

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

GHOSTRUCK INC.

DOCKET TV-161308

ORDER 05

ORDER DENYING PETITION FOR
ADMINISTRATIVE REVIEW OF
ORDER 04

BACKGROUND

- 1 On February 9, 2017, the Washington Utilities and Transportation Commission (Commission) instituted a special proceeding and complaint seeking to impose penalties against Ghostruck Inc. (Ghostruck or Company). The complaint alleges that on 146 occasions since February 12, 2015, the Company transported household goods or advertised, solicited, offered, or entered into agreements to transport household goods without first obtaining a household goods carrier permit from the Commission.
- 2 On April 5, 2017, the Commission conducted a brief adjudicative proceeding. On April 25, 2017, the Commission entered Order 04, Initial Order Classifying Respondent as a Household Goods Carrier; Ordering Respondent to Cease and Desist; Imposing and Suspending Penalties on Condition of Future Compliance (Order 04).
- 3 On May 12, 2017, Ghostruck submitted a Petition for Administrative Review (Petition). The Company contends that the Commission should reverse Order 04 and find that Ghostruck is a “household goods broker” that the Commission does not regulate. In the alternative, Ghostruck requests that the penalty assessed against the Company be reduced to \$0.
- 4 On May 22, 2017, Commission regulatory staff (Staff) submitted its Answer to the Petition (Answer). Staff requests that the Commission deny the Petition and affirm Order 04 in all respects.
- 5 Donna Barnett, Perkins Coie LLP, Bellevue, Washington represents Ghostruck. Sally Brown, Senior Assistant Attorney General, and Jeff Roberson, Assistant Attorney General, represent Staff.

DISCUSSION AND DECISION

6 We deny the Petition. Order 04 correctly resolves the disputed issues in this proceeding and requires the Company to pay a reasonable penalty for its violations of applicable law. We adopt that order as our own,¹ as modified by the discussion below.

Classification

7 The legislature has defined a “household goods carrier” subject to Commission regulation 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.”² The record evidence demonstrates that Ghostruck entered into an agreement to transport household goods on 141 occasions.³ The Company also advertised household goods moving services on five occasions.⁴ Ghostruck does not hold a permit from the Commission authorizing the Company to operate as a household goods carrier. Order 04, therefore, correctly concludes that Ghostruck is a household goods carrier and committed 146 violations of RCW 81.80.075 by operating for compensation in Washington without first obtaining the required permit from the Commission.

8 Ghostruck disputes this conclusion. The Company claims to be “a software company that arranges to have goods moved by licensed carriers” and thus is a “household goods broker,” not a household goods carrier.⁵ While conceding that “household goods broker” is not defined in statute or Commission rules, the Company asserts that “the classification of household goods broker has been recognized by the Commission and UTC Staff.”⁶ We disagree.

9 No statute establishes “household goods brokers” as either a regulated or nonregulated entity. The Commission has never classified any company as a “household goods broker”

¹ We include Order 04 as an appendix to this order.

² RCW 81.80.010(5).

³ Paul, TR 50-53; Paul, Exh. SP-2.

⁴ Paul, TR 37-45; Paul, Exhs. SP-4, SP-5, SP-6, SP-7, and SP-8.

⁵ Petition at 5:28-36.

⁶ *Id.* at 5:38-42. Ghostruck, however, apparently does not call itself a “household goods broker” when dealing with the public. The Company’s website is devoid of that term. Rather, Ghostruck uses the term “moving company” when referring to itself. Paul, Exh. SP-4.

or even recognized such a classification.⁷ Exhibits in the record in this docket indicate that some members of Staff have loosely used the term “household goods broker” in their communications, but the Commission establishes company classifications by rule or order, not through informal Staff discussions. The term “household goods broker,” therefore, is legally meaningless in the context of this classification proceeding.

