

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper  
Carrier Classification of, and Complaint  
for Penalties Against

TRANSIT SYSTEMS, INC. d/b/a  
MOVES FOR SENIORS

DOCKET TV-170747

ORDER 04

ORDER DENYING PETITION FOR  
ADMINISTRATIVE REVIEW OF  
INITIAL ORDER 03

**BACKGROUND**

- 1 On July 17, 2017, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing (Order 01) initiating this docket on its own motion. Order 01 alleged that Transit Systems, Inc. d/b/a Moves for Seniors (MFS or Company) violated RCW 81.80.075(1) by offering and advertising household goods moving services within the state of Washington without the permit required for such operations.<sup>1</sup> The Commission simultaneously issued a subpoena requiring MFS to appear before the Commission at a special proceeding on October 25, 2017, and to bring the documents specified in the subpoena. The Company appeared at the special proceeding, contested the allegations set out in the Complaint, and requested an opportunity to present testimony and evidence demonstrating that its operations do not require a permit from the Commission.
- 2 The Commission convened a Brief Adjudicative Proceeding (BAP) before an Administrative Law Judge on December 19, 2017. Staff presented documentary evidence and testimony from Susie Paul, compliance investigator. Chris Pienkowski, vice president of business development, testified for the Company. Both witnesses were cross-examined. The parties filed briefs on January 31, 2018.

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<sup>1</sup> RCW 81.80.010(5) provides that: "'Household goods carrier' means a person who transports for compensation, by motor vehicle within this state, *or who advertises*, solicits, *offers*, or enters into an agreement to transport household goods as defined by the commission.'" (Emphasis added).

- 3 On February 13, 2018, the Commission entered Order 03, Initial Order Classifying Respondent as a Household Goods Carrier; Ordering Respondent to Cease and Desist; Imposing and Suspending Penalties on Condition of Future Compliance. MFS filed its Petition for Administrative Review of Order 03 on March 2, 2018. Staff filed its Answer opposing the Petition on March 12, 2018.

### DISCUSSION AND DECISION

- 4 We deny MFS's Petition both to the extent it challenges the Initial Order's classification determination that the Company is a "household goods carrier" subject to Commission regulation as "a person who . . . advertises, solicits, offers, or enters into an agreement to transport household goods,"<sup>2</sup> and with respect to its determination that MFS committed the two violations alleged and should be penalized accordingly. Because MFS lacks the required permit to conduct business as a household goods carrier, we also sustain the Initial Order's determination that MFS should be required to cease and desist from activities subject to regulation under Title 81 RCW.
- 5 MFS's Petition, in large part, simply reiterates the arguments it presented to the Administrative Law Judge following the BAP. These arguments were thoroughly addressed by the Initial Order, and rejected for the reasons stated in the Initial Order. We will not repeat the detailed discussion included in Order 03 here. Rather, we elect to adopt the Initial Order as our own, with the additional discussion below.

#### Commission Jurisdiction Vis-à-vis New Business Models

- 6 RCW Chapter 81 and the provisions of WAC 480-15 govern the Commission's regulatory authority and obligations with respect to intrastate transportation operators, including "household goods carrier[s]" as defined in RCW 81.80.010(5), which states: "Household goods carrier' means a person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods as defined by the commission." It is unlawful for any person to "engage in business as a household goods carrier without first obtaining a household goods carrier permit from the commission."
- 7 WAC 480-15-020 defines "household goods" as:

The personal effects and property used, or to be used, in a residence when transported or arranged to be transported between residences or between a residence and a storage facility with the intent to later transport to a

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<sup>2</sup> See *supra* n. 1 (quoting RCW 81.80.010(5) in full).

residence or when referenced in connection with advertising, soliciting, offering, or entering into an agreement for such transportation.

Transportation of the goods must be arranged and paid for by the customer or by another individual, company or organization on behalf of the customer.

This rule also defines a “[c]arrier or household goods carrier” as “[a] person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods.” Finally, as relevant here, WAC 480-15-020 defines “[e]ngaging in business as a household goods carrier” as “[t]ransporting household goods for compensation, by motor vehicle within this state, or advertising, soliciting, offering, or entering into an agreement to transport household goods.”

