

Appendix A

(Order 04)

Service Date: April 25, 2017

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

DOCKET TV-161308

ORDER 04

GHOSTRUCK INC.

INITIAL ORDER CLASSIFYING
RESPONDENT AS A HOUSEHOLD
GOODS CARRIER; ORDERING
RESPONDENT TO CEASE AND
DESIST; IMPOSING AND SUSPENDING
PENALTIES ON CONDITION OF
FUTURE COMPLIANCE

BACKGROUND

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. This Initial Order is based upon a record developed during a Commission investigation and during a Brief Adjudicative Proceeding held in accordance with RCW 34.05.482-94 and WAC 480-07-610. If this Initial Order becomes final, Ghostruck Inc. (Ghostruck or Company) will be classified as a household goods carrier, as defined by RCW 81.80.010(5), and required to permanently cease and desist from operating as a household goods carrier without first obtaining a permit from the Commission. In addition, Ghostruck will be assessed a financial penalty in the amount of \$75,500 for 146 violations of RCW 81.80.75(1). A \$56,400 portion of the penalty will be suspended for a period of two years from the date of this order, then waived without further action by the Commission, subject to the condition that Ghostruck refrains from further household goods carrier operations, as defined by RCW 81.80.010(5), without first obtaining the required permit from the Utilities and Transportation Commission (Commission).*

- 1 **Nature of Proceeding.** The Commission initiated this special proceeding under RCW 81.04.510 to determine if Ghostruck 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. The statute provides 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.”
- 2 The Commission’s related Complaint against Ghostruck, brought by Commission regulatory staff (Commission Staff or Staff) under RCW 81.04.110 is based in part on, and recommends penalties for, five separate violations of RCW 81.80.010(5) and RCW 81.80.075 for advertisements found on the Company’s website, Facebook, Twitter, Pinterest, and a press release by Ghostruck. Commission Staff, in addition, complains of 141 agreements the Company entered into with consumers to transport household goods in violation of RCW 81.80.010(5) and RCW 81.80.075. Finally, Staff recommends that the Commission find Ghostruck in violation of chapter 81.80 RCW for operating as a common carrier without the required common carrier permit in connection with a single violation of chapter 81.77 RCW for providing residential curb-side pick-up without the required Solid Waste G Certificate.
- 3 **Procedural History.** On February 9, 2017, the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Brief Adjudicative Proceeding, initiating this docket on its own motion. The Order Instituting Special Proceeding alleges that Ghostruck should be classified as a “household goods carrier” under RCW 81.80.010(5) because it has advertised, solicited, offered, or entered into one or more agreements to transport household goods, for compensation, by motor vehicle, within the state of Washington, despite its failure to seek and obtain a household goods carrier permit from the Commission. The Complaint alleges that Ghostruck violated RCW 81.80.010(5) at least 146 times since February 2015 by advertising, soliciting, offering, or entering into an agreement, to transport household goods without the necessary permit required for such operations. Also on February 9, 2017, the Commission issued a *Subpoena and Subpoena Duces Tecum For Production of Documents* (Subpoenas) to the Company commanding Ghostruck to appear before the

Commission at a special proceeding scheduled to convene at 9:30 a.m. on April 5, 2017, in the Commission's offices at 1300 S. Evergreen Park Drive S.W., Olympia, Washington, and to bring the documents specified in the *Subpoenas*.

4 On March 10, 2017, Ghostruck filed its Motion to Dismiss or for Summary Judgment. The Commission entered Order 03, its Order Denying Motion for Summary Determination; Denying Motion to Dismiss, on March 21, 2017.

5 **Hearing.** On April 5, 2017, the Brief Adjudicative Proceeding hearing convened as scheduled in Olympia, Washington, before Administrative Law Judge Dennis J. Moss.¹

6 **Appearances.** Sally Brown, Senior Assistant Attorney General and Jeff Roberson, Assistant Attorney General, Olympia, Washington, represent Commission Staff.² Donna Barnett, Perkins Coie LLP, Bellevue, Washington, represents the Company.

DISCUSSION

Applicable Law.

7 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 prohibits household goods carriers from operating for compensation in Washington without first obtaining the required permit from the Commission. Upon

¹ ALJ Moss substituted for ALJ Rayne Pearson by Notice of Substitution on March 27, 2017, following ALJ Pearson's recusal on Ghostruck's motion, also on March 27, 2017. The Notice of Substitution included a Notice Rescheduling Brief Adjudicative Proceeding to April 5, 2017.

² In adjudications the Commission's regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

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.