10 Ghostruck also argues that it does not perform moves but simply arranges for them. The Company relies on language in the agreement with its customers to contend that Order 04 misinterprets Ghostruck’s role. The Company maintains that order erroneously relies on “irrelevant factors,” such as not requiring the customers to contract with the “actual mover” and charging a flat rate in advance of the move, that are the obligation of the carrier transporting the goods, not Ghostruck. The Company’s arguments ignore the law and the facts.

11 A household goods carrier is any entity that “enters into an agreement to transport household goods.” The contract between Ghostruck and its customers is just such an agreement.⁸ That contract establishes the rates, terms, and conditions under which the customer’s household goods will be transported. Ghostruck sets a fixed price for the move.⁹ Ghostruck collects those charges from the customer.¹⁰ Ghostruck specifies the types of items that the Company will and will not move.¹¹ Ghostruck provides liability coverage for lost or damaged goods.¹² In short, Ghostruck takes full responsibility for the move. The fact that another company physically transports the goods is irrelevant. Ghostruck effectively, if not actually, uses those companies as subcontractors to fulfill Ghostruck’s contractual obligations to its customers.¹³ The self-serving “reminder” in the

⁷ Our declaratory order in Docket TV-150185 is not to the contrary. In that order, we concluded that entities that only provide potential customers with quotes from carriers offering to provide household goods moving services are not household goods carriers. Our references to “household goods brokers” in that order reflect only the Washington Movers Conference’s use of that term. We did not then, and do not now, recognize, define, or classify “household goods broker” as an entity that is subject or not subject to Commission jurisdiction.

⁸ Paul, Exh. SP-4 at 20-24 (Ghostruck “Terms of Service”).

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 21.

¹¹ *Id.* at 1 & 20.

¹² *Id.*

¹³ We take administrative notice that the Commission recently penalized both companies Ghostruck identified it used for this purpose. *See In re Investigation of MVP Moving and Storage LLC*, Dockets TV-170039 and TV-170038, Order 01, Order Upgrading Safety Rating and Imposing and Suspending Penalties (April 6, 2017) (company penalized for violating driver and vehicle safety and qualification regulations); *In*

agreement that the Company “provides a technology platform (Service) that connects movers and users” does not change the basic character or legal effect of the contract – Ghostruck contracted to provide household goods moving service and was the party responsible for complying with that agreement.

12 With respect to Ghostruck’s advertising, the Company maintains that a review of its “full website, read in context, illustrates a company clearly advertising to *arrange for* moves, not conduct moves.”¹⁴ Ghostruck contends that its customers understood this distinction, did not complain, and gave the Company positive reviews. Again, Ghostruck’s arguments are unavailing.

13 As we have already discussed, Ghostruck need not physically transport goods to be classified as a household goods carrier and thus the Company’s attempt to distinguish its activities from “conducting” the move is a distinction without a legally significant difference. Ghostruck’s website, moreover, refers to the Company as a “moving compan[y]” that is “really good at moving” and will “move anything in your home.”¹⁵ We find these representations amount to “advertis[ing] . . . to transport household goods,” despite the existence of other statements characterizing the Company differently. Customer satisfaction with Ghostruck’s services or alleged understanding of the Company’s role in the move are not determinative.¹⁶ If, in the Commission’s judgment, the publication is reasonably susceptible to being interpreted by consumers as an advertisement to transport household goods, our inquiry is at an end. The five publications at issue in this docket easily satisfy that standard.

re Determining the Proper Carrier Classification of, and Complaint for Penalties Against Jacob Raich d/b/a Super Friends Moving, L.L.C., Docket TV-170206, Order 02 Stipulated Initial Order *inter alia* Imposing and Suspending Penalties (company penalized for operating as a household goods carrier after permit cancelled for failure to maintain insurance).

¹⁴ Petition at 10:34-36 (emphasis in original).

¹⁵ Paul, Exh. SP-4 at 2 & 4.