8 Thus, the Commission has jurisdiction over:

1. Persons who transport household goods for compensation, commonly known as “moving companies;” and
2. Persons who advertise, solicit, offer, or enter into agreements to transport household goods.

9 RCW 81.04.510 provides in relevant part that:

Whether or not any person or corporation is conducting business requiring operating authority, or has performed or is performing any act requiring approval of the commission without securing such approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in operations without the necessary approval or authority required by any provision of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and bring with him or her or it books, records, accounts, and other memoranda, and give testimony under oath as to his or her or its operations or acts, and the burden shall rest upon such person or corporation of proving that his or her or its operations or acts are not subject to the provisions of this chapter. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After having made the investigation herein described, the commission is authorized and directed to issue the necessary order or orders declaring the operations or acts to be subject to, or not subject to, the provisions of this title. In the event the operations or acts are found to be subject to the provisions of this title, the commission is authorized and directed to issue cease and desist orders to all parties involved in the operations or acts.

The Commission informally refers to these proceedings as “classification proceedings.”

10 On several recent occasions, including this docket, the Commission has acted on its own motion to initiate a classification proceeding under RCW 81.04.510 with respect to persons alleged to be household goods movers subject to the Commission’s jurisdiction by virtue of their activities that typically involve the use of third party independent contractors to physically move a customer’s household goods from one location to another.<sup>3</sup> The business models each respondent was alleged to have implemented focused on advertising, soliciting, offering, or entering into agreements to transport household goods, not physically moving the household goods using company employees and vehicles. Upon proof of these allegations in the *Ghostruck* docket, for example, as discussed in Orders 04 and 05 in that proceeding, the Commission classified the company as a household goods carrier and penalized it for specific violations of RCW Chapter 81.80. The Commission also ordered *Ghostruck* to cease and desist from operating as a household goods carrier in Washington without first obtaining a permit from the Commission.

11 In this docket, Order 03 finds that: “[o]n at least two occasions, MFS has advertised, solicited, or offered to transport household goods for compensation within the state of Washington without first having obtained a household goods carrier permit from the Commission, in violation of RCW 81.80.075.” In point of fact, although Staff sought to impose only a single penalty for advertising, the record shows MFS advertising on multiple Internet web sites, and each advertisement supports the classification of the Company as a household goods carrier and would support a separate penalty.<sup>4</sup> The record also establishes that MFS’s business model requires customers to enter into agreements with MFS that provide for transportation of the customer’s household goods.<sup>5</sup> This

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<sup>3</sup> See also, *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against Ghostruck Inc.*, Docket TV-161308, Order 05 (June 1, 2017); *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against: Dolly, Inc.*, Docket TV-171212, Order 01 Instituting Special Proceeding (January 18, 2018).

<sup>4</sup> Order 03 ¶¶ 20, 40 (citing RCW 81.80.075(4)(a)).

<sup>5</sup> Order 03 ¶ 22.

practice, too, establishes that MFS is a household goods carrier within the meaning of the Commission's governing statutes and rules.<sup>6</sup>

12 We underscore that the Commission is obligated to exercise its jurisdiction and carry out its duty, as presently defined by statute, to order businesses that follow this business model to cease and desist from such activities.<sup>7</sup> The MFS business model undercuts the important consumer protections established by RCW Chapter 81.80 and the Commission's rules in WAC Chapter 480-15. The record in this case shows, for example, that MFS has arranged for the transportation of household goods by unlicensed carriers on multiple occasions.<sup>8</sup> This means that customers are denied the protections afforded by the Commission's rules concerning public liability and property damage insurance (WAC 480-15-530), cargo insurance (WAC 480-15-550), criminal background checks of drivers and helpers (WAC 480-15-555), equipment safety requirements (WAC 480-15-560), and driver safety requirements (WAC 480-15-570).

