

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of

Cancellation of Temporary Authority to
Operate as a Household Goods Carrier
Held by The Moving Club, Inc.

DOCKET NO. TV-031701

COMMISSION STAFF'S
RESPONSE TO PETITION FOR
REHEARING/REOPENING

1 The Moving Club, Inc. filed a petition for rehearing or reopening. Pursuant
to notice dated January 26, 2004, Commission Staff submits the following response.
Commission Staff respectfully requests that the petition be denied.

I. BACKGROUND

2 In December 2001, the Washington Utilities and Transportation Commission
(Commission) granted The Moving Club, Inc., temporary authority to transport
household goods within the State of Washington. *In re The Moving Club, Inc.*, App.
No. P-78676, M.V. Order No. 150741 (December 12, 2001) (Order Granting
Temporary Authority). In the Order Granting Temporary Authority, The Moving
Club was required to allow Commission Staff to inspect its vehicles and documents.
The Moving Club was also required to file no later than January 12, 2002, a certified
statement that declared the following:

- Employees of The Moving Club involved in soliciting, selling, or booking moves, estimating costs, or billing customers are sufficiently trained and have enough experience to comply with all laws and rules relating to economic regulation and Tariff 15-A or, in lieu of such training and experience, the employees would attend a Commission-sponsored training;
- Employees of The Moving Club involved in operating or maintaining vehicles, dispatching or hiring drivers, or ensuring compliance with safety regulations are sufficiently trained and have enough experience to comply with all laws and rules relating to safety regulation or, in lieu of such training and experience, the employees would attend a Commission-sponsored training; and
- The Moving Club has removed and canceled all advertising that did not meet the requirements of RCW 81.80.355 and RCW 81.80.357.

3 Despite Staff's repeated efforts to conduct a compliance audit and safety review of The Moving Club, the Company refused to allow Staff access to its vehicles and documents, acting in direct defiance of the Order Granting Temporary Authority. The Moving Club also failed to submit the required certified statements regarding its operations.

4 Based on The Moving Club's failure to comply with the Order Granting Temporary Authority, the Commission issued a Notice of Pending Cancellation of Authority (Notice) on October 21, 2003. The Notice was served by both regular and certified United States mail to the address on record with the Commission for the

Company. The Commission received a signed return receipt indicating that The Moving Club received the Notice.

5 The Notice informed The Moving Club that the Commission intended to cancel the Company's temporary household goods authority for failure to meet the terms and conditions required by the Order Granting Temporary Authority. The Notice further informed The Moving Club that it could retain its temporary authority by complying with the terms and conditions required by the Order Granting Temporary Authority before October 31, 2003. The Notice also provided The Moving Club with the option of requesting a hearing by October 31, 2003, to challenge the information contained in the Notice.

6 The Moving Club failed to respond to the Notice in any way. The Moving Club did not provide the required certified statements. The Moving Club did not allow Staff to conduct a compliance audit or safety review. The Moving Club did not request a hearing.

7 By order, the Commission cancelled The Moving Club's temporary authority to operate as a household goods carrier. *In re Cancellation of Temporary Authority to Operate as a Household Goods Carrier Held by The Moving Club, Inc.*, Docket TV-031701, Order No. 01, Order Canceling Temporary Authority and Denying Application for Permanent Authority (January 13, 2004) (Cancellation Order). The Commission also dismissed The Moving Club's application for permanent authority. *Id.*

II. DISCUSSION

8 The Moving Club petitions for either rehearing or reopening the record in this docket. Staff will first address whether rehearing and reopening is appropriate in this case. Staff will then discuss whether The Moving Club's petition should be treated as a petition for reconsideration. Lastly, Staff will address the two reasons listed by The Moving Club in support of its petition, namely the nature of The Moving Club's authority to transport household goods and substantial hardship. Commission Staff recommends that The Moving Club's petition be denied.

