

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

TOTAL EFFORT LLC

DOCKET TV-180804

ORDER 02

STIPULATED INITIAL ORDER
CLASSIFYING RESPONDENT AS
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 stipulation presented by the parties. If this Initial Order becomes final, Total Effort LLC (Total Effort or Company) will be assessed a financial penalty in the amount of \$5,000 for two (2) violations of RCW 81.80.075(1). A \$4,500 portion of the penalty will be suspended for a period of two years from the date of this order, then waived, subject to the condition that Total Effort refrains from further operations as a household goods carrier without first obtaining the required permit from the Utilities and Transportation Commission (Commission). In addition, if this Initial Order becomes final, Total Effort will be classified as a household goods carrier and required to permanently cease and desist from operating as a household goods carrier without first obtaining a permit from the Commission.

- 1 **Nature of Proceeding.** The Commission initiated this special proceeding to determine if Total Effort 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 October 12, 2018, 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 Total Effort 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 Léon Hembry and Carolyn Savage, Company owners, or a Company representative to appear before the Commission at a special proceeding scheduled to convene at 9:00 a.m. on November 13, 2018, 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 **Hearing.** On November 13, 2018, the hearing convened as scheduled in Olympia, Washington, before Administrative Law Judge Laura Chartoff.

4 **Appearances.** Brian Braun, Compliance Investigator, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff).¹ Leon Hembry, Tacoma, WA, represents the Company, *pro se*.

DISCUSSION

5 **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 prohibits household goods carriers from operating for compensation in Washington without first obtaining the required permit from the

¹ 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.

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.

- 6 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: (i) willingness to comply with the provisions of RCW 81.80.070 and the rules governing household goods carriers contained in WAC 480-15 and (ii) compliance history.
- 7 **Stipulation Presented by Parties.** At hearing, Leon Hembry agreed that Total Effort has been operating as a household goods carrier in the state of Washington without the required permit. The Company offered to transport household goods on at least one occasion and also advertised to transport household goods on at least one occasion.
- 8 Leon Hembry has agreed to permanently shut down and cease operations as a household goods carrier, as defined by WAC 480-15, without first obtaining a permit from the Commission.
- 9 Under RCW 81.04.075(4), Commission Staff is authorized to seek a penalty of up to \$10,000 against the Company. Based upon the above-noted stipulation, Staff now seeks a lesser penalty of \$5,000 and, on the condition that the Company honors its pledge of compliance by maintaining a permit from the Commission, seeks to have \$4,500 of the penalty suspended for two years, then waived.
- 10 The parties agree that the Company's compliance history is a negative factor, making a suspended penalty appropriate as a tool to ensure Total Effort does not re-enter the household goods moving business without first obtaining the required permit.

FINDINGS AND CONCLUSIONS

- 11 (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.


- 12 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Total Effort.
- 13 (3) On at least one occasion, Total Effort offered to transport household goods within the state of Washington without first having obtained a household goods carrier permit from the Commission in violation of RCW 81.80.075.
- 14 (4) On at least one occasion, Total Effort advertised to transport household goods without first having obtained a household goods carrier permit from the Commission in violation of RCW 81.80.075.

ORDER

THE COMMISSION ORDERS:

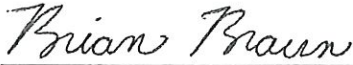
- 15 (1) Total Effort is classified as a common carrier of household goods within the state of Washington.
- 16 (2) Total Effort is ordered to immediately cease and desist operations as a household goods carrier within the state of Washington should it lose its permit from the Commission.
- 17 (3) Total Effort is assessed a penalty of \$5,000. A \$4,500 portion of the penalty is suspended for a period of two years from the date of this Order, and waived thereafter, provided Total Effort 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 is due and payable subject to the payment schedule in Appendix A to this Order.
- 18 (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 November 13, 2018.




LAURA CHARTOFF
Administrative Law Judge

Agreed for Entry:



Brian Braun
Utilities and Transportation



Leon Hembry
Total Effort, LLC

Appendix A

Due Date	Amount
11/13/2018	\$100
12/13/2018	\$200
1/14/2019	\$200

If a payment is missed, the entire amount of the penalty, including the suspended portion of \$4,500, will become due and payable the day after the missed penalty was due.

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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).