- 8 It is undisputed that Ghostruck, through and in conjunction with its subsidiary, Empty Truck Co., LLC (Empty Truck), transported household goods by motor carrier for compensation in Washington for a brief period prior to February 2015. The Commission’s Complaint, however, is limited to the period after January 2015. Hence, the focus of the Commission’s attention for purposes of both classification and the pending Complaint, is on the question of whether Ghostruck advertised, solicited, offered, or entered into one or more agreements to transport household goods, for compensation, by motor vehicle, within the state of Washington from and after February 2015.³ If so, the Company is, by definition, a “household goods carrier” subject to the Commission’s jurisdiction.
- 9 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.
- 10 Staff, during its investigation, found evidence that Ghostruck arranged for at least one residential curbside solid waste pickup and disposal, a service Ghostruck advertised it would perform. Curbside solid waste pickup and disposal in Washington requires a Solid Waste G Certificate, which Ghostruck did not apply for or receive. The Commission’s

³ While the focus of our attention in this proceeding is on Ghostruck’s advertising, solicitation, offering, and entering into agreements to transport household goods during and after February 2015, we discuss briefly below evidence that suggests Ghostruck actually conducted household goods moves using a “backup truck” during the time period relevant to this special proceeding and complaint. *See infra* ¶¶ 10-11.

Complaint accordingly includes allegation of Ghostruck's violation of RCW 81.77.010, *et seq.*

Facts and Analysis.

11 Ghostruck established itself as a business in Washington in December 2013. The company rolled out a new business model reliant on a web-based application (app) promoted by Ghostruck as a means to expedite and simplify the process for customers seeking the services of a company that could move household goods intrastate. As described by Mr. Nienaber, Ghostruck's Chief Executive Officer, the company is:

an app-based software company that provides a technology platform that connects household goods carriers with customers requesting household goods moves. Empty Truck Co. was an affiliated company of Ghostruck, but Empty Truck Co. no longer operates. Similarly, Ghostruck is winding down its operations. While it operated, Ghostruck connected people seeking household goods moving jobs and assigned them to professional, licensed household goods carriers. If no professional mover was available to take a job, Ghostruck employed Empty Truck Co. to conduct the move.⁴

12 Commission Staff became aware of Ghostruck in June 2014, when it received an article published in the Puget Sound Business Journal entitled "An Uber for moving your stuff."⁵ On July 24, 2014, Commission Staff sent a letter to Ghostruck advising that the Commission had information that the Company was conducting household goods moves in Washington and advertising household goods moving services, both in violation of laws governing intrastate household goods movers in Washington. Staff's letter also advised that the Company should immediately cease operating and advertising until it applied for and obtained a permit from the Commission, subject to the imposition of penalties of up to \$5000 per violation.⁶

⁴ Declaration of Nathanael Nienaber in Support of Ghostruck's Motion to Dismiss or for Summary Determination (Nienaber Declaration) ¶ 2.

⁵ Staff Investigation Report Appendix A.

⁶ Staff Investigation Report Appendix B.

- 13 On July 30, 2014, Mr. Nienaber contacted Staff, stating that Ghostruck was not actually providing moving services, but instead was connecting consumers seeking moving services to professional movers. Mr. Nienaber acknowledged, however, that if Ghostruck could not schedule an independent professional mover within one hour, the Company would perform the move using a truck operated by its subsidiary, Empty Truck. Mr. Nienaber said he did not have a Commission-issued household goods permit for Empty Truck. Staff informed Mr. Nienaber again that it was not lawful for the Company to perform household goods moves unless and until the Commission issued a permit. Mr. Nienaber submitted an application for a household goods permit on July 30, 2014, in the name of Empty Truck, identifying it as a subsidiary of Ghostruck. The Commission issued a temporary household goods permit for Empty Truck (THG-65588) on September 22, 2014.⁷ Three months later, however, on December 22, 2014, the Commission cancelled the Company's provisional operating authority, dismissed its application for permanent authority, and ordered Empty Truck to cease all operations associated with the permit, due to the Company's failure to file proof of liability and property damage insurance, both of which are required to protect consumers.⁸
- 14 According to Mr. Nienaber, Ghostruck stopped using Empty Truck by the end of 2014, later dissolving it as a subsidiary in June 2015.⁹ It appears, however, that Ghostruck continued to use a "backup truck" to perform moves at least as late as March 2015.¹⁰
- 15 The heart of Ghostruck's business plan and operations at all relevant times has been its website on the Internet. Mr. Nienaber acknowledges that "Ghostruck's July 2014 website implied that Ghostruck would conduct moves."¹¹ He related in connection with this admission that the Company's website included statements such as: "Every Ghostruck driver is a professional, licensed and bonded mover who has passed a thorough criminal

⁷ Staff Investigation at 5.

⁸ *Id.* at 5-6.

⁹ Nienaber Declaration ¶ 9.

¹⁰ Staff Investigation at 10.