A. The Commission should deny The Moving Club's petition for rehearing because the petition is untimely and fails to make the minimum showing required by statute.

9 Under RCW 81.04.200, any public service company affected by any order of the Commission and deeming itself to be aggrieved may file a petition for rehearing upon the matters involved in the order. The public service company may file a petition for rehearing after the expiration of two years from the date the order took effect. *Id.* The Commission has discretion to allow a public service company to file a petition for rehearing at any time. *Id.*

10 A petition for rehearing must set forth the grounds for rehearing. A petition for rehearing must show one of the following: (1) that the conditions have changed since the issuance of the order, (2) that a result injuriously affecting the petitioner occurred which was not considered or anticipated at the former hearing, (3) that the effect of the order was such as was not contemplated by the Commission or the

petitioner, or (4) that any good and sufficient cause exists which, for any reason, was not considered and determined at the former hearing.

11 In this case, although the Commission did not hold a hearing before canceling The Moving Club's authority, the Commission's action was a valid exercise of agency discretion. Under RCW 34.05.422(1)(c), an agency may revoke a license if it provides the licensee with notice of the opportunity for an appropriate adjudicative proceeding. Here, the Commission provided The Moving Club with notice of the pending cancellation and with the opportunity to request a hearing.

12 The Moving Club failed to avail itself of the opportunity for a hearing. As a result, the Commission entered the Cancellation Order on January 13, 2004. Because two years have not elapsed since the order's entry, The Moving Club's petition for rehearing is untimely. Although the Commission has discretion to accept a petition for rehearing at any time, the Commission should decline to allow The Moving Club's petition. This is not a case in which the two-year requirement in RCW 81.04.200 should be waived. Over the two years that The Moving Club held its temporary authority, it had every opportunity to comply with the statutes and regulations governing household goods carriers. Moreover, The Moving Club had the opportunity to request a hearing when the Commission issued the Notice of Pending Cancellation. The Moving Club's petition for rehearing should be denied as untimely.

13 Furthermore, The Moving Club's petition does not make the minimum showing as required under RCW 81.04.200. The Moving Club does not contend that

conditions have changed such that a rehearing is appropriate. In addition, The Moving Club does not describe an injurious result not considered or anticipated in the proceeding. Although canceling a company's authority to operate may be viewed as "injurious," that result was both considered and anticipated in this proceeding.

14 Similarly, The Moving Club fails to describe an effect that was not contemplated by the Commission or the Company. The Moving Club received notice that its temporary authority would be cancelled unless the Company took certain action. Both the Commission and the Company contemplated the cancellation of the Company's temporary authority.

15 Lastly, although the Company does offer two reasons in support of its overall petition,¹ the Company has not set forth any good and sufficient cause that was not considered and determined in the proceeding. Thus, the Commission should deny the petition for rehearing. In addition, The Moving Club's petition for reopening should also be denied.

B. The Commission should deny The Moving Club's petition to reopen the record in this case because the petition is untimely and unsupported.

16 Under WAC 480-07-830, any person affected by a final order of the Commission may petition for reopening any time after the close of the record and before entry of the final order. The Moving Club's petition comes after entry of the final order. Thus, the petition is precluded as untimely.

¹ Commission Staff will address these two reasons offered by The Moving Club in more detail below in section II.D.

17 Even if The Moving Club’s petition is not precluded, the Commission should deny the petition. Under WAC 480-07-830, the Commission may grant a petition for reopening in contested proceedings to permit receipt of evidence essential to a decision and which was unavailable and not reasonably discoverable with due diligence at the time of the hearing. Any evidence The Moving Club proposes to offer now was likely available and discoverable at the time the Commission issued the Notice.

18 The Commission may also grant a petition for reopening based on any other good and sufficient cause. *Id.* The Moving Club does not offer good and sufficient cause for reopening the record in this case. Thus, the Commission should deny the petition for reopening. Additionally, The Moving Club’s petition should be denied if it is treated as a petition for reconsideration.

