

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment Against CAN'T STOP MOVING, LLC	DOCKET TV-170293 <i>(Consolidated)</i> ORDER 04
In the amount of \$51,900	
In the Matter of the Investigation of CAN'T STOP MOVING, LLC	DOCKET TV-180319 <i>(Consolidated)</i> ORDER 02
For Compliance with WAC 480-15-560 and WAC 480-15-570	EXTENDING PROVISIONAL PERMIT; IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On May 2, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$51,900 in Docket TV-170293 against Can't Stop Moving, LLC (Can't Stop Moving or Company) for 529 violation of Washington Administrative Code (WAC) 480-15-555 and 480-15-570, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹
- 2 On June 19, 2017, the Commission entered Order 01, Order Denying Request for Hearing; Granting Mitigation; Imposing and Suspending Penalties. Order 01 assessed a reduced penalty of \$25,400 and suspended a \$15,400 portion of the reduced penalty for 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.
- 3 On July 5, 2017, the Commission entered Order 02, Order Granting Payment Arrangement (Order 02). The Commission approved an installment arrangement proposed jointly by Staff and Can't Stop Moving that required the Company to make 20

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.

monthly payments of \$500 each, with a final payment due February 15, 2019. Order 02 specified that if Can't Stop Moving failed to pay any installment by 5 p.m. on the due date, the entire unpaid balance including the suspended portion would become immediately due and payable, and that the Commission may cancel the Company's household goods permit.

- 4 On April 24, 2018, 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), which resulted in a proposed "conditional" safety rating.
- 5 On April 27, 2018, Staff filed a Motion to Impose Suspended Penalties in Docket TV-170293, Order 01. In its motion, Staff relies upon a declaration of special investigator Wayne Gilbert and his assignment report documenting safety violations discovered during a Safety Investigation completed on April 24, 2018. Staff requested that the suspended penalties become immediately due and payable because the Company failed to comply with Order 01 by incurring repeat critical safety violations.
- 6 On May 1, 2018, the Commission issued a Notice of Intent to Cancel; Complaint Seeking to Impose Penalties and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements In the Matter of the Investigation of Can't Stop Moving For Compliance with Washington Administrative Code (WAC) 480-15-560 and WAC 480-15-570 in Docket TV-180319 (Notice of Intent to Cancel). The Notice of Intent to Cancel set the Brief Adjudicative Proceeding for June 1, 2018, at 9:30 a.m. The Complaint requested 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 and WAC 480-15-570 and Title 49 C.F.R. documented in the April 2018 safety investigation. The Commission also gave notice that it exercised its discretion to consolidate Dockets TV-170293 and TV-180319 pursuant to WAC 480-07-320 and to hear all matters concurrently.
- 7 Finally, on May 29, 2018, Staff filed a letter with the Commission in Docket TV-170293 requesting the Commission enforce Order 02 and require Can't Stop Moving to immediately pay the unpaid balance of the payment plan in addition to the \$15,400 suspended portion. Staff requested that the payment plan be cancelled because the Company made a majority of its payments late.
- 8 On June 1, 2018, the Commission conducted a brief adjudicative proceeding before Administrative Law Judge Laura Chartoff.