13 In addition, customers may be denied the protections afforded by Commission rules concerning information carriers are required to provide to customers (WAC 480-15-620), requirements for estimates and supplemental estimates (WAC 480-15-630 and -660), requirements for bills of lading (WAC 480-15-710), and tariff requirements concerning shipment weights (WAC 480-15-750). While MFS claims that its customers receive a second estimate from a licensed carrier prior to the move, there is no evidence demonstrating this to be true.<sup>9</sup> Mr. Pienkowski testified for MFS that customers receive from the Company's vendor movers "all required documentation regarding consumer protection and anything else that may be required by the Commission because they are licensed through the Commission to perform these moves." Again, not only is there no

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<sup>6</sup> The Commission did not oppose, and provided testimony concerning, House Bill 2604 and Substitute Senate Bill 6234 during the 2018 session of the Washington legislature. Had this legislation passed into law the Commission's statutory authority over household goods carriers and other common carriers would have changed. These bills did not become law. However, in its Supplemental Operating Budget, ESSB 6032, the legislature directed "the Commission to convene a task force to make recommendations and report to the legislature regarding the most effective method of regulation of digital application-based micro-movers and the small goods movers that utilize their digital application. The report is due to the legislature by December 15, 2018." ESSB 6032, Sec. 141(6).

<sup>7</sup> See RCW 81.04.510.

<sup>8</sup> Order 03 ¶ 9.

<sup>9</sup> *Id.* ¶ 21.

evidence of this, the claim is belied by the Company's admission that it has contracted with unlicensed carriers.<sup>10</sup>

- 14 The Commission's Complaint in this docket alleged that MFS violated RCW 81.80.075(1) "at least once by offering to transport household goods without first having obtained" the necessary permit. Ms. Paul testified that a former Staff member whose work she supervised, following Commission investigation protocols, contacted the Company by email on May 5, 2017, using an assumed name to inquire about household goods moving services between two points in Bellevue.<sup>11</sup> MFS responded the next day and offered to provide the requested service. A Company employee quoted a price of \$638 for a 4-hour move that included two men, a truck, and a travel fee.
- 15 MFS's witness, Mr. Pienkowski testified that the Company's offer was one for relocating furniture from one unit to another within a building, not between two points in Bellevue.<sup>12</sup> At best, the evidence on which he relied is ambiguous, and we find reasonable and agree with the interpretation of that evidence in Order 03, which is supported by Ms. Paul's testimony concerning standard Commission practices in investigations and her interactions with the Staff investigator who arranged for the offer to be made by MFS.<sup>13</sup> In contrast, there is no independent evidence supporting Mr. Pienkowski's interpretation. We affirm the analysis of this disputed evidence in Order 03 and find it supports finding that MFS offered on this occasion to transport household goods in Washington for compensation without having first obtained the permit necessary to do so, thus violating RCW 81.80.075(1).
- 16 The Commission's Complaint also alleged that MFS violated RCW 81.80.075(1) "at least once by advertising to transport household goods without first having obtained" the necessary permit. Staff presented testimony and exhibits documenting MFS's posted advertisements on its website, [www.movesforseniors.com](http://www.movesforseniors.com), as well as websites for Holiday Touch, LinkedIn, Yelp, and Facebook. Although each of these advertisements is a separate violation of RCW 81.80.075(1), as previously discussed, the Commission's Complaint alleges only one violation of this statute on the basis of advertising and does not tie its allegation to any particular advertisement.<sup>14</sup> This evidence supports the

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<sup>10</sup> *Id.* ¶ 23

<sup>11</sup> Paul, TR. 64:22 – 66:2.

<sup>12</sup> Pienkowski, TR 95:9-11.

<sup>13</sup> Order 03 ¶¶ 29-31.

<sup>14</sup> We note that each day an advertisement is published also is a separate violation. *See* RCW 81.04.380; *See also* RCW 81.04.405.

allegation that MFS violated RCW 81.80.075(1) by advertising to transport household goods without first having obtained the necessary permit.