C. If the Commission treats The Moving Club’s petition as a petition for reconsideration, it should be denied.

19 Under RCW 34.05.470 and WAC 480-07-850, any party may file a petition for reconsideration of a final order within ten days after the order is served. The petition must identify each portion of the order that the petitioner challenges as erroneous or incomplete. WAC 480-07-850(2). The petition must cite portions of the record or the statutes and rules the petitioner relies upon. *Id.* The petition must also present a brief argument in support of the petitioner’s position. *Id.*

20 The timing and the nature of The Moving Club’s petition suggests that it could be appropriately treated as a petition for reconsideration. The petition was

filed within ten days after the Cancellation Order was served and requests the Commission revisit the ultimate issue: whether The Moving Club's temporary authority should be cancelled.

21 The Moving Club's petition is insufficient as a petition for reconsideration. The petition does not identify the portions of the order The Moving Club challenges. Nor does the petition cite to statute or rule that would support The Moving Club's position, presumably that its authority should not be cancelled. Lastly, the petition does not offer argument in support of The Moving Club's position. Thus, the Commission should deny the petition.

D. The reasons offered by The Moving Club in support of its petition are insufficient.

22 The Moving Club offers two reasons in support of its petition. The first reason offered is to determine whether temporary authority to operate as a household goods carrier existed. It appears that The Moving Club challenges whether it possessed temporary or permanent authority.² *See* Petition. Attached to the Notice was the Order Granting Temporary Authority. Attached to this pleading as Attachment 1 is a true and accurate copy of The Moving Club's permit on file with the Commission.³ The Moving Club had not yet been granted permanent authority because it failed to comply with the conditions and requirements set forth in the Order Granting Temporary Authority. Commission records clearly define the

² If The Moving Club challenges whether it held any authority to operate as a household goods carrier, the Order Granting Temporary Authority is direct evidence to the contrary.

³ The Commission may take judicial notice of its own documents.

extent of The Moving Club's authority. In addition, the Commission determined in this proceeding the extent of The Moving Club's authority. *See* Cancellation Order at ¶ 12, Finding of Fact No. 2.

23 The second reason offered by The Moving Club is determination on the merits to avoid substantial hardship. The Commission decided the matter on the merits using the information it had available to it. *See* Cancellation Order at ¶ 16, Finding of Fact No. 6.

24 Moreover, The Moving Club fails to demonstrate the substantial hardship it wants remedied by its petition. During the two years The Moving Club held its authority, it failed to comply with the conditions imposed by the Order Granting Temporary Authority. And, although The Moving Club knew that the Commission intended to cancel its authority to operate as a household good carrier, it chose not to respond to the Commission's Notice. The Company offers no explanation for its failure to respond to the Notice. Any hardship caused by The Moving Club's failure to respond appears to be self-induced.

25 In addition, The Moving Club is not barred from submitting a new application for authority under the Commission's statutes and rules. The ability to file a new application does not guarantee approval because the Commission must determine whether it would be in the public interest to grant The Moving Club new temporary authority to operate as a household goods carrier. However, any hardship faced by The Moving Club due to the Commission's Cancellation Order may be minor, not substantial. In any event, The Moving Club has not supported its

petition with evidence or argument demonstrating sufficient hardship. Thus, the Commission should deny the petition.

III. CONCLUSION

26 Staff recommends that the Commission deny The Moving Club's petition. As a petition for rehearing, it is untimely and fails to demonstrate good and sufficient cause for rehearing as required by RCW 81.04.200. As a petition to reopen, it is untimely and fails to make the minimum showing required under WAC 480-07-830. As a petition for reconsideration, it fails to meet the minimum requirements under WAC 480-07-850.

27 If the Commission grants The Moving Club's petition, Commission Staff requests the opportunity to respond to any new evidence or argument presented by the Company.

Dated this ____ day of February 2004.

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