- 9 Staff presented testimony from Wayne Gilbert, special investigator, and Jason Sharp, Motor Carrier Safety supervisor. Mr. Gilbert testified about the critical safety violations that resulted in Staff's proposed conditional safety rating for Can't Stop Moving. Following an April 2018 compliance review, Staff documented ten violations of 49 C.F.R. Part 391.45(a), which requires that drivers be medically examined and certified by a qualified provider prior to operating company vehicles. The Company allowed an employee to operate a company vehicle on ten occasions between September 2017 and February 2018 without having been medically examined and certified.
- 10 Staff also documented two violations of 49 C.F.R. Part 391.51(b)(2), which requires the Company to maintain inquiries into its driver's driving record in the driver's qualification file. The Company failed to acquire and maintain motor vehicle reports for two employees.
- 11 Staff also documented 32 violations of 49 C.F.R. Part 392.2 for 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 an employee to operate a company vehicle on 32 occasions without having a valid driver's license.
- 12 Staff also documented 30 violations of 49 C.F.R. Part 395.8(a)(a), which requires drivers to make a record of duty status. The Company allowed its employees to drive on 30 occasions without making a record of duty status in the six months prior to the compliance review.
- 13 Staff also documented four violations of 49 C.F.R. Part 396.3(b) for failing to maintain required maintenance and inspection records for any of its four vehicles.
- 14 Finally, Staff documented three violations of 49 C.F.R. Part 396.17(a) for using a commercial motor vehicle not periodically inspected. The Company failed to provide proof of periodic inspections for three of the four vehicles checked.
- 15 Mr. Sharp testified that the Company has since submitted a proposed safety management plan that Staff finds acceptable. Staff recommends the Commission extend the Company's provisional status and allow the Company to maintain its certificate with the following conditions:
1. The Company will remain in provisional status until such time as it receives a satisfactory safety rating; Staff will conduct a follow-up investigation within one year (May 2019).

2. The Company owner must attend the August 15, 2018, household goods training course in Olympia.
3. The Company must pay the suspended \$15,400 penalty assessed in Docket TV-170293.
4. The Company must pay a \$28,600 penalty for violations discovered during the April 2018 safety investigation calculated as follows:
 - a. A \$5,000 penalty for ten repeat violation of 49 C.F.R. 391.45(a) for using a driver not medically examined and certified;
 - b. a \$200 penalty for two violations of 49 C.F.R. Part 391.51(b) for failing to keep driving record inquiries in the driver's qualification file;
 - c. a \$16,000 for 32 repeat violations of 49 C.F.R. 392.2 for operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated;
 - d. a \$6,000 penalty for 30 repeat violations of 49 C.F.R. 395.8(a)(1) for failing to require a driver to prepare a record of duty status using the appropriate method;
 - e. an \$800 penalty for four violations of 49 C.F.R. Part 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance; and
 - f. a \$600 penalty for three repeat violations of 49 C.F.R. 396.17(a) for using a commercial motor vehicle not periodically inspected.

16 Can't Stop Moving presented testimony from Eric Michelson, owner, who acknowledged the violations but requested the penalty be mitigated and that he be allowed to maintain his household goods permit. Mr. Michelson explained that the violations resulted from a lack of oversight. Mr. Michelson realizes he is unable to manage compliance with Commission laws and regulations on his own, and has hired a safety manager to focus on compliance and prevent violations from reoccurring.

17 With regard to the payment plan in TV 170293, Mr. Michelson acknowledged that some payments were late, but that he is now current with payments. To ensure payments are timely in the future, he will arrange automatic payments with his bank.

18 Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Commission staff (Staff). Eric Michelson, Owner, Seattle, Washington, represents Can't Stop Moving.

DISCUSSION AND DECISION

1. Docket TV-170293 – Suspended Penalty and Payment Plan

19 In Docket TV-170293, Order 01 assessed a reduced penalty of \$25,400, and suspended a \$15,400 portion of the penalty for two years subject to the conditions that the Company incur no repeat critical violations of WAC 480-15 and Title 49 C.F.R. and that the Company pay the remaining penalty.

20 It is undisputed that the Company incurred several repeat critical violations of WAC 480-15 and Title 49 C.F.R., including using a driver not medically examined and certified; operating a motor vehicle not in accordance with the law, ordinances, and regulations of the jurisdiction in which it is being operated; failing to require drivers to prepare a record of duty status using an appropriate method; failing to keep minimum records of inspection and vehicle maintenance; and using a motor vehicle not periodically inspected.

21 Because the Company has failed to satisfy the conditions in Order 01 in Docket TV-170219 by incurring repeat critical violations of WAC 480-15 and Title 49 C.F.R., we conclude that the \$15,400 suspended penalty is now due and payable.

22 In Order 02, Docket TV-170219, the Commission approved an installment arrangement and specified that if the Company failed to pay any installment by 5 p.m. on the due date, the entire unpaid balance including the suspended portion would become immediately due and payable, and that the Commission may cancel the Company's household goods permit.

