

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of I HEART MOVERS, LLC, for Compliance with WAC 480-15	DOCKETS TV-210308, TV-210309, and TV-210563 (<i>Consolidated</i>)
In the Matter of the Penalty Assessment against I HEART MOVERS, LLC, in the amount of \$19,600	ORDER 02 / 01 CONSOLIDATING DOCKETS; GRANTING MOTION; APPROVING APPLICATION AND REINSTATING HOUSEHOLD GOODS PERMIT SUBJECT TO CONDITIONS
In the Matter of the Application to Reinstate the Provisional Household Goods Carrier Permit of I HEART MOVERS, LLC	

BACKGROUND

- 1 On May 14, 2021, the Washington Utilities and Transportation Commission (Commission) issued in Docket TV-210308 a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding, Setting Time for Oral Statements in the Matter of the Investigation of I Heart Movers, LLC, (IHM or Company) for Compliance with Washington Administrative Code (WAC) 480-15 (Notice).
- 2 The Notice explained that Commission staff (Staff) conducted a follow-up compliance review of IHM's operations in April 2021 and cited the Company for 225 violations of federal and state safety regulations, which resulted in a proposed conditional safety rating. Based on its review, Staff recommended the Commission cancel IHM's household goods carrier permit unless the Company obtains Commission approval of a safety management plan. The Notice directed IHM to file a proposed safety management plan

by June 10, 2021. The Notice also set a brief adjudicative proceeding for June 24, 2021, at 1:30 p.m. to determine whether the Commission should cancel IHM's household goods carrier permit.

3 On May 19, 2021, the Commission assessed in Docket TV-210309 a \$19,600 penalty (Penalty Assessment) against IHM for the safety violations discovered during Staff's April 2021 compliance review. The Penalty Assessment included:

- A \$1,000 penalty for 10 violations of WAC 480-15-555 for failing to acquire criminal background checks for prospective employees.
- A \$100 penalty for 30 violations of WAC 480-15-590(4) for failing to maintain a rental agreement with the required information about the commercial motor vehicle leased.
- A \$100 penalty for 12 violations of 49 C.F.R. § 391.11(b)(5) for failing to have valid commercial motor vehicle operator's license.
- An \$8,200 penalty for 82 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
- A \$9,000 penalty for 90 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status.
- A \$100 penalty for one violation of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

4 On May 26, 2021, IHM filed with the Commission a request for mitigation of the penalty, admitting the violations and requesting the Commission reduce the assessed penalty.

5 On June 24, 2021, the Commission conducted a virtual brief adjudicative proceeding before Administrative Law Judge Rayne Pearson. Because the violations cited in Staff's April 2021 investigation gave rise to the enforcement actions taken in both dockets, the Commission exercised its discretion to consolidate Dockets TV-210308 and TV-210309.

6 At hearing, Staff presented testimony and documentation of the critical safety violations that resulted in Staff's proposed conditional safety rating. Staff testified to the Commission's enforcement policy and the technical assistance provided to IHM since it first obtained its provisional household goods permit in November 2018. IHM had been penalized \$9,100 in July 2020 in Dockets TV-200627 and TV-200628 (*Consolidated*) for violations of Commission safety regulations. Those violations resulted in a proposed unsatisfactory safety rating. In those consolidated proceedings, the Commission ordered Staff to conduct a follow-up safety investigation. That follow-up safety investigation was

performed in April 2021 and gives rise to the proposed conditional safety rating and penalty assessment at issue in these consolidated proceedings.

7 At hearing, the owner of the Company testified, admitted each of the violations, requested the penalty be reduced, requested that the Company be allowed to maintain its permit, and indicated that the deficiencies contained in the Company's prior proposed safety management plan had been corrected and resubmitted for Staff's review shortly before the hearing.

8 On June 25, 2021, Staff filed its evaluation of the Company's revised proposed safety management plan, as agreed at hearing. After review, Staff maintained its recommendation that the Commission cancel the Company's permit due to the repeated violations discovered and because the revised proposed safety management plan was not supported by evidence that the Company had taken corrective actions to address the violations, or that the Company's operations currently meet the safety fitness standards set forth in 49 C.F.R Parts 385.5 and 385.7.

9 The Commission issued Order 01 in Dockets TV-210308 and TV-210309 (*Consolidated*) on June 24, 2021, cancelling IHM's provisional household goods permit and ordering it to cease and desist unless and until its permit was reinstated or it obtained a new permit from the Commission, and also assessing a reduced penalty of \$10,000 and suspending that penalty amount for two years, after which the penalty amount would be waived if IHM refrained from operating as a household goods carrier unless and until it obtained a household goods permit from the Commission (Order 01).