17 Order 03 adopts Staff’s recommendation that the Commission impose the maximum financial penalty of \$5,000 for each of the two violations alleged in the Complaint, for a total penalty of \$10,000 and Staff’s further recommendation that the Commission suspend a \$5,000 portion of the penalty for two years, and then waive it, subject to the condition that the Company refrains from operating as a household goods carrier in the state of Washington without first obtaining a permit. We, too, agree with, and accept Staff’s recommendations. We will further condition the suspension of a portion of the penalty on the Company timely paying the unsuspended portion.

18 While we are denying MFS’ petition today, the Commission has previously committed to an open and robust dialogue on the impact current statutes and Commission rules have on new business models in the household goods moving industry.<sup>15</sup> Also, as noted above, the legislature has directed the Commission to convene a task force on this topic with a report due by December 15, 2018.

#### FINDINGS AND CONCLUSIONS

19 (1) The Commission is an agency of the state of Washington vested by statute with authority to regulate persons engaged in the business of transporting household goods for compensation over public roads in Washington.

20 (2) The Commission has jurisdiction over the subject matter of this proceeding and over MFS. Specifically, the Commission has jurisdiction over both persons who transport household goods for compensation, commonly known as “moving companies,” and persons who advertise, solicit, offer, or enter into agreements to transport household goods.

21 (3) MFS is a “household goods carrier” within the meaning established by governing authority in RCW Chapter 81.80 and WAC Chapter 480-15 because the preponderance of substantial competent evidence in the record concerning MFS’s business model and the Company’s conduct shows that MFS advertises, solicits, offers, and enters into agreements to transport household goods in Washington for compensation.

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<sup>15</sup> Docket TV-170999, Order 01 ¶ 13.

- 22 (4) MFS has not obtained or applied for a permit from the Commission authorizing the Company to conduct business in Washington as a household goods carrier.
- 23 (5) Under RCW 81.80.075(1), it is unlawful to operate as a household goods carrier in Washington without first obtaining the required permit from the Commission. Any person who engages in business as a household goods carrier without the required permit is subject to a penalty of up to \$5,000 per violation under RCW 81.80.075(4).
- 24 (6) Upon proof of unauthorized operations, RCW 81.04.510 authorizes and directs the Commission to order an unpermitted household goods carrier to cease and desist its activities. MFS should be directed to cease and desist from providing household goods carrier services over public roads in Washington as required by RCW 81.04.510.
- 25 (7) On at least two occasions, as alleged by Staff, MFS advertised, solicited, or offered to transport household goods for compensation within the state of Washington without first having obtained a household goods carrier permit from the Commission, in violation of RCW 81.80.075.
- 26 (8) MFS should be penalized \$10,000 for two violations of RCW 81.80.075, a \$5,000 portion of which should be suspended for a period of two years, and then waived, provided the Company (a) pays the remaining \$5,000 portion of the penalty when due, and (b) ceases and desists from operating as a household goods carrier without first obtaining the required permit from the Commission. The Company should pay the remaining \$5,000 portion of the penalty no later than 10 days from the effective date of this Order.

**ORDER**

**THE COMMISSION ORDERS:**

- 27 (1) Transit Systems, Inc. d/b/a Moves for Seniors is classified as a household goods carrier within the state of Washington.
- 28 (2) Transit Systems, Inc. d/b/a Moves for Seniors is ordered to immediately and permanently cease and desist operations as a household goods carrier within the state of Washington unless and until it obtains a permit from the Commission.
- 29 (3) Transit Systems, Inc. d/b/a Moves for Seniors is assessed a penalty of \$10,000. A \$5,000 portion of the penalty is suspended for a period of two years from the date



of this Initial Order, and waived thereafter, provided Transit Systems, Inc. d/b/a Moves for Seniors (a) pays the remaining \$5,000 portion of the penalty when due, and (b) ceases and desists from further operations as a household goods carrier in Washington without first obtaining the required permit from the Commission. Transit Systems, Inc. d/b/a Moves for Seniors must pay the remaining \$5,000 penalty no later than 10 days from the effective date of this Order.

- 30 (4) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective March 21, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner