



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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April 21, 2017

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive Southwest  
P.O. Box 47250  
Olympia, WA 98504-7250

Re: *Washington Utilities and Transportation Commission v. Right Turn Moving LLC*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TV-170178

Dear Mr. King:

In February 2017, Motor Carrier Safety Investigator Wayne Gilbert conducted a compliance review investigation of Right Turn Moving LLC (Right Turn Moving). A compliance review is an in-depth examination of the motor carrier's compliance with regulations that the Federal Motor Carrier Safety Administration has identified as "acute" or "critical."<sup>1</sup> Acute regulations are identified where non-compliance is so serious as to require immediate corrective actions regardless of the overall safety posture of the 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 management controls and unusually higher than average accident rates.<sup>2</sup> Mr. Gilbert found 110 violations, including occurrences, all of which were first-time violations.

The Commission's enforcement policy provides that some 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.<sup>3</sup> Of the 110 violations found, 103 were of acute or critical regulations.<sup>4</sup>

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<sup>1</sup> Title 49 CFR Part 385, Appendix B – Explanation of Safety Rating Process

<sup>2</sup> *Id.*

<sup>3</sup> Docket A-120061 – Enforcement Policy of the Washington Utilities and Transportation Commission, Section V.

<sup>4</sup> Although Investigator Gilbert identified 110 acute and critical violations, the Commission's enforcement policy specifies that certain first-time violation types be penalized as a single violation, even if multiple occurrences are discovered. In this case, the penalty assessment cited 102 violations of acute or critical regulations.

On March 23, 2017, the Commission issued a penalty assessment under docket TV-170178 against Right Turn Moving in the amount of \$10,200 for violations of WAC 480-15-560 Vehicle Safety Requirements and WAC 480-15-570 Driver Safety Requirements, which require household goods moving companies to comply with Title 49 CFR Parts 391, 395 and 396, as follows:

- **One-hundred violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Right Turn Moving allowed its driver Robert Tyler to operate a commercial motor vehicle on one-hundred occasions during the six months prior to the compliance review. Mr. Tyler drove 83 times in 2016 (19 times in September, 20 times in October, 23 times in November, and 21 times in December) and 17 times in 2017 (12 times in January and 5 times in February). Mr. Tyler's medical certificate had expired August 7, 2016.
- **One violation of CFR 395.8(a) – Failing to require driver to make a record of duty status.** Right Turn Moving driver Robert Tyler failed to provide a record of duty status on November 16, 2016.
- **One violation of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Right Turn Moving used both of its commercial vehicles after failing to have either vehicle periodically inspected.

On April 17, 2017, Right Turn Moving filed with the Commission an application for mitigation. In the application, Right Turn Moving Administrator Jennifer Tyler admitted the medical card violations, took full responsibility, described corrective steps taken, and requested the penalties be reduced by an unspecified amount. Ms. Tyler stated that the penalties were excessive for a company the size of Right Turn Moving. Ms. Tyler did not address the violations involving records of duty status or periodically inspected vehicles.

1. **Mitigation request: CFR Part 391.45(a) – Using a driver not medically examined and certified. (100 occurrences)** Right Turn Moving states that it overlooked the expiration date of Mr. Tyler's medical certificate, and unknowingly allowed him to drive. Once the company became aware, it directed its employee to immediately get an exam and a new card. This was corrected by the company the same day.

Right Turn Moving has also instituted new procedures to prevent future violations. The company has an electronic calendar alert in place, 45 days before expiration of each driver's medical card. This signals supervisory staff to take appropriate steps to ensure the employee gets re-examined and re-certified before the card expires. The company will also begin regular quarterly audits of each driver's qualification file. This will ensure that copies of current medical cards, as well as other required documents, are in the file.

**Staff response:** Staff considered the company's willingness to take responsibility for the violation, to immediately remove the driver from the road, and to make lasting policy and

procedural changes to prevent violations. Staff also considered the size of the company, and recommends mitigation of the \$10,000 penalty to \$3,000.

2. **Mitigation request: Part 395.8(a) – Failing to require driver to make a record of duty status.** Right Turn Moving's mitigation request did not address this violation.

**Staff response:** Because Right Turn Moving did not address this violation in its request, Staff is unable to recommend any mitigation of this \$100 penalty.

3. **Mitigation request: Part 396.17(a) – Using a commercial vehicle not periodically examined.** Right Turn Moving's mitigation request did not address this violation.

**Staff response:** Because Right Turn Moving did not address this violation in its request, Staff is unable to recommend any mitigation of this \$100 penalty.

Right Turn Moving is a small household goods moving company with two driver and two commercial vehicles. In 2016 the company reported \$216,728 in gross revenue and 59,764 miles traveled.

The company was cooperative and responsive, and has provided documentation that the most serious of the three violations has been corrected. Staff recommends mitigation of the \$10,200 penalty to \$3,200.

If you have any questions, please contact Mike Turcott, Compliance Investigator, Transportation Safety, at (360) 664-1174 or by e-mail at [miturcot@utc.wa.gov](mailto:miturcot@utc.wa.gov).

Sincerely,



David Pratt  
Assistant Director, Transportation Safety

Enclosures