¹¹ Nienaber Declaration ¶ 4.

background check” and “Ghostruck will move your stuff from here to there or dispose of it for you.”¹²

16 Mr. Nienaber stated that Ghostruck, following training with Commission Staff on August 27, 2014, “revised its website and advertisements to remove any suggestion that Ghostruck transported goods.”¹³ Examination of Ghostruck’s revised website, however, shows that it continued to imply “after Summer 2014,” and at all times relevant here, that Ghostruck was a moving company and would conduct moves. The revised web pages, for example, include the following statements:

- “Unlike *other moving companies* we provide fixed prices, not estimates or quotes.”
- “Is there *anything Ghostruck won’t move*? We’d like to say *we’ll move anything in your home ...*”
- “*Does Ghostruck move things in the same location?*”
- “*We’re really good at moving* so that’s what we stick to.”¹⁴

17 Ghostruck’s web pages include its “Terms of Service.” Customers are required to agree to these “terms as a legal agreement” if they wish to schedule a move using Ghostruck’s services.¹⁵ Customers are not required to enter, nor is there evidence that they do, in fact, enter into a separate agreement with any household goods carrier Ghostruck may have engaged to conduct the physical move of the customer’s household goods.

18 Estimates for the move are not performed by the carrier as required by WAC 480-15-630 and Tariff 15-C, Item 85.¹⁶ Ghostruck charges each customer a flat rate, which must be paid in advance. Ghostruck states on its web pages that:

¹² *Id.* See also Nienaber Declaration Exhibit B.

¹³ Nienaber Declaration ¶ 4.

¹⁴ Nienaber Declaration Exhibit C (emphasis added).

¹⁵ Staff Investigation at 7; Nienaber Declaration Exhibit C.

¹⁶ Staff Investigation at 7.

Unlike other moving companies we provide fixed prices, not estimates or quotes. Upload your job details into our app to find out exactly how much your move will cost on the spot.

According to Staff:

In working with Ghostruck, the carrier is not allowed to create an estimate, or a supplemental estimate if the job changes. The only option Ghostruck offers the carrier related to the earnings is to not perform the move.¹⁷

19 In addition, Ghostruck does not provide the customer with any specific information about the carrier that will actually move the customer's household goods. Ghostruck informs its customers via its web pages that: "Your mover will pickup on [date] between [time] and [time]. You will be notified by text and email when they are on their way."¹⁸ There is no documentary evidence in the record suggesting that the carrier contacts the customer in any fashion before this time.

20 Ghostruck's business practices result in agreements between the Company and customers to move household goods in Washington, for compensation, that regularly circumvent Commission consumer protection requirements. According to Staff:

In the 141 household goods moves reviewed in this investigation, consumers did not receive a single document that meets the requirements of chapter 480-15 WAC and Tariff 15-C for regulated moves, including:

- Written estimates.
- Supplemental estimates.
- Table of Measurements.
- Bills of Lading.
- Consumer Guide, "*Moving in Washington State.*"¹⁹

¹⁷ Staff Investigation at 8.

¹⁸ Staff Investigation Exhibit Q.

¹⁹ Staff Investigation at 12.

- 21 Ghostruck meets the statutory definition of “household goods carrier” because it:
- Advertises, solicits, and offers on its website and social media to transport for compensation, by motor carrier, household goods in the state of Washington.
 - Enters into agreements to transport household goods for compensation in the state of Washington.

22 Ghostruck does not have, nor has it applied for, authority to conduct itself as a household goods carrier in Washington. Ghostruck’s activities accordingly violate RCW 81.80.010(5) and 81.80.075.

23 As related previously, Ghostruck’s web pages also state that “Ghostruck will move your stuff from here to there or dispose of it for you.” Staff presented un rebutted evidence of such activity by Ghostruck.²⁰ RCW 81.77.010(4) defines “contract carrier” to include “any person who under special and individual contracts or agreements transports solid waste by motor vehicle for compensation.” Such a contract carrier is a “[s]olid waste collection company” as defined by RCW 81.77.010(7). RCW 81.77.020 provides in relevant part that:

No person, his or her lessees, receivers, or trustees, shall engage in the business of operating as a solid waste collection company in this state, except in accordance with the provisions of this chapter.

RCW 81.77.040 provides in relevant part that:

A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation.

24 Ghostruck does not have, nor has it applied for, a certificate of public convenience and necessity to conduct itself as a solid waste collection company in Washington.

²⁰ Staff Investigation Appendix M.

Ghostruck's activities involving curb-side pickup and disposal of waste accordingly violated RCW 81.77.040.

Affirmative Defenses.