10 On July 8, 2021, the Company submitted to Staff an updated safety management plan addressing each violation noted during the safety investigation.

11 On July 19, 2021, the Company filed with the Commission in Docket TV-210563 an Application for Reinstatement of its provisional household goods permit (Application).

12 On July 30, 2021, Staff filed with the Commission in Dockets TV-210308 and TV-210309 (*Consolidated*) and Docket TV-210563 a letter moving the Commission to approve the Application and reinstate IHM's provisional household goods permit subject to conditions (Motion).¹ Staff indicates that, after its review, the Company's updated

¹ Although failing to comply with the procedural guidelines for motions in Chapter 480-07 WAC, the Commission exercises its discretion to liberally construe the letter filed by Staff with a view to effect justice among the parties. WAC 480-07-395(4). The Commission will, therefore,

safety management plan “demonstrates that IHM has taken appropriate action to develop a compliant safety program and implement[] a system, that if followed, should prevent future repeat violations.”² Staff recommends the Commission approve the Application and reinstate IHM’s provisional permit subject to the following conditions:

- (1) IHM must pay in full the remaining \$3,550 penalty from Dockets TV-200627 and TV-200628 (*Consolidated*) according to a payment plan effective September 1, 2021, and consisting of 11 monthly installments of \$300 and one final installment of \$250, with the first due by September 1, 2021, and all subsequent installments due no later than the 1st of each month.
- (2) All employees of IHM must attend the August household goods training provided by the Commission.
- (3) Six months from the date of reinstatement, Staff will perform a focused review of the Company’s hours of service records, criminal background checks, and driver’s medical certification.
- (4) IHM must achieve a satisfactory safety rating following a comprehensive safety investigation conducted by Staff one year from the date of reinstatement.
- (5) IHM must not receive any repeat critical violations during the follow-up inspections.
- (6) Any violation of these conditions will be grounds for cancellation of IHM’s operating authority as an intrastate household goods mover in Washington.

13 On August 24, 2021, the Commission issued a Notice of Substitution of Presiding Officer, appointing Administrative Law Judge Andrew J. O’Connell as the presiding officer for Dockets TV-210308 and TV-210309 (*Consolidated*).

DISCUSSION AND DECISION

14 As a threshold matter, the Commission finds that facts and principles of law in Dockets TV-210308 and TV-210309 (*Consolidated*) and Docket TV-210563 are related and exercises its discretion to consolidate the proceedings on its own motion.

consider Staff’s request as a “motion” based primarily on the relief requested rather than the formatting, appearance, and name of document submitted. *See* WAC 480-07-395(4).

² Staff’s Motion at 2.

- 15 A household goods carrier can apply for reinstatement of its canceled permit within 30 days if the carrier corrects all conditions that led to the permit's cancellation and pays a \$250 reinstatement fee.³
- 16 In its Application, IHM states it has now updated its safety management plan to Staff's satisfaction. IHM also indicated payment of the required reinstatement fee and included a personal statement justifying the reinstatement in its Application.
- 17 In its Motion, Staff confirms that IHM corrected the conditions that led to the permit's cancellation and submitted an acceptable safety management plan. The safety management plan includes documentation of driver qualifications, hours of service records, support statements, insurance, vehicle leasing, and criminal background check information. Additionally, IHM supported its plan with evidence that it had created a compliance tracking system along with calendar reminders for future compliance dates. Last, IHM has hired additional staff to oversee the safety compliance program and stated that it intends to require its drivers to attend the Commission's household goods training.
- 18 The Commission has authority to place conditions on reinstating a household goods carrier's permit due to violations federal or state law, or the Commission's rules.⁴ Here, it is appropriate to do so.
- 19 Washington Law requires household goods carriers, like IHM, to comply with federal safety requirements and undergo routine safety inspections. IHM has been penalized by the Commission for multiple and repeat violations of critical safety regulations in the several dockets memorialized in this Order. Violations classified as "critical" are indicative of a breakdown in a carrier's management controls. Patterns of noncompliance with critical regulations are linked to inadequate safety management controls and higher than average accident rates. The Commission determines, therefore, that IHM's Application should only be approved subject to conditions that will aid in the Company's efforts to break its patterns of noncompliance, thereby reducing the risks to the public.
- 20 The Commission finds the conditions proposed by Staff appropriate. Staff indicates that it discussed the proposed payment plan with the Company. No other indication of the Company's assent to the proposed conditions has been provided to the Commission. As Staff's Motion would resolve one or more of the substantive issues presented (whether

³ WAC 480-15-450(4); WAC 480-15-230.

