

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

DIARRA MOVING & DELIVERY
SERVICES LLC

For Compliance with WAC 480-15-560
and WAC 480-15-570

DOCKET TV-190788

ORDER 01

CANCELLING BRIEF
ADJUDICATIVE PROCEEDING;
APPROVING SAFETY
MANAGEMENT PLAN;
UPGRADING SAFETY RATING
TO CONDITIONAL; EXTENDING
PROVISIONAL AUTHORITY

BACKGROUND

- 1 On October 3, 2019, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements in the Matter of the Investigation of Diarra Moving & Delivery Services LLC (Diarra Moving or Company) for Compliance with Washington Administrative Code (WAC) 480-15-560 and WAC 480-15-570 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Diarra Moving's operations in September 2019 and cited the Company for 34 critical violations of federal and state safety regulations. Based on its review, Staff recommended the Commission cancel Diarra Moving's household goods carrier permit unless the Company obtained Commission approval of a safety management plan. The Notice directed Diarra Moving to file a proposed safety management plan by November 1, 2019. The Commission also set a brief adjudicative proceeding for November 12, 2019, at 10 a.m. to determine whether the Commission should cancel Diarra Moving's household goods carrier permit.¹
- 3 On October 23, 2019, Diarra Moving submitted a proposed safety management plan.
- 4 On October 25, 2019, Staff filed with the Commission its evaluation of the Company's safety management plan. Staff determined, based on its review of the Company's proposed plan, that the Company took all of the required steps to bring its safety

¹ On October 9, 2019, the Commission assessed a \$600 penalty against Diarra Moving in Docket TV-190787 for the 34 critical violations cited in the Notice. On October 15, 2019, the Company paid the penalty in full.

operations into compliance with Commission regulations. Staff recommends that the Commission upgrade the Company's safety rating to conditional, but also extend the Company's provisional permit period until such time as the Company is able to achieve a satisfactory safety rating.

- 5 With its Evaluation, Staff submitted correspondence from the Company indicating that it waives its right to a hearing. As such, Staff recommends that the brief adjudicative proceeding be cancelled. Because the underlying dispute in this docket has been resolved, we find good cause to cancel the brief adjudicative proceeding and decide this matter on a paper record.

DISCUSSION AND DECISION

- 6 Washington Law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's September 2019 compliance review of Diarra Moving found 34 violations of critical safety regulations, which resulted in a proposed unsatisfactory 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.
- 7 On October 23, 2019, the Company submitted its proposed safety management plan and requested the Commission upgrade its safety rating. Staff determined that Diarra 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. Staff concludes that Diarra Moving's safety management plan is acceptable and satisfies the legal requirements of 49 CFR Part 385. We agree.
- 8 Based on Staff's Evaluation, the Commission finds that the Company has achieved compliance with WAC 480-15 by correcting the violations that led to the proposed unsatisfactory safety rating. Accordingly, the Commission agrees with Staff's recommendation and grants the Company's request to upgrade its safety rating to conditional.
- 9 We likewise agree with Staff's recommendation to extend the Company's provisional period for its household goods carrier permit. 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. Good cause may include, among other things, a carrier that has not yet achieved a satisfactory safety rating but is

making substantial progress toward a satisfactory rating. Here, the Company has corrected the violations at issue and demonstrated that it has taken significant steps to ensure its operations comply with applicable safety regulations. Accordingly, the Commission finds good cause to extend the Company's provisional period until such time as the Company achieves a satisfactory rating.

FINDINGS AND CONCLUSIONS

- 10 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 11 (2) Diarra Moving is a household goods carrier subject to Commission regulation.
- 12 (3) Diarra Moving cured the deficiencies that led to the proposed unsatisfactory safety rating. Accordingly, Diarra Moving's safety rating should be upgraded to conditional, and the Company should be allowed to maintain its household goods carrier permit.
- 13 (4) Because the underlying dispute has been resolved, the Commission should cancel the brief adjudicative proceeding set for November 12, 2019, at 10 a.m.
- 14 (5) Pursuant to WAC 480-15-305(1)(b), the Commission should find good cause to extend Diarra Moving's provisional period until such time as the Company achieves a satisfactory safety rating.

ORDER

THE COMMISSION ORDERS THAT:

- 15 (1) The brief adjudicative proceeding set for November 12, 2019, at 10 a.m. is cancelled.
- 16 (2) The Commission approves Diarra Moving & Delivery Services LLC's safety management plan.
- 17 (3) Diarra Moving & Delivery Services LLC's safety rating is upgraded to conditional.
- 18 (4) Diarra Moving & Delivery Services LLC's provisional period is extended until such time as the Company achieves a satisfactory safety rating.

DATED at Lacey, Washington, and effective October 28, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson

RAYNE PEARSON

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 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) 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 does not 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).