permit, and provided proof that the Company corrected the insurance issue that led to cancellation. Under WAC 480-15-450(4)(a), the carrier must file an application for reinstatement and pay the reinstatement fees. Correcting the issue that led to cancellation, a reinstatement application, and payment of the application fee appear to be the only requirements for reinstatement when a household

²² WAC 480-15-560; WAC 480-15-570; WAC 480-15-999.

²³ RCW 81.80.360.

²⁴ RCW 81.04.380.

goods carrier applies within 30 days of cancellation under subsection (4)(a).²⁵ Because Can't Stop Moving has meet those requirements, arguably its provisional permit should be reinstated until a hearing can be held on the other issues raised in this complaint. However, under RCW 81.80.170, the Commission may issue temporary permits only after the Commission finds that issuance of a temporary permit is consistent with the public interest.²⁶ For the reasons outlined above, it is not in the public interest to issue a provisional permit to the company in this case.

35 The Commission has imposed substantial penalties and conditions on the Company in the past, including a detailed safety management plan it entered into less than a year ago. Despite the Commission's efforts to ensure compliance, Can't Stop Moving continues to violate important safety regulations.

36 Good cause no longer exists to grant or extend the provisional permit. The Company has had a provisional permit since June 2015. It has not achieved a satisfactory safety rating in that time. Investigations of Can't Stop Moving continue to uncover repeated critical safety violations. The Commission has extended the provisional period for the Company's permit more than twice as long as is typical. The Company has failed to make substantial progress toward compliance, and therefore good cause to grant or extend the provisional permit no longer exists.

37 The Commission should not reinstate the Company's provisional permit.

VI. REQUEST FOR RELIEF

38 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 acute, critical, or repeated violation of WAC 480-15-560, WAC 480-15-570, and Title 49 C.F.R.

39 Staff requests that the Commission deny Can't Stop Moving's application for reinstatement of its provisional permit as inconsistent with the public interest under RCW 81.80.170.

²⁵ WAC 480-15-450(4)(a) describes what a carrier must do in order to reinstate a permit within 30 days of cancellation. While the rule does not state that the Commission shall reinstate a permit if these conditions are met, WAC 480-15-450(4)(b) states: "If the carrier files an application for reinstatement after thirty days of cancellation, the application will be considered in all aspects to be an application for new authority and will be subject to all terms and conditions specified in WAC 480-15-302 for new entrants." This implies that WAC 480-15-302 does not govern applications for reinstatement within 30 days of cancellation under subsection (4)(a).

²⁶ See also, RCW 81.80.075 (2) and (3).

40 Staff also requests that the Commission order such other or additional relief as is appropriate under the circumstances.

VII. PROBABLE CAUSE

41 Based on a review of the Commission Staff compliance review 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 DENY REINSTATEMENT OF PROVISIONAL PERMIT

42 WAC 480-15-450(1) provides that the Commission may cancel a household goods carrier permit and authority for cause. Staff recommends the Commission deny the Company's application for reinstatement of its provisional 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.

43 **THE COMMISSION GIVES NOTICE that it intends to deny the application for reinstatement of the provisional permit and authority of Can't Stop Moving to provide services as a household goods carrier for cause, following a hearing on the factual allegations set out above.**

IX. ORDER AND NOTICE OF BRIEF ADJUDICATIVE PROCEEDING

49 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 deny Can't Stop Moving's application for reinstatement of its household goods carrier provisional permit and assess penalties for violations of the Commission's safety regulations.

50 **THE COMMISSION GIVES NOTICE That it will conduct a brief adjudicative proceeding in these matters at 9:30 a.m., on June 6, 2019, in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

51 **THE COMMISSION ORDERS Can't Stop Moving to appear before the Commission in this proceeding on June 6, 2019, in Room 206, Richard**

**Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia,
Washington, to give testimony and evidence under oath.**

52 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.

53 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.

54 **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.**

55 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

Representative: Unknown

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

Representative: Nash Callaghan
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1192
nash.callaghan@utc.wa.gov

56 Administrative Law Judge Nelli Doroshkin, from the Commission's Administrative Law Division, will preside during this proceeding.²⁷

DATED at Olympia, Washington and effective May 10, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge
Director, Administrative Law Division

²⁷ Judge Doroshkin can be reached at (360) 664-1163 or nelly.doroshkin@utc.wa.gov.

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.: (____) _____