

[Service Date October 11, 2013]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper)	DOCKET TV-131608
Carrier Classification of, and Complaint)	
for Penalties against:)	AMENDED ORDER 02
)	
MUNN, DARYL d/b/a)	INITIAL ORDER CLASSIFYING
INNOVATIVE MOVING CO.)	RESPONDENT AS HOUSEHOLD
)	GOODS CARRIER; ORDERING
)	RESPONDENT TO CEASE &
)	DESIST; AND IMPOSING
)	PENALTIES; DEFAULT ORDER
)	
.....)	

INTRODUCTION

Synopsis. *This is an Administrative Law Judge’s Initial Order that is not effective unless approved or allowed to become effective as described in the notice at the end of this Order. If this Initial Order becomes final, the Commission will find Daryl Munn d/b/a Innovative Moving Co. in default for failing to appear at the hearing. In addition, if this Initial Order becomes final, Daryl Munn d/b/a Innovative Moving Co., will be classified as a household goods carrier, assessed a financial penalty in the amount of \$5,000 for two (2) violations of RCW 81.80.075(1), and required to cease and desist from operating as a household goods carrier without first obtaining a permit from the Commission.*

1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine whether Daryl Munn d/b/a Innovative Moving Co. (Innovative Moving Co.), has engaged, and continues to engage, in business as a common carrier for transportation of household goods for compensation within the state of Washington without possessing the permit required for such operations.

2 **Procedural History.** On Sept. 7, 2013 the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing, pursuant to RCW 81.04.510, initiating this docket on its own motion. The Complaint alleges that Innovative Moving Co. violated RCW 81.80.075(1) by:

(1) offering on at least one occasion to transport household goods within the state of Washington

(2) advertising household goods moving services within the state of Washington on at least one occasion

without the necessary permit required for such operations. On the same date, the Commission issued a *Subpoena and Subpoena Duces Tecum For Production of Documents* (Subpoenas) to the company commanding Innovative Moving Co. to appear before the Commission at a special proceeding scheduled to convene at 9:30 a.m., Oct. 8, 2013, in the Commission's offices at 1300 S. Evergreen Park Drive S.W., Olympia, Washington, and to bring the documents specified in the *Subpoenas*.

3 On Sept. 7, 2013, the Commission personally served (via legal messenger) the Complaint and Order Initiating Special Proceeding and Subpoenas on Ranie Hamilton, Daryl Munn's co-resident in Bremerton, WA.

4 **Hearing.** On Oct. 8, 2013, the hearing convened, as scheduled, in Olympia, Washington, before Administrative Law Judge Adam Torem. Commission Staff was the only party appearing at the hearing. Commission Staff moved for default pursuant to RCW 34.05.440(2) and WAC 480-07-450. Commission Staff also requested that it be allowed to present a prima facie case demonstrating that Innovative Moving Co. was operating as a household goods carrier without the required permit being issued by the Commission.

5 RCW 34.05.440(2) allows the presiding officer discretion to enter a "default or other dispositive order" if a party fails to appear at the hearing. Based on the failure of Innovative Moving Co. to appear or otherwise comply with the Commission's subpoenas, the Administrative Law Judge granted Commission Staff's request to enter a default order and to allow for presentation of its case.

6 Commission Staff presented the testimony of one witness, Ms. Lauren McCloy. Commission Staff provided a brief summary oral argument at the close of the hearing.

7 **Initial Order.** The presiding administrative law judge finds Innovative Moving Co. in default pursuant to RCW 34.05.440(2) and WAC 480-07-450(1). Further, the presiding administrative law judge finds that Innovative Moving Co. is operating as a household goods carrier without a permit. Further, the presiding administrative law judge orders

Innovative Moving Co. to pay a \$5,000 penalty for two (2) violations of RCW 81.80.075(1). Finally, the presiding administrative law judge orders Innovative Moving Co. to cease and desist from future unauthorized operations.

- 8 **Appearances.** Lauren McCloy, Compliance Investigator, Olympia Washington, represents Commission Staff.