¹⁶ Ghostruck provided no evidence of customers’ understanding of its website or other advertisements but merely attempts to infer such understanding from those customers’ satisfaction with the Company’s service. Satisfaction is not equivalent to understanding. At least one customer, moreover, was confused and complained that a company other than Ghostruck moved his household goods. Nienaber, TR 108:17-22.

Whether to Impose Penalties¹⁷

- 14 Ghostruck had several interactions with Staff over the last three years and contends that the Company relied on Staff declarations that Ghostruck is a household goods broker and thus not regulated by the Commission. The Company maintains that Order 04 errs by ignoring this evidence and penalizing Ghostruck for conduct that Staff assured the Company was beyond the Commission's jurisdiction. There are at least two fatal flaws in this argument.
- 15 First, Staff's legal opinions are advisory. The Commission through its rules and final orders interprets the statutes the legislature has enacted for the Commission to implement and enforce. The record evidence demonstrates considerable controversy over whether entities referred to as "household goods brokers" are subject to the Commission's jurisdiction. Ghostruck retained counsel in 2014 to represent the Company in navigating this debate. Ghostruck knew or should have known that only official action in the form of a Commission order could resolve this issue, and the Company assumed the risk that the Commission would not ultimately adopt Ghostruck's interpretation of Staff's position. The Commission cannot, and does not, abdicate its authority to impose penalties for violations of statutes or Commission rules because Staff may have interpreted the law differently.
- 16 The second fatal flaw in the Company's argument is that the record lacks sufficient evidence to determine the basis of the opinions expressed in the three Staff communications on which Ghostruck allegedly relied.¹⁸ Ms. Wallace's September 10, 2014, message to Mr. Nienaber states, "This email is to confirm our conversation on Aug. 27, 2014, in which you were informed that your description of the business operations of Ghostruck Inc does not fall within the jurisdiction of the Utilities and Transportation Commission's regulation of household goods companies."¹⁹ The email does not include the referenced description of the Company's operations, nor does any other exhibit in the record. Ghostruck attempts to bridge that gap through speculation, which we do not find

¹⁷ The Company originally framed this issue in terms of estoppel but does not use that term or analyze the applicable legal elements in the Petition. Accordingly, Ghostruck has waived its estoppel claim, and we construe these arguments as a basis on which the Company believes the Commission should impose no monetary penalties for the violations.

¹⁸ Only three of the communications to which the Company refers or cites were sent to the Company. The remaining emails are communications between Staff members or between Staff and third parties. Ghostruck cannot rely on emails it did not receive and thus we consider only the three emails sent to Mr. Nienaber.

¹⁹ Nienaber, Exh. NN-6.

credible.²⁰ Without substantial evidence of how Mr. Nienaber described the Company's business operations to Ms. Wallace, much less the accuracy of that description, we cannot find that Ghostruck could reasonably rely on her opinion of the Company's legal status.

17 Mr. Dotson's emails are even less reliable. In his April 10, 2015, message, he merely stated his assumption based on "vaguely remembering a conversation [he] had with someone" that Ghostruck was "applying to broker Household Goods moves here in Washington."²¹ In his subsequent email on February 10, 2017, Mr. Dotson wrote, "If my memory serves, you were a household goods broker, which we don't regulate, so you did not need to register with us."²² In both instances, Mr. Dotson was relying on his memory of information from unknown sources about the nature of Ghostruck's operations, not making any independent evaluation based on his personal knowledge of the Company. Neither email provides a basis for Ghostruck reasonably to believe that Staff, much less the Commission, was certifying that the service the Company provides is not subject to Commission jurisdiction.

18 To the extent that Staff's interactions with the Company may have contributed to the Company's alleged misunderstanding of the law, Staff's statements may be a mitigating factor in reducing the penalty amount. Those statements, however, do not support eliminating the penalties entirely.

Penalty Calculation

19 The Commission considers 11 factors when determining the appropriate action to take in any enforcement proceeding, including but not limited to the level of financial penalties the Commission will assess.²³ In household goods carrier classification proceedings, the Commission also weighs the applicable statutory factors.²⁴ Order 04 analyzes all these

²⁰ The Company begins by raising doubts about the accuracy of the email, stating that the "conversation" was actually a six-hour training." Petition at 15:1-3. Ghostruck proceeds by summarizing the information allegedly discussed during this training and purports to describe what Ms. Wallace knew about the Company's operations based on information she received from another Staff member several weeks before the training. Only Ms. Wallace, however, can know what she knew at that time, and she did not testify or otherwise document what Mr. Nienaber said to her or any independent understanding she might have had about the Company. We therefore lack any evidentiary basis for finding that the Company could have reasonably relied on that email to conclude that it was not operating as a household goods carrier.

²¹ Nienaber, Exh. NN-13 at 1.

²² Nienaber, Exh. NN-16.

²³ *In re Enforcement Policy of the Commission*, Docket A-120061, Enforcement Policy at 7-9.

²⁴ RCW 81.80.075

factors and establishes a penalty of \$75,500 (calculated as \$500 per violation for the 141 illegal moves and \$1,000 for each of the advertising violations), \$56,400 of which would be suspended and waived in two years if the Company ceases and refrains from operations as a household goods carrier without first obtaining authority from the Commission.

20 Ghostruck disputes this assessment,²⁵ specifically advocating that the Commission more carefully scrutinize five of the 13 factors: (1) the Company's willingness to comply with applicable law; (2) the seriousness of the violations; (3) whether the violations were intentional; (4) the likelihood of recurrence; and (5) the size of the Company. We find that Order 04 properly considered these factors and do not alter the penalty amounts.

21 *Willingness to comply.* Ghostruck contends that the record shows repeated efforts the Company made to comply with its legal obligations, including engaging counsel, communicating with Staff, obtaining a permit for an affiliate, and attending industry meetings. The record, however, also reflects that the Company's stated goal was to change the moving industry,²⁶ and that the Company appeared to hear only what it wanted to hear about applicable regulations, making cosmetic changes while continuing its core operations despite warnings from Staff.²⁷ Nor did the Company cease those operations after the Commission initiated this complaint.²⁸ We continue to agree with Staff that, on balance, Ghostruck lacked a willingness to comply with the law.

22 *Seriousness of the violations.* Ghostruck claims that, contrary to the finding in Order 04, the violations were not serious because some customers received some of the documents required under the rules, the carriers who physically moved the household goods rather than Ghostruck were responsible for providing the documents, and no customers complained to the Commission. The Commission has never found that unlawful transport of household goods is not a serious violation, and we do not make such a finding here. Commission rules and Tariff 15-C, moreover, are designed to protect consumers by requiring household goods moving companies to provide written estimates, bills of lading, a consumer guide, and other important information. The failure to do so is *per se*

²⁵ The Company also argues that Order 04 errs by stating that Staff recommended the statutory maximum as reflected in the complaint, rather than the lesser penalty amount Staff later recommended at the hearing. This is a harmless oversight. The Commission considers all parties' recommendations when assessing penalties but ultimately determines the appropriate amount based on its own independent analysis.

²⁶ Paul, Exh. SP-5.

²⁷ *E.g.*, Paul, Exh. SP-2.

²⁸ Nienaber, TR 109:3-6.

a serious violation. Ghostruck was the household goods carrier for each of the 141 moves at issue in this proceeding, and thus Ghostruck was responsible for providing the requisite information. Order 04 correctly finds that Ghostruck's violations were serious.

