September 22, 2014

Steven V. King, 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. A Better Company, LLC d/b/a A Better Moving Company*

Commission Staff’s Response to Application for Mitigation of Penalties

Docket TV-143123

Dear Mr. King:

On August 28, 2014, the Washington Utilities and Transportation Commission (commission) issued Penalty Assessment TV-143123 against A Better Company, LLC d/b/a A Better Moving Company (A Better Moving Company) in the amount of $1,300, for one violation of WAC 480-15-560, which requires household goods carriers to comply with CFR Part 396 – Inspection, repair and maintenance, and 12 violations 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 391 - Qualification of drivers and Part 395 – Hours of service of drivers as follows:

* **$100 for one violation of** **WAC 480-15-560** which adopts **CFR Part 396.17(a)** – Using a commercial motor vehicle not periodically inspected. Neither of the company’s two vehicles received a periodic inspection in the past 12 months. This is a critical regulation but these are first-time violations, so the commission assessed a penalty of $100 for one violation of this type. Future violations of this regulation will result in penalties assessed for each violation.
* **$1,200 for** **12 violations of WAC 480-15-570** as follows:
	+ **Eleven violations of CFR Part 391.45(b)(1)** – Using a driver not medically examined and certified during the preceding 24 months. Driver Matthew Forza’s medical certificate expired 5/23/14. Current medical certificate issued 7/22/14. Mr. Forza drove 11 days in June without a valid medical certificate.
	+ **One violation of CFR Part 395.8(a)** – Failing to require a driver to make a record of duty status. Driver Matthew Forza failed to produce a record of duty status for 11 days. This is a critical regulation but these are first-time violations, so the Commission assessed a penalty of $100 for one violation of this type. Future violations of this regulation will result in penalties assessed for each violation.

On September 12, 2014, A Better Moving Company filed with the commission its application for mitigation of penalties (Mitigation Request). Jason Cates, owner of A Better Moving Company, admitted the violations but asked that the penalty amount be reduced for the reasons set out in the response. Mr. Cates responded to all of the violations noted in the compliance review. Staff will only respond to the violations for which the penalties were assessed.

A Better Moving Company operates as a household goods carrier under permit number THG-64629. On July 23, 2014, Motor Carrier Safety Inspector John Foster conducted a compliance review inspection at the carrier’s terminal. Compliance reviews are an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as “acute” or “critical.”[[1]](#footnote-1) Acute regulations are identified where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates.[[2]](#footnote-2) Mr. Foster found 31 total violations, all of which were first-time violations.

The commission’s Enforcement Policy, however, provides that some commission requirements are so critical to safe operations that the commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues.[[3]](#footnote-3) Of the 31 violations, 24 were of critical regulations.

As stated in the penalty assessment, the commission could have assessed up to $2,400 in penalties against A Better Moving Company for the violations found in the compliance review. Instead, based on the specific factors outlined in the penalty assessment, the commission only assessed $1,300 in penalties. In its Mitigation Request, A Better Moving Company did not provide any information that supports further mitigation of the penalty; therefore, staff 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.

Sincerely,

David Pratt

Assistant Director, Transportation Safety

Enclosures

1. Code of Federal Regulations, [Appendix B to Part 385—Explanation of safety rating process](http://www.fmcsa.dot.gov/regulations/title49/section/385.Appendix%20B%20to%20Part%20385) [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V. [↑](#footnote-ref-3)