- 25 Ghostruck alleges in its Answer that "staff's investigation report contains extensive factual errors,"²¹ but the Company makes no specific allegations of error and cites no evidence showing any factual errors. Nor did the Company present or develop through testimony at hearing any evidence that refutes the factual allegations included in Staff's Investigation Report, the testimony of its witnesses, or the documentary evidence received during the hearing. Indeed, the record evidence supports fully the facts stated in Staff's Investigation Report.
- 26 Ghostruck asserts that "Commission staff, after a thorough review of Ghostruck operations, informed Ghostruck in writing on multiple occasions that it was a household goods broker, and was not regulated by the WUTC."²² Ghostruck says it "relied on Commission staff's determination."²³ In point of fact, there is a single document in the record, an email from former Commission employee Sharon Wallace, presented as Exhibit F to Mr. Nienaber's Declaration and Hearing Exhibit NN-6, that 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 under the jurisdiction of the Utilities and Transportation Commission's regulation of household goods companies. At this time, the commission views Ghostruck Inc. as a broker of household goods moves.

This document is problematic both factually and legally. In terms of its value in ascertaining facts, it has little, if any, because it purports to be predicated upon Mr. Nienaber's "description of the business operations of Ghostruck Inc." Yet, there is no evidence disclosing what description of Ghostruck's business Mr. Nienaber provided to

²¹ Ghostruck Answer and Affirmative Defenses ¶ 32.

²² *Id.*

²³ *Id.*

Ms. Wallace, whether directly or indirectly. According to Staff's activity log, opened on June 26, 2014, Ms. Wallace was not present following the Commission's household goods training session on August 27, 2014, when Mr. Nienaber "discussed his business and plan with [Staff]." ²⁴ It appears from the Staff's activity log, moreover, that the focus of Mr. Nienaber's comments at that time was "to basically 'sell' [Staff] on the idea that the rules etc. need to be changed" and to offer his views of how the marketplace for household goods movers and customers ought to operate in the future. ²⁵ Hence, there is no way to know whether he accurately described to Staff present on August 27, 2014, the "business operations of Ghostruck Inc." or, indeed, described them at all. Beyond that, there is no way to know whether Staff accurately conveyed any such information to Ms. Wallace. ²⁶

27 The document is problematic from a legal perspective because there is nothing in the Commission's statutes or rules that recognizes the classification of "broker of household goods moves." ²⁷ The only Commission order touching on this subject, Order 01 in Docket TV-150185, was entered on April 14, 2015, long after Ms. Wallace's email to

²⁴ Paul, Exh. SP-2 at 5.

²⁵ *Id.*

²⁶ The Commission notes that as of August 27, 2014, Ghostruck's overall business indisputably included operations as a household goods carrier through the conduct of its subsidiary, Empty Truck, for which the company subsequently obtained a permit, later rescinded. *See supra* ¶ 13. In addition, as of that date, Mr. Nienaber acknowledged to Commission Staff that Ghostruck's web pages implied that Ghostruck, without regard to Empty Truck, conducted operations as household goods carrier. Nienaber Declaration ¶ 4; *see also supra* ¶ 16.

²⁷ RCW 81.80.010(3) includes in its definitions of "common carriers" and "contract carriers" "persons engaged in the business of providing, contracting for, or undertaking to provide transportation of property for compensation over the public highways of the state of Washington as *brokers* or forwarders." Common carriers, contract carriers, or temporary carriers cannot legally "operate for the transportation of property for compensation in this state without first obtaining from the commission a permit for such operation." RCW 81.80.070(1). Thus, even if Ghostruck qualified as a "broker" under this statute, it would be subject to the Commission's jurisdiction as a common carrier or contract carrier. However, Ghostruck does not qualify as a "broker" under RCW 81.80.010(3) because it is not in the business of "providing, contracting for or undertaking to arrange for, transportation of property *by two or more common carriers*." WAC 480-12-100(2). The Commission's definition of brokers is limited to persons conducting such business. *See* Docket TV-150185, Order 01 ¶¶ 10-11.

Mr. Nienaber. This order, in any event, does not describe the business operations of an entity the Commission might consider to be a broker of household goods moving services. Order 01 does not discuss at all the business model that Ghostruck follows. On the other hand, Order 01 describes a business model significantly different than Ghostruck's business model that the Washington Movers Conference identifies as an "Internet Broker," but the Commission expressly rejects the use of this term in favor of "Information Provider." Order 01 also distinguishes "brokers" under RCW 81.80.010(3), which are defined as persons "engaged in the business of providing, contracting for or undertaking to *arrange* for, transportation of property by two or more common carriers." Thus, Order 01 describes forms of business that the Commission does not consider, either formally or informally, to be brokers of household goods moving services. Order 01 does not describe any business model that it might consider to be a broker of household goods moving services. The term, nowhere defined in statute or rule, thus remains nebulous, at best, even in common usage.

28 For all these reasons, no matter how Mr. Nienaber described Ghostruck's operations in conversation with Staff on August 27, 2014, Ms. Wallace's statement that the Commission viewed Ghostruck as being outside the Commission's jurisdiction because it was a "broker of household goods moves" has no force or effect from a legal perspective.