⁴ See WAC 480-15-145(9); RCW 81.80.280.

the Commission should approve IHM's Application), it is dispositive.⁵ IHM had, therefore, either 10 or 20 days from July 30, 2021, to file a response indicating its position on the proposed conditions if it so desired.⁶ IHM has provided no response to date; more than 20 days after Staff's Motion was filed. Under these circumstances, the Commission finds that IHM has failed to take its opportunity to respond to Staff's Motion, that due process requirements have been met, and the Commission may issue a decision on Staff's Motion. The conditions proposed by Staff require additional training of IHM's employees, and establish expectations for future safety investigations of the Company. These conditions, and the consequences of any failure to meet them, should positively affect regulatory compliance by the Company. Accordingly, the Commission determines that Staff's Motion should be granted, and the Application should be approved subject to the conditions outlined in Paragraph 12.

21 Order 01 assessed a penalty of \$10,000, which was suspended for a period of two years and waived thereafter provided that IHM refrained from operating as a household goods carrier until its permit was reinstated. It is unclear what effect the reinstatement of its permit will have on IHM's suspended penalty amount, assessed in Order 01. Order 01 implies that the suspended penalty amount should either be expunged upon the reinstatement of IHM's permit, or it should be reinstated and paid immediately to the Commission. We resolve this lack of clarity, finding that it is fair and just to expunge the suspended penalty amount under the circumstances of this case. As a condition of reinstatement, the Commission imposes a \$3,550 penalty to be paid in installments to the Commission over the following 12 months. This penalty amount (lesser compared to the \$10,000 suspended penalty), coupled with reincorporating the Company into the regulatory fold, better serves the Commission's goals of compliance and safety than reinstating a suspended \$10,000 penalty when the Company has failed to trigger that suspended penalty amount through any misdeed. The Commission determines, therefore, that the rationale supporting the \$10,000 suspended penalty assessed by Order 01 no longer exists and the suspended penalty should be expunged.

FINDINGS AND CONCLUSIONS

22 (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

⁵ WAC 480-07-375(1)(a).

⁶ See WAC 480-07-380(1)(c); WAC 480-07-380(2)(c).

service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.

- 23 (2) IHM is a household goods carrier subject to Commission regulation.
- 24 (3) The Commission canceled IHM's authority to operate as a household goods carrier on June 25, 2021, due to its failure to cure the deficiencies that led to its proposed conditional safety rating or demonstrate that its operations currently meet the safety fitness standards set forth in 49 C.F.R Parts 385.5 and 385.7.
- 25 (4) The Commission found IHM had committed 225 critical violations of WAC 480-15 and Title 49 C.F.R. and for these violations assessed a \$10,000 penalty, which the Commission suspended for two years, after which it would be waived, subject to the condition that IHM refrains from operating as a household goods carrier without first obtaining a reinstatement of its permit or a new permit from the Commission.
- 26 (5) IHM submitted an acceptable safety management plan on July 7, 2021.
- 27 (6) IHM filed with the Commission an application for reinstatement of its canceled permit within 30 days of its cancellation.
- 28 (7) IHM has met the requirements for reinstatement of its canceled permit.
- 29 (8) Staff filed a motion in these consolidated dockets on July 30, 2021, requesting that the Commission approve IHM's application for reinstatement of its canceled permit subject to the conditions outlined in Paragraph 12.
- 30 (9) Staff's motion should be granted and IHM's application for reinstatement of its canceled permit should be approved subject to the conditions outlined in Paragraph 12.
- 31 (10) The conditions imposed by this Order, including the assessed \$3,550 penalty to be remitted to the Commission over 12 months, should be sufficient to ensure the Company's compliance with the Commission's regulations. The \$10,000 suspended penalty assessed by Order 01 is therefore unnecessary and unjust and should be expunged.

ORDER

THE COMMISSION ORDERS:

- 32 (1) Dockets TV-210308, TV-210309, and TV-210563 are consolidated.
- 33 (2) Commission staff's motion is GRANTED.
- 34 (3) I Heart Movers, LLC's application to reinstate its provisional household goods
carrier permit is APPROVED subject to the conditions in Paragraph 12.
- 35 (4) The \$10,000 suspended penalty assessed by Order 01 is expunged.

DATED at Lacey, Washington, and effective August 24, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Andrew J. O'Connell
ANDREW J. O'CONNELL
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).