23 It is undisputed that the Company made several payments after the due date. However, the Company is now current with payments and Mr. Michelson testified that he will arrange automatic payments with his bank to ensure they are timely in the future. Therefore, we decline to cancel the payment plan. Instead, the portion of the penalty that is not suspended will continue to be due according to the payment plan in Order 02. We also decline to cancel the Company's household goods permit for the reasons discussed below.

2. Docket TV-180319 – Household Goods Carrier Permit

24 Washington law requires auto transportation carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's April 2018 compliance review of Can't Stop Moving found 81 violations of critical regulations, which resulted in a proposed conditional safety rating. Violations classified as critical 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.

25 On May 29, 2018, the Company submitted its proposed safety management plan. Staff found that Can't Stop Moving's safety management plan addresses each violation, identifies how each violation occurred, describes the steps taken to correct each violation, and describes the controls put in place to ensure compliance going forward. In addition, Mr. Michelson testified credibly that he realizes he is unable to both manage the business operations and ensure compliance with Commission safety regulations, and that he has hired a safety manager to assist him with compliance. Mr. Michelson also agreed to attend the Commission's August 15, 2018, household goods training.

26 Can't Stop Moving was granted a provisional household goods permit in 2015 and has failed to achieve a satisfactory safety rating following two safety reviews. WAC 480-15-305(1)(b) provides that, prior to a grant of permanent authority, an applicant must complete a provisional period of not less than six months and not more than 18 months unless the Commission determines for good cause that the provisional period should be extended. In order to receive permanent authority, an applicant must achieve a satisfactory safety rating in a safety review conducted by Staff.² In addition, WAC 480-15-305(3) provides:

If the carrier has not completed the requirements for permanent authority within eighteen 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 permit should be extended beyond eighteen 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.

² WAC 480-15-305(1)(e).

27 In this case, the Commission finds good cause to extend the Company’s provisional period for its household goods operating authority. In any enforcement proceeding, the Commission’s ultimate goal is compliance. While Can’t Stop Moving incurred fewer violations in the 2018 safety investigation, the Company did not demonstrate it made substantial progress towards a satisfactory safety rating. 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. Accordingly, the Commission finds good cause to extend the Company’s provisional period until such time the Company achieves a satisfactory rating.

3. Docket TV-180319 - Penalty

28 Violations discovered during safety inspections are subject to penalties of up to \$1,000 per violation.³ In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.⁴ Critical violations meet this standard.⁵ In general, the Commission imposes penalties of \$100 per violation for first-time critical violations, and imposes higher penalties for repeat violations.⁶ Staff recommends the Commission assess a \$28,600 penalty for 81 repeat violations of Commission safety rules.

29 The Commission considers many factors in determining the appropriate penalty for the violation, including, but not limited to, how serious or harmful the violation is to the public, whether the violation is intentional, whether the company promptly corrected the violations and remedied the impacts, and the company’s past performance regarding compliance, violations, and penalties.⁷ For example, if violations are repeat violations that were made known to the Company in the course of an earlier inspection of investigation, the Commission will be more likely to take an enforcement action.

³ See RCW 80.04.405, RCW 80.04.380, RCW 80.81.360.

⁴ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

⁵ 49 C.F.R. § 385, Appendix B.

⁶ See Enforcement Policy ¶15.

⁷ *Id.*

30 In this case, the Safety Investigator documented 81 *critical* violations in six categories, five of which are repeat violations for which the Company was previously penalized. The Company was aware of deficiencies in its compliance program, but nevertheless failed to implement the process changes it identified in its 2017 mitigation request. Although we commend the company for promptly correcting the repeat violations and hiring a safety manager to prevent the violations from reoccurring, these are measures the Company should have taken in response to the penalty it received in 2017. Accordingly, we agree with Staff that escalated penalties are appropriate in the circumstances presented here.