29 Ghostruck, having decided to become a part of the household goods moving industry in Washington was, by virtue of its decision, charged with the responsibility to be familiar with, to understand, and to operate in accordance with the laws concerning household goods movers in Washington. Apparently recognizing this responsibility somewhat belatedly, Ghostruck obtained the assistance of qualified counsel shortly after Ghostruck's initial contact with the Commission on July 24, 2014, informing the company that Staff had information that Ghostruck was performing household moves without a household goods permit in violation of WAC 480-15-020. According to Mr. Nienaber: "On or about August 15, 2014, Ghostruck engaged the law firm of Perkins Coie LLP."²⁸ Thus, before Mr. Nienaber's meeting with Staff on August 27, 2014, Ghostruck knew, or should have known, that the Commission's statutes provide that the question whether a business entity is a "household goods carrier" and, hence, subject to

²⁸ Nienaber Declaration ¶ 3.

the Commission's jurisdiction, is "a question of fact to be determined by the commission" in a "special proceeding" under RCW 81.04.510.²⁹

30 It follows that Ghostruck knew, or should have known, that a statement by Commission Staff in an email following up on an unrecorded conversation, such as that by Ms. Wallace quoted above, simply is not binding on the Commission as a determination of Ghostruck's status vis-à-vis the Commission's regulation of businesses involved in household goods transportation in Washington.

31 In addition to discussing Ms. Wallace's email, Ghostruck argues that it:

worked with members of the staff of the Commission's Consumer Protection and Communications division over several months to ensure that all aspects of Ghostruck's operations comply with Commission rules and Washington statutes. On multiple occasions Commission staff

²⁹ RCW 81.04.510 provides:

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.

thoroughly reviewed all aspects of Ghostruck's operations, including its advertising, web site, and terms of service. Commission staff concluded that Ghostruck is a broker of household goods and, as such, complies with the Commission rules and Washington statutes.³⁰

32 We find scant evidence supporting these assertions, but accept them for purposes of discussion. Again, any informal statement by Commission Staff "that Ghostruck is a broker of household goods" and, hence, not subject to Commission jurisdiction, is legally meaningless because the Commission's statutes and rules do not recognize any such classification. In any event, even if Ghostruck considers itself, or is considered by Staff or others to be a broker of household goods, the question whether the Company is subject to the Commission's jurisdiction because it is a business that "advertises, solicits, offers, or enters into an agreement to transport household goods" in Washington - that is, a jurisdictional "household goods carrier," as defined by RCW 81.80.010(5) - is one of fact to be determined in a special proceeding such as instituted in this docket.³¹

Penalties.

33 Staff recommends that the Commission assess Ghostruck a penalty of up to \$5,000 for each of the 141 agreements the company entered into with consumers to transport household goods in violation of RCW 81.80.010(5) and RCW 81.80.075, as evidenced in the record of this proceeding.³² This could result in a penalty of up to \$705,000. In addition, Staff recommends that the Commission assess Ghostruck a penalty of up to \$25,000 for five separate violations of RCW 81.80.010(5) and RCW 81.80.075 for advertisements found on the company's website, Facebook, Twitter, Pinterest, and in a press release by Ghostruck.³³

³⁰ Answer and Affirmative Defenses ¶ 33.

³¹ RCW 81.04.510. We note that had Ghostruck wished to seek proactively such a determination of fact it could have filed a petition for declaratory order. WAC 480-07-930(1). The Commission would then have the option to enter a declaratory order, or to convert the docket initiated by such a petition into a special proceeding. WAC 480-07-930(4).

³² See Paul, Exh. SP-10.

³³ See Paul, Exhs. SP-4 – SP-8.

34 Staff identifies 13 factors that inform the Commission's decision on penalties in individual cases. Eleven of these factors are identified in a policy statement the Commission issued on January 7, 2013, in Docket A-120061. The remaining two factors are identified in statute.³⁴

35 The statutory factors are stated in RCW 81.80.075, as follows:

- The carrier's willingness to comply with the requirements of RCW 81.80.070 and the Commission's administrative rules governing household goods carriers.
- The carrier's history of compliance with chapter 81.80 RCW.

36 Staff argues that Ghostruck has not shown an ability or willingness to comply with applicable law and has a history of non-compliance with the provisions of Title 81 RCW. The Commission agrees with Staff.

37 The facts demonstrate that Ghostruck has been operating, and contrary to Mr. Nienaber's testimony that the company is essentially out of business, apparently continues to operate in Washington in defiance of applicable law.³⁵ Never, since initially directed to cease and desist operations not in compliance with various statutes and rules in July 2014, has the Company stopped operating. This includes periods when the Company's operations, by Mr. Nienaber's own admission, failed to meet legal requirements. This also includes periods when Mr. Nienaber's professed lack of understanding that the Company could not operate without a permit is simply not credible.³⁶ Although the Company expressed a

³⁴ RCW 81.80.075

³⁵ TR. at 108:24-109:6.

³⁶ Paul, Exh. SP-2 at 3-4. Commission Staff's notes of conversations with Mr. Nienaber on July 30 and 31, 2014, relate that Staff repeatedly explained that neither Ghostruck nor Empty Truck could provide moves without a permit. Mr. Nienaber acknowledged that Ghostruck provided estimates to customers. Staff clarified that WAC 480-15-630 requires that estimates must be from the carrier. Yet, on August 13, 2014, when Staff again contacted Mr. Nienaber and reiterated that he could not operate or advertise without a permit, he reportedly said he had not understood this from his previous conversations with Staff.

willingness to comply when first confronted by Staff in July 2014, the changes it made to its web pages were cosmetic and not substantive.

38 It appears from the record that Ghostruck’s business model was never designed to conform to laws and regulations governing household goods movers in Washington. Rather, Ghostruck presented itself as a force of change that would remodel the conduct of the household goods moving business to conform to Ghostruck’s conception of what it should be,³⁷ rather than to conform to what the legislature and the Commission have determined is appropriate to protect consumers. As previously discussed, when Mr. Nienaber described his business plan with Staff on August 27, 2014, the focus of his comments was “to basically ‘sell’ [Staff] on the idea that the rules etc. need to be changed” and to offer his views of how the marketplace for household goods movers and customers ought to operate in the future.³⁸ According to Staff’s notes of the conversation, Mr. Nienaber’s vision for the future included changes to the law that would allow unpermitted movers to operate with constraints on the number of moves they could perform and Ghostruck customers could choose to have a licensed or unlicensed mover.³⁹

39 In short, Ghostruck’s history does not demonstrate an ability or willingness to comply with applicable law. The company has a history of more than three years of non-compliance with the provisions of Title 81 RCW.

40 Our brief analysis of Ghostruck vis-a-vis the factors affecting penalties that the Commission identifies in its policy statement follows:

41 *How serious or harmful the violation is to the public.* Ghostruck’s requirement that customers enter into agreements directly with the Company meant, at least in the 141 household goods moves Staff reviewed in its investigation, that consumers did not receive a single document required under chapter 480-15 WAC and Tariff 15-C for regulated moves, including: Written estimates, Supplemental estimates, Table of

³⁷ See Paul, Exh. SP-5, Ghostruck Press Release (“Seattle-based Ghostruck is leveraging big data and proprietary technology to change the face of the moving industry.”)

³⁸ See *supra* ¶ 25.

³⁹ Paul, Exh. SP-2 at 5.

Measurements, Bills of Lading, and Consumer Guide, “*Moving in Washington State.*” These requirements are in place to protect consumers. Consumers who contract with Ghostruck are denied the information the Commission considers to be necessary for customers to make informed decisions. Consumers are not informed of their rights and responsibilities, or the Commission’s role in regulation and enforcement. It follows that the potential for harm to the public is significant. There is no evidence in the record, however, to substantiate significant actual harm arising from Ghostruck’s operations.⁴⁰

42 *Whether the violation is intentional.* Ghostruck was informed by Staff on a number of occasions that it was operating as a household goods carrier without the required permit, including on the following occasions:

- On July 24, 2014, Staff notified Ghostruck, by letter, to cease and desist operating and advertising as a household goods carrier.
- On July 30, 2014, Ghostruck contacted Staff by telephone and again was told that the Company could not operate or advertise as a household goods carrier without the required permit.
- On July 31, 2014, Staff had another telephone conversation with Ghostruck about the Company’s submitted household goods application.
- On August 13, 2014, Staff again contacted Mr. Nienaber by telephone to remind him that he could not advertise until the Company obtained the required permit. Staff offered to meet with Company representatives to go over the rules and a meeting was set for August 14, 2014. Ghostruck contacted Staff and rescheduled the meeting for August 27, 2014.

43 Staff met with Company representatives at the Commission’s Headquarters in Olympia, on August 27, 2014, and again explained that the Company could not operate without the required permit. However, following up on the August 27, 2014, meeting, for reasons that are not clear from the record, Staff sent Mr. Nienaber an email stating that Staff had informed Mr. Nienaber during the meeting that his “description of the business operations of Ghostruck Inc. does not fall under the jurisdiction of the Utilities and

⁴⁰ This is not to say that there is no such evidence. *See, e.g.*, Paul, Exhibit SP-6 at 2 (Nicole Donovan review on Facebook)

Transportation Commission’s regulation of household goods companies.” The email continued, stating that “the commission views Ghostruck Inc. as a broker of household goods moves.”

44 Thus, there is a conflict in the evidence concerning what Mr. Nienaber was told by Staff on August 27, 2014. According to the contemporaneous notes taken by a Staff member who participated in the meeting with Mr. Nienaber, Staff “made sure he understood that we will regulate the rules as they are written now, not how he thinks they should be.”⁴¹ However, an email drafted by another Staff member who was not present to hear Mr. Nienaber’s description of Ghostruck’s business, expressed a different understanding of the conversation between Staff and Mr. Nienaber, opining that Ghostruck did not fall under the Commission’s jurisdiction because the agency “views Ghostruck Inc. as a broker of household goods moves.”⁴² We previously discussed the limited weight we give to this evidence because it presents problems of both fact and law.⁴³ Nevertheless, we do give it some weight in the determination of whether the Company’s violations were intentional, which bears in turn on the level of penalties the Commission will assess.

45 *Whether the company self-reported the violation.* Ghostruck did not report any violation under Chapter 81.77 RCW or the Commission’s rules.

46 *Whether the company was cooperative and responsive.* The evidence is mixed, but overall it supports a finding that the Company was reasonably cooperative in terms of interacting with the Commission. In terms of being responsive, however, Ghostruck’s efforts were largely cosmetic (*e.g.*, changing the language in its web pages without correcting the misimpression those pages gave to the public in suggesting that Ghostruck was a moving company). Importantly, the Company was neither cooperative nor responsive to Staff’s requests for the identities of household goods carriers that actually performed moves arranged by Ghostruck. This is particularly significant because any moving company that conducted a move following the Ghostruck model was itself guilty of multiple violations of law. Just as the Commission can penalize Ghostruck for the 141

⁴¹ Paul, Exhibit SP-2 at 5.

⁴² *Id.* at 6.

⁴³ *See supra.* ¶¶ 25-28.

moves of which Staff complains in this case, the Commission could complain against the company or companies that actually conducted those moves without required documentation. At a minimum, the Commission has a continuing interest in keeping licensed movers apprised of their obligations when conducting moves in Washington, without regard to how the mover and customer may have been brought together.

- 47 *Whether the company promptly corrected the violations and remedied the impacts.* The short answer is “no.” Ghostruck continues to operate in violation of applicable statutes and rules.
- 48 *The number of violations.* In addition to the 146 violations shown by the evidence in this case, Ghostruck acknowledges that it has conducted business with carriers not implicated by Staff’s Complaint. There is no evidence concerning the extent of this additional business, or showing violations in connection with it.
- 49 *The number of customers affected.* In addition to the 141 customer-specific violations shown by the evidence in this case, Ghostruck acknowledges that it has conducted business with carriers in addition to those whose records were investigated by Staff in this docket and, hence, with additional customers not reflected by Staff’s Complaint.
- 50 *The likelihood of recurrence.* Mr. Nienaber testified during the hearing that Ghostruck is out of business. He gave conflicting testimony, however, stating that a customer could still arrange a move using Ghostruck’s web-based app.
- 51 *The company’s past performance regarding compliance, violations, and penalties.* The Company received a notification to cease and desist operating as a household goods company and has had repeated contacts with Staff informing the Company it is operating as a household goods mover. The Company has not changed its business practices or obtained a permit to legally operate as a household goods carrier in the state of Washington. The Company is charged with knowledge of the law and plainly has continuously operated as a household goods carrier by advertising, soliciting, offering, or entering into agreements, to transport household goods without the necessary permit required for such operations.

- 52 *The company's existing compliance program.* There is no evidence of any compliance program.
- 53 *The size of the company.* Ghostruck is a small company with few employees. Washington Department of Revenue data show that the Company reported gross revenue of \$228,357.48 for 2015, and \$76,325.95 for 2014. At the time of Staff's investigation, revenue was not reported for 2016. Ghostruck reported in a press release that it received \$2.2 million in seed funding.
- 54 The Commission does not wish to stifle innovation and positive change in any industry it regulates. The avenues for affecting such change, however, do not include Commission acquiescence in continuing violations of Washington statutes and Commission rules. The evidence shows that Ghostruck's efforts to participate in the Washington household goods moving industry following the Company's vision of how the industry should operate and be regulated has resulted in numerous violations of the laws and rules governing how the industry is required by law to operate. It is appropriate that the Commission assess penalties for this unlawful behavior and that the Commission require the Company to cease and desist from such behavior, including advertising, soliciting, offering, or entering into agreements to transport household goods unless and until it secures from the Commission the necessary permit for such activities and brings its operations fully into compliance with all applicable laws.
- 55 In our final penalty assessment analysis, we do give some weight and consideration to the fact that Ghostruck received misleading advice from Staff on at least one occasion during the past several years that the Company has operated without a permit. We also consider the small size of the Company, including evidence of gross revenues of a little over \$300,000 for 2014 and 2015. Assuming gross revenues for 2016 at a level somewhat less than in 2015, the Company still would have produced less than \$500,000 during its full period of operations.
- 56 All things considered, the Commission determines that it should impose a penalty of \$75,500 reflecting a penalty assessment of \$500 for each of 141 violations of the prohibition against entering into agreements to transport household goods in Washington without the required permit and \$5,000 reflecting a penalty assessment of \$1,000 for each of five violations of the prohibition against advertising, soliciting, or offering to transport

household goods in Washington without the required permit. The Commission determines that it should order Ghostruck to cease and desist from these activities.

