

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of  
  
JNS MOVERS, INC.,  
  
For a permit to operate as a motor carrier of  
household goods

Docket TV-230373

COMMISSION STAFF'S MOTION  
TO REVISE RECOMMENDATION  
AND WITHDRAW NOTICE OF  
INTENT TO DENY APPLICATION

**I. INTRODUCTION**

1           In June 2023, the Commission issued notice of its intent to deny the application for a household goods (HHG) carrier permit filed by JNS Movers, Inc. (JNS) because of concerns about JNS's owner's, Justin Higbee, failure to list a criminal conviction for assault in the fourth degree entered against him in 2021. Mr. Higbee subsequently had that conviction expunged from his record. Staff, accordingly, seeks leave to revise its recommendation and asks the Commission to withdraw the notice of its intent to deny JNS's application based on the changed recommendation.

**II. RELIEF REQUESTED**

2           Staff respectfully requests that the Commission: (1) grant it leave to revise its recommendation that the Commission deny JNS's application, and (2) withdraw the notice of intent to deny JNS's application.

### III. STATEMENT OF FACTS

3 JNS filed its application for operating authority in May 2023.<sup>1</sup> As it processed the  
application, Staff discovered a 2021 conviction for fourth degree assault for JNS's owner,  
Justin M. Higbee.<sup>2</sup>

4 Staff recommended that the Commission deny the application based on the 2021  
assault conviction for three reasons.<sup>3</sup> First, the trial court entered the conviction within five  
years of JNS's application, and the conviction thus served as a per se bar to the grant of  
JNS's application.<sup>4</sup> Second, Mr. Higbee had omitted the conviction, providing a second  
reason to deny the application.<sup>5</sup> Third, the assault conviction, coupled with other, older  
convictions, raised concerns about JNS's operations.<sup>6</sup>

5 After the Commission served notice of its intent to deny JNS's application, Mr.  
Higbee contacted Staff and claimed that the criminal histories relied on by Staff had  
erroneously included the 2021 assault conviction.<sup>7</sup> Mr. Higbee stated that he had retained an  
attorney to expunge the conviction;<sup>8</sup> a few days later he contacted Staff again to inform it  
that the trial court had removed the conviction from his record.<sup>9</sup> Staff performed a second  
round of criminal background checks in mid-July 2023 to verify this claim and discovered  
that the assault conviction no longer appeared.<sup>10</sup>

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<sup>1</sup> *In re Application of JNS Movers Inc.*, Docket TV-230373, Notice of Intent to Deny Application for Permanent Authority; Notice of Opportunity for Hearing, 1 ¶ 1 (June 13, 2023) (*NOID*).

<sup>2</sup> Decl. of Patrick Remfrey at 1 ¶ 3.

<sup>3</sup> Decl. of Patrick Remfrey at 1 ¶¶ 3-4.

<sup>4</sup> Decl. of Patrick Remfrey at 1 ¶ 3.

<sup>5</sup> Decl. of Patrick Remfrey at 1 ¶ 4.

<sup>6</sup> Decl. of Patrick Remfrey at 1 ¶ 4.

<sup>7</sup> Decl. of Patrick Remfrey at 2 ¶ 5.

<sup>8</sup> Decl. of Patrick Remfrey at 2 ¶ 5.

<sup>9</sup> Decl. of Patrick Remfrey at 2 ¶ 5.

<sup>10</sup> Decl. of Patrick Remfrey at 2 ¶ 5.

6           Staff reconsidered its recommendation that the Commission deny the application after the second round of background checks. The removal of the conviction meant that nothing acted as a per se bar to granting of the application;<sup>11</sup> it also eliminated questions about fraud or misrepresentation in the application.<sup>12</sup> And, with the removal of the most recent conviction, Staff no longer has concerns about Mr. Higbee’s criminal history.<sup>13</sup>

**IV. STATEMENT OF ISSUES**

7           Should the Commission grant Staff leave to revise its recommendation, and withdraw the notice of intent to deny JNS’s application based on that revised recommendation?

**V. EVIