



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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June 14, 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. Can't Stop Moving LLC*
4253 2nd Avenue West, Seattle, WA 98119
Commission Staff's Response to Application for Mitigation of Penalties
Docket TV-170293

Dear Mr. King:

In April 2017, Motor Carrier Safety Investigator Wayne Gilbert conducted a compliance review investigation of Can't Stop Moving LLC (Can't Stop 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."¹ 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.² Mr. Gilbert found 534 violations (including multiple occurrences), 509 of which were repeat 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.³ Of the 534 violations found, 510 were of critical regulations.

On May 1, 2017, the Commission issued a penalty assessment under docket TV-170293 against Can't Stop Moving in the amount of \$51,900 for violations of Washington Administrative Code

¹ Title 49 CFR Part 385, Appendix B – Explanation of Safety Rating Process

² *Id.*

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

(WAC) 480-15-555 Criminal Background Checks for Prospective Employees, as well as WAC 480-15-560 Vehicle Safety Requirements, and WAC 480-15-570 Driver Safety Requirements, both of which require household goods carriers to comply with Title 49 Code of Federal Regulations (CFR) Parts 391, 392, 395 and 396, as follows:

1. **Five violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Can't Stop Moving had no documentation of having conducted criminal background checks on employees Prince Austin, Patrick Allen, Bobby Quinn, Tom Munson, and John Grueneberg.
2. **Four hundred ninety-two violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** In the six months preceding the compliance review, Can't Stop Moving allowed five of its drivers, Bobby Quinn, Tom Munson, John Grueneberg, Prince Austin, and Patrick Allen to drive on 492 occasions during which time the drivers were not medically examined and certified. Between October, 2016 and March, 2017 Mr. Quinn drove 99 times; Mr. Munson drove 93 times; Mr. Grueneberg drove 82 times; Mr. Austin drove 116 times; and Mr. Allen drove 102 times.
3. **Five violations of CFR 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Can't Stop Moving had no driver qualification files for employees Prince Austin, Patrick Allen, Bobby Quinn, Tom Munson, or John Grueneberg.
4. **Seventeen violations of CFR Part 392.2 – Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.** Prince Austin drove on 17 occasions during March 2017 during which time his driver's license was suspended.
5. **Two violations of CFR 395.8(a) – Failing to require driver to make a record of duty status using appropriate method.** Can't Stop Moving failed to require its employee Tom Munson to make a record of duty status after having been on duty for 13 hours on March 11, and 14 hours on March 24, 2017.
6. **Four violations of CFR 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Can't Stop Moving failed to keep minimum records of inspection and vehicle maintenance on its four vehicles.
7. **Four violations of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Can't Stop Moving failed to ensure its four commercial motor vehicles had been periodically inspected.

On June 1, 2017, Can't Stop Moving filed with the Commission an application for mitigation. In the application, Can't Stop Moving Owner Eric Michelson admitted the violations, requested the penalty amount be reduced by an unspecified amount, provided supporting documentation, and requested a hearing to present evidence in support of his mitigation request. Staff believes that Can't Stop Moving provided sufficient information in its application for mitigation and that a hearing is not necessary. The company's explanation for each violation and staff response follows.

1. **Mitigation request: WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Can't Stop Moving has completed background checks on all of its affected employees, has added the required documentation to the employee files and has adopted procedures to ensure background checks are conducted and documented as required in the future.

Staff response: The company has admitted and corrected the violations, and taken steps to prevent future occurrences. Staff recommends mitigation of this penalty from \$500 to \$200.

2. **Mitigation request: CFR Part 391.45(a) – Using a driver not medically examined and certified.** All drivers have been medically examined and certified and the company has a contract with a clinic to provide examinations on all new drivers.

Staff response: The company has admitted and corrected the violations, and taken steps to prevent future occurrences. Staff recommends mitigation of this penalty from \$49,200 to \$24,000.

3. **Mitigation request: CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Can't Stop Moving has created and is maintaining qualification files for each driver. In addition, the company has pre-printed forms available for new drivers and has established a schedule for periodic auditing of driver files.

Staff response: The company has admitted and corrected the violations, and taken steps to prevent future occurrences. The \$100 penalty assessed for these violations is the minimum possible penalty for one violation of this type and staff recommends no further mitigation of this penalty.

4. **Mitigation request: CFR Part 392.2 – Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.** Can't Stop Moving has established an "amnesty" policy whereby employees are encouraged to self-report any issues with their driver's licenses. In addition, the company has established a schedule for periodic auditing of employees' driving histories.

Staff response: The company has admitted and corrected the violations, and taken steps to prevent future occurrences. Staff recommends mitigation of this penalty from \$1,700 to \$800.

5. **Mitigation request: CFR Part 3951.8(a) – Failing to require driver to make a record of duty status using appropriate method.** Can't Stop Moving has placed log books in each vehicle and provided training to its drivers on when a driver's log entry is required and the proper format for making such entries.

Staff response: The company has admitted and corrected the violations, and taken steps to prevent future occurrences. Staff recommends mitigation of this penalty from \$200 to \$100.

6. **Mitigation request: CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Can't Stop Moving has created and is maintaining maintenance

files on all vehicles and has procedures in place for ensuring maintenance is completed and documented.

Staff response: The company has admitted and corrected the violations, and taken steps to prevent future occurrences. The \$100 penalty assessed for these violations is the minimum possible penalty for one violation of this type and staff recommends no further mitigation of this penalty.

7. **Mitigation request: CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Can't Stop Moving has established a periodic maintenance plan and created calendar reminders to ensure required periodic maintenance occurs.

Staff response: Staff appreciates the company's efforts to ensure necessary periodic maintenance takes place, however it failed to address the violation cited. CFR Part 396.17(a) addresses periodic inspections, not maintenance. Every commercial motor vehicle must be periodically inspected by a qualified person as specified in the regulation. Because the company's mitigation request failed to address this violation, staff recommends no further mitigation of this \$100 penalty.

Staff recommendation: Staff appreciates Can't Stop Moving's positive attitude toward safety compliance and willingness to take responsibility for and correct safety violations. Can't Stop Moving is a small company, with nine drivers and four commercial vehicles. In 2016 the company reported 18,642 miles traveled and \$1,345,183 in gross revenue.

Staff recommends mitigation of the penalty from \$51,900 to \$25,400. Staff further recommends suspension of \$15,400 of the penalty for a period of two years on the condition that company has no additional violations of the regulations cited in the penalty assessment. Staff also recommends that the company be required to immediately pay the remaining penalty amount of \$10,000 or establish a mutually acceptable payment schedule.

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.

Sincerely,



David Pratt
Assistant Director, Transportation Safety