57 Viewing compliance as its paramount interest in proceedings such as this one, the Commission will suspend \$56,400 of the penalty amount conditioned on Ghostruck ceasing and desisting fully from activities that define it as a household goods carrier under RCW 81.80.010(5). This means, among other things, that Ghostruck will remove immediately its web-based application from the Internet and will remove immediately its presence from Facebook, Twitter, Pinterest, and any other social media sites or other platforms it uses or has used to make its services known. The Commission will investigate whether the company complies with this condition on, or shortly after, 10 days following the date this Initial Order becomes final by operation of law or following affirmation by the Commission on review. Any failure to comply with this condition will be duly noticed by the Commission and the suspended penalty amount of \$56,400 will be due and payable within five days following the date of Commission notice without further action by the Commission.

58 The penalty amount of \$19,100 not suspended by this Order is due and payable to the Commission within 10 days following the date this Initial Order becomes final by operation of law or following affirmation by the Commission on review.

FINDINGS AND CONCLUSIONS

59 (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.

60 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Ghostruck, Inc.

61 (3) Since February 2015, using at least five separate platforms, Ghostruck, Inc. continuously has advertised, solicited, or offered to transport household goods, for compensation, by motor vehicle, within the state of Washington, without first having obtained a household goods carrier permit from the Commission, thus violating RCW 81.80.075.

ORDER 04

- 62 (4) On at least 141 occasions since February 2015, Ghostruck, Inc. entered into agreements to transport household goods for compensation, by motor vehicle, within the state of Washington, without having obtained a household goods carrier permit from the Commission, thus violating RCW 81.80.075.
- 63 (5) Ghostruck, Inc. is a “household goods carrier” as that term is defined in RCW 81.80.010(5) because it has continuously since 2014 advertised, solicited, offered, or entered into agreements to transport household goods. RCW 81.80.075(1) provides that “No person shall engage in business as a household goods carrier without first obtaining a household goods carrier permit from the commission.”
- 64 (6) Ghostruck, Inc. has neither applied for nor obtained a permit from the Commission authorizing it to conduct business as a household goods carrier.
- 65 (7) It is unlawful, under RCW 81.80.075(1), 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 five thousand dollars per violation under RCW 81.80.75(4).
- 66 (8) Upon proof of unauthorized operations, RCW 81.04.510 authorizes the Commission to order an unpermitted household goods carrier such as Ghostruck, Inc. to cease and desist immediately its activities. Any person who engages in business as a household goods carrier in violation of a cease and desist order issued by the Commission under RCW [81.04.510](#) is subject to a penalty of up to ten thousand dollars per violation under RCW 81.80.75(5).

ORDER

THE COMMISSION ORDERS:

- 67 (1) Ghostruck Inc. is classified as a household goods carrier within the state of Washington.
- 68 (2) Ghostruck Inc. is required immediately to cease and desist operations as a household goods carrier within the state of Washington and the Company must

refrain from such operations unless and until it first obtains a permit from the Commission.

- 69 (3) Ghostruck Inc. is assessed a penalty of \$75,500, as discussed in the body of this Order. A \$56,400 portion of the penalty is suspended for a period of two years from the date of this Order, and waived thereafter without further action by the Commission, provided Ghostruck, Inc. refrains permanently from further operations as a household goods carrier in the state of Washington without first obtaining the required permit from the Commission. The remainder of the penalty, \$19,100, is due and payable within 10 days following the date on which this Initial Order becomes Final by operation of law.
- 70 (4) Ghostruck Inc. is required to remove immediately its web-based application from the Internet and its presence from Facebook, Twitter, Pinterest, and any other social media sites or other platforms it uses or has used to make its services known. The Commission will investigate whether the Company complies with this condition on, or shortly after, 10 days following the date this Initial Order becomes final by operation of law or following affirmation by the Commission on review. Any failure to comply with this condition will be duly noticed by the Commission and the suspended penalty amount of \$56,400 will be due and payable within five days following the date of Commission notice, without further action by the Commission being required.
- 71 (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 April 25, 2017.

DENNIS J. MOSS
Senior Review Judge

NOTICE TO THE 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 480-07-825(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*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) 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 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 not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, 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.

You must serve on each party of record one copy of any Petition or Answer filed with the commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and **two (2)** copies of your Petition or Answer 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