April 28, 2011

David W. Danner, Executive Director and Secretary

Washington Utilities and Transportation Commission

1300 S. Evergreen Park Dr. SW

P. O. Box 47250

Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Moving and Storage Solutions, Inc.*

Commission Staff’s Response to Application for Mitigation of Penalties

Docket TV-110656

Dear Mr. Danner:

On April 15, 2011, the Washington Utilities and Transportation Commission (commission) issued Penalty Assessment TV-110656 against Moving and Storage Solutions, Inc. (Moving and Storage Solutions) in the amount of $500, for one violation of Washington Administrative Code (WAC) 480-15-570, which requires household goods carriers to comply with parts of Title 49, Code of Federal Regulations (CFR), including Part 382, which governs controlled substance and alcohol use and testing. Specifically, the commission alleged that Moving and Storage Solutions failed to receive a negative pre-employment controlled substance test result for a driver who operated company vehicles.

On April 25, 2011, Moving and Storage Solutions filed with the commission its application for mitigation of penalties (Mitigation Request). Moving and Storage Solutions admitted the alleged violation but asked that the penalty amount be waived.

Moving and Storage Solutions operates as a household goods carrier in Washington under permit number HG-11850. On April 5 and 6, 2011, Motor Carrier Safety Section staff (staff) conducted a compliance review of the company’s terminal safety records and equipment. As a result of that inspection, staff found that Moving and Storage Solutions had not received negative pre-employment controlled substance test results for a driver who was operating company equipment. Specifically, employee Chad Luna drove prior to undergoing a pre-employment controlled substance test.

In its Mitigation Request, Moving and Storage Solutions does not dispute that the violations occurred. The company states that it was not aware of the requirement to conduct pre-employment drug tests. Moving and Storage Solutions asks for a waiver of the penalties due to its ignorance of the law at the time the violations occurred.

The drug and alcohol testing requirements apply to every person and to all employers of such persons who operate commercial motor vehicles in the state of Washington. Through their incorporation in the commission’s rules in WAC 480-15-570(3) and WAC 480-15-999, the federal requirements in CFR Part 382.301(a) expressly apply to all household goods carriers in Washington. These regulations serve to protect passenger safety and the safety of the driving public.

On September 22, 2010, Phil Bryan, representing Moving and Storage Solutions, attended the commission’s household goods and tariff training. During the safety regulations portion of the training, the subject of drug and alcohol testing, including pre-employment drug testing, was covered in detail. Mr. Bryan initialed the form titled, “Verification of Training Received” indicating he had received the training.[[1]](#footnote-1)

With such recent and comprehensive technical assistance from the commission, there are no exceptions for ignorance of the law. Moving and Storage Solutions is responsible for understanding and complying with the regulations that apply to it as a household goods carrier. This includes ensuring that all of its drivers, prior to performing safety-sensitive functions, undergo pre-employment controlled substance testing with a negative test result.

Staff does not support mitigating the assessed penalty based on Moving and Storage Solutions’ Mitigation Request and recommends the request be denied.

If you have any questions, please contact Betty Young, Compliance Investigator, Transportation Safety, at 360-664-1202, or by e-mail at [byoung@utc.wa.gov](mailto:byoung@utc.wa.gov).

Sincerely,

David Pratt

Assistant Director, Transportation Safety

Enclosures

1. See Verification of Training Received form signed by Phil Byran, enclosed. [↑](#footnote-ref-1)