MEMORANDUM

A. Default

- 9 The Complaint and Order Instituting Special Proceeding includes a notice that any party who fails to attend or participate in the hearing may be held in default in accordance with the terms of RCW 34.05.440 and WAC 480-07-450. RCW 34.05.440(2) provides: "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding ... the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order." WAC 480-07-450(1) provides that that the Commission may find a party in default if the party fails to appear at the time and place set for a hearing.
- 10 The Subpoenas include language ordering Innovative Moving Co. to appear for the hearing and produce specified documents in compliance with subpoena powers granted to the Commission in RCW 34.05.446 and RCW 81.04.510.
- 11 At the time of the hearing, the Commission had served Innovative Moving Co. with the Complaint and Order Instituting Special Proceeding and Subpoenas by personal service upon Ranie Hamilton, co-resident of Daryl Munn, owner of Innovative Moving Co.
- 12 **Decision.** Innovative Moving Co. was properly and legally served with the Complaint and Order Instituting Special Proceeding and Subpoenas and provided due and proper notice of the Oct. 8, 2013, hearing. Innovative Moving Co. did not appear at the hearing and is hereby held in default. Further, Innovative Moving Co. did not comply with the Subpoenas; it failed to appear and also failed to produce or otherwise provide any of the specified documents.

WAC 480-07-450(2) states: "A party who is dismissed from a proceeding or found in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be

reopened for further process.” A notice appearing at the end of this order provides instructions for filing such a notice with the Commission.

B. Operating as a Household Goods Carrier Without Authority.

13 **Applicable Law.** RCW 81.80.010(5) defines “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.

RCW 81.80.075(1) prohibits household goods carriers from engaging in business in Washington without first obtaining the required permit from the Commission. Upon proof of unauthorized operations, RCW 81.04.510 authorizes the Commission to order the unpermitted company to cease and desist its activities. Additionally, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by a company that violates any law, or any order or rule of the Commission.

14 RCW 81.80.075(4) subjects persons who engage in business as a household goods carrier in the state of Washington without the required permit to a penalty of up to \$5,000 for each violation. In deciding the penalty amount to be imposed per violation, RCW 81.80.075(4)(b) requires the Commission to consider two factors: (a) willingness to comply with the provisions of RCW 81.80.070 and the rules governing household goods carriers contained in WAC 480-15 and (b) compliance history.

15 In a proceeding initiated under RCW 81.05.510, the responding company has the burden of proving that its alleged operations are not subject to the provisions of RCW 81.80.075(1).

16 If the company is found to be operating as a household goods carrier without the required permit, the Commission is authorized and directed to enter an order requiring the corporation to cease and desist activities subject to regulation under Title 81.

17 The evidence in this matter unquestionably demonstrates that Innovative Moving Co. has offered and advertised to engage in the business of moving household goods without a permit.

18 Ms. Lauren McCloy, a Compliance Investigator with the Commission, testified concerning her investigation into the operations and business practices of Innovative Moving Co. Ms. McCloy prepared a declaration summarizing her investigation, with appendices documenting her investigation. *Ex. 1.*

19 The Commission has never received a permit application from Innovative Moving Co. or from its owner, Daryl Munn.

20 **Decision.** By failing to appear at the hearing held on Oct. 8, 2013, Innovative Moving Co. has also failed to meet the burden of proving that its business operations are not subject to the provisions of RCW 81.80.075(1). The evidence presented by Commission Staff through exhibits and witness testimony establishes that Innovative Moving Co. has engaged in business as a household goods carrier without the necessary permit required by RCW 81.80.075(1).

FINDINGS OF FACT

21 (1) The Washington Utilities and Transportation 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.

22 (2) On at least one occasion, Innovative Moving Co. offered to transport household goods within the state of Washington without first having obtained a household goods carrier permit from the Commission.

23 (3) On at least one occasion, Innovative Moving Co. advertised to transport household goods without first having obtained a household goods carrier permit from the Commission.

24 (4) Innovative Moving Co. failed to comply with the Subpoenas properly served.

25 (5) Innovative Moving Co. failed to appear at the hearing convened on Oct. 8, 2013, pursuant to notice that was properly served.

CONCLUSIONS OF LAW

- 26 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and over Innovative Moving Co., pursuant to RCW 81.04.510, RCW 81.80.010, RCW 81.80.070, and RCW 81.80.075.
- 27 (2) Pursuant to RCW 34.05.440(2), Innovative Moving Co. is held in default for failing to appear at the Oct. 8, 2013, hearing.
- 28 (3) Innovative Moving Co. offered to perform household goods moving services without first having obtained a permit from the Washington Utilities & Transportation Commission, in violation of RCW 81.80.075(1).
- 29 (4) Innovative Moving Co. advertised to perform household goods moving services without first having obtained a permit from the Washington Utilities & Transportation Commission, in violation of RCW 81.80.075(1).
- 30 (5) Innovative Moving Co. is classified as a common carrier of household goods within the state of Washington, pursuant to RCW 81.80.010(4) and WAC 480-15-020.
- 31 (6) The Commission is directed by RCW 81.04.510 to order Innovative Moving Co. to cease and desist from conducting operations requiring permit authority unless or until the required authority is obtained from the Commission.

ORDER

THE COMMISSION ORDERS:

- 32 (1) Innovative Moving Co. is held in default. Should Innovative Moving Co. fail to respond to this Order by filing a written motion within ten (10) days requesting that the order be vacated pursuant to WAC 480-07-450(2), the default in this proceeding shall remain in place.
- 33 (2) Innovative Moving Co. is classified as a common carrier of household goods within the state of Washington.

- 34 (3) Innovative Moving Co. is ordered to immediately cease and desist operations as a household goods carrier within the state of Washington.
- 35 (4) Innovative Moving Co. is assessed a penalty of \$5,000, payable immediately.
- 36 (5) 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 October 11, 2013.

ADAM TOREM
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 480-07-450(2) states that a party held in default has 10 days after service of a default order to file a written motion requesting the order be vacated and the proceeding reopened for further process. The party held in default must state the grounds relied upon, including its reasons for failing to appear.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. **A party held in default must file a written motion requesting the order be vacated pursuant to WAC 480-07-450(2) within 10 days after service in order to have the Commission consider a Petition for Administrative Review from that party.** What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) 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 fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **two (2)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Exhibit A



PROCESS SERVICE INVOICE

Bill To: ATTORNEY GENERAL - UTC DIV
1400 S Evergreen Park Dr SW
Olympia, WA 98504
Account #: 4775
Attention: LAUREN MCCLOY 360-664-1190

INVOICE #: 7900554
REFERENCE: TV-131608
BILLED: Sep 16, 2013
PRINTED: Oct 8, 2013
AMOUNT DUE: \$79.50

CASE NAME: IN THE MATTER OF DETERMINING THE PROPER
DOCUMENTS: LETTER RE: MANDATORY APPEARANCE BEFORE ADMINISTRATIVE LAW JUDGE; ORDER INSTITUTING SPECIAL PROCEEDING; COMPLAINT SEEKING TO IMPOSE PENALTIES; NOTICE OF MANDATORY APPEARANCE AT HEARING; SUBPOENA AND SUBPOENA DUC ESTECUM FOR PRODUCTION OF DOCUMENTS; DECLARATION OF LAUREN MCCLOY; HOUSEHOLD GOODS MOVING APPLICATION; TRANSPORTATION REGULATION; MOTORCARRIER INSURANCE REQUIREMENTS; MOTORCARRIER OVERVIEW
SERVEE: DARYL EDWIN MUNN, D/B/A INNOVATIVE MOVING CO.
PERSON SERVED: RANIE HAMILTON, CO-RESIDENT, WHO ACCEPTED SERVICE, WITH IDENTITY CONFIRMED BY VERBAL COMMUNICATION, A BROWN-HAIRED WHITE FEMALE APPROX. 25-35 YEARS OF AGE, 5'4"-5'8" TALL AND WEIGHING 120-160 LBS.
DATE SERVED: September 7, 2013 6:21 pm
SERVED BY: Cheryl Clevenberg
SERVICE ADDRESS: 6910 AEGEAN Boulevard NE, BREMERTON, WA 98311

SERVICE PERFORMED	NOTE	RATE
SERVICE OF PROCESS		79.50
SUB TOTAL		79.50
PREPAID RETAINER		0.00
AMOUNT DUE		79.50

Documents are served in accordance with and pursuant to; the statutes or court rules of jurisdiction in which the matter originates, and/or the statutes or court rules of the state in which service took place, and client instructions. If service was substituted upon another person or left with a person who refused to identify him or herself, it is incumbent upon the client to notify ABC Legal Services immediately, in writing, if further attempts to serve, serve by mail, or investigate are required.

OFFICIAL PROCESS SERVER TO
U.S. DEPT. OF JUSTICE AND U.S. STATE DEPT.