31 The Commission has considered these factors and determined it should penalize Can't Stop Moving a total of \$28,600 for violations of WAC 480-15 and 49 C.F.R. as follows:

- Ten violations of 49 C.F.R. Part 391.45(a) – using a driver not medically examined and certified. The Commission assesses penalties of \$500 per occurrence of this repeat violation, for a total of \$5,000.
- Two violations of 49 C.F.R. Part 391.51(b)(2) – failing to maintain inquiries into driver's driving record in driver's qualification file. The Commission assesses penalties of \$100 per occurrence, for a total of \$200.
- 32 violations of 49 C.F.R. Part 392.2 – operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which is its being operated. The Commission assess penalties of \$500 per occurrence of this repeat violation, for a total of \$16,000.
- 30 violations of 49 C.F.R. Part 395.8(a)(1) – failing to require driver to prepare a record of duty status using appropriate method. The Commission assess penalties of \$200 per occurrence of this repeat violation, for a total of \$6,000.
- Four violations of 49 C.F.R. Part 396.3(b) – failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses penalties of \$200 per occurrence of this repeat violation, for a total of \$800.
- Three violations of 49 C.F.R. Part 396.17(a) – using a commercial motor vehicle not periodically inspected. The Commission assess penalties of \$200 per occurrence of this repeat violation, for a total of \$600.

FINDINGS AND CONCLUSIONS

- 32 (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.
- 33 (2) Can't Stop Moving is a household goods carrier subject to Commission regulation.
- 34 (3) In Docket TV-170293, Order 01 assessed a reduced penalty of \$25,400, and suspended a \$15,400 portion of the penalty for two years subject to the conditions that the Company incur no repeat critical violations of WAC 480-15 and Title 49 C.F.R. and that the Company pay the remaining penalty.
- 35 (4) On April 24, 2018, Staff completed a safety investigation of Can't Stop Moving and documented 81 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), which resulted in a proposed "conditional" safety rating.
- 36 (5) Can't Stop Moving has failed to satisfy the conditions in Order 01, Docket TV-170219, by incurring repeat critical violations of WAC 480-15 and Title 49 C.F.R.. Therefore, the Commission should impose the suspended penalty of \$15,400.
- 37 (6) In Order 02, Docket TV-170219, the Commission approved an installment arrangement and specified that if the Company failed to pay any installment by 5 p.m. on the due date, the entire unpaid balance including the suspended portion would become immediately due and payable and that the Commission may cancel the Company's household goods permit.
- 38 (7) Can't Stop Moving paid several installments after the due date but has now brought its payments current. Accordingly, the Commission should reject Staff's motion to cancel the payment plan in Order 02.
- 39 (8) Can't Stop Moving cured the deficiencies that led to its conditional safety rating within 60 days, as required.

- 40 (9) Pursuant to WAC 480-15-305(3), the Commission should find good cause to extend Can't Stop Moving's provisional period until such time the Company achieves a satisfactory safety rating.
- 41 (10) In Docket TV-180319, the Commission should assess a total penalty of \$28,600 for the 81 violations of WAC 480-15 and Title 49 C.F.R. that were found in Staff's 2018 safety investigation.

ORDER

THE COMMISSION ORDERS That

- 42 (1) Can't Stop Moving, LLC's provisional permit is extended until such time as it receives a satisfactory safety rating.
- 43 (2) The \$15,400 penalty that was imposed and then suspended in Order 01, TV-170293, is now due and payable. Can't Stop Moving LLC must either pay the \$15,400 penalty or file jointly with Staff a proposed payment plan within 10 days of the effective date of this Order.
- 44 (3) The Commission assesses a \$28,600 penalty against Can't Stop Moving, LLC for violations discovered during the April 2018 safety investigation. Can't Stop Moving LLC must either pay the \$28,600 penalty or file jointly with Staff a proposed payment plan within 10 days of the effective date of this Order.
- 45 (4) Can't Stop Moving LLC's owner, Eric Michelson, must attend the August 15, 2018, household goods training at the Commission's offices in Olympia, Washington.
- 46 (5) Staff must conduct a follow-up investigation within one year.
- 47 (6) The Commission denies Staff's request to cancel the payment plan in Order 02, TV-170293. The payment plan will remain in effect unless Can't Stop Moving LLC files jointly with Staff a revised payment plan and the plan is accepted by the Commission.

DATED at Olympia, Washington, and effective June 11, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAURA CHARTOFF
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).