- 23 *Company Intent.* Ghostruck maintains that Order 04's conclusion that the Company intentionally violated the law is erroneous in light of the evidence that Staff informed the Company that its operations were not subject to Commission oversight. Order 04, however, made no such finding. Rather, the Order recognizes the conflicting evidence in the record and properly finds that all interactions between Staff and the Company contribute to the level of the penalty assessed. In fact, Order 04 mitigated the penalty in light of Staff's statements. There was no error.
- 24 *Likelihood of recurrence.* Ghostruck claims that it no longer has any employees, so there is no likelihood the violations will recur. The Company contends that Order 04's reliance on Mr. Nienaber's testimony that a customer could still arrange a move demonstrates a lack of understanding of app-based systems, which operate without human involvement but would still require a person to perform the move. The Company's explanation of its operations only heightens our concerns. As long as its website is up, Ghostruck is continuing to violate the law by advertising to transport household goods. And if a customer arranges for a move through the app that is not subsequently performed, the Company is engaging in deceptive marketing. Not only are the violations at issue in this proceeding likely to recur, they would recur with worse potential consequences. Order 04 properly considered this factor in assessing the penalty against the Company.
- 25 *Company size.* Ghostruck asserts that rather than being a small company with few employees and substantial revenues as of two years ago as characterized in Order 04, the Company has no employees and essentially no cash. Ghostruck claims that any penalty "serves no purpose except to drive the company into bankruptcy when it could otherwise simply wind down."²⁹ We are not convinced. Ghostruck violated the law, and continues to violate the law. The Commission does not allow illegal operations to "simply wind down." We order them to immediately cease and desist, as we do here. Ghostruck produced no evidence of its current finances, so there is nothing in the record to support its claim that the penalty we assess will drive the Company into bankruptcy. But if that penalty results in Ghostruck discontinuing its unlawful operations, the penalty will have served its purpose.

²⁹ Petition at 21:35-37.

26 The analysis of the 13 factors in Order 04 support the penalty assessment in that Order.
That penalty amount is sufficient to deter future violations, appropriately punitive for the
Company's past conduct, and reasonably mitigated given the evidence in the record.
Penalizing illegal conduct does not stifle innovation, as Ghostruck contends. The state
legislature, not the Commission, may change the law, and the Commission is obligated to
implement and enforce the laws the legislature enacts. As such, Ghostruck and other new
entrants into a market the Commission regulates must exercise their creativity within the
bounds of existing law, not outside it.

FINDINGS AND CONCLUSIONS

27 The Commission's findings and conclusions are set forth in paragraphs 59-66 in Order
04. We supplement those findings and conclusions with the following:

- 28 (9) The Commission does not recognize, define, or classify "household goods broker"
as a person who is subject or not subject to regulation as a household goods
carrier. The Commission determines whether a person is a household goods
carrier based on the person's actions, not how the entity characterizes its
operations.
- 29 (10) Pursuant to RCW 81.80.010(5), a person need not physically transport household
goods to be classified as a household goods carrier.
- 30 (11) The opinions of Commission Staff on the applicability of statutes and rules are
advisory. The Commission through its rules and final orders interprets the statutes
the legislature has enacted for the Commission to implement and enforce.
- 31 (12) A person advertises to transport household goods if, in the Commission's
judgment, a publication for which the person is responsible is reasonably
susceptible to being interpreted by consumers as an advertisement to transport
household goods.

ORDER

32 **THE COMMISSION ORDERS:**

- 33 (1) The Commission denies the petition of Ghostruck Inc. for administrative review
of Order 04 and affirms and adopts that order, which is attached as Appendix A.

- 34 (2) Ghostruck Inc. must immediately cease operating as a household goods carrier, including but not limited to taking down or otherwise deactivating its electronic app, its website, and any online advertising of the Company.
- 35 (3) The Commission assesses a penalty of \$75,500 against Ghostruck Inc., of which \$56,400 is suspended for two years from the date of this order and will be waived if Ghostruck timely pays the remaining \$19,100 and immediately ceases and does not resume household goods carrier operations without first obtaining authority from the Commission. Any failure to comply with these conditions will result in the suspended portion of the penalty becoming immediately due and payable.
- 36 (4) The \$19,100 of the penalty that the Commission does not suspend is due and payable within 10 days of the date of this Order.

Dated at Olympia, Washington, and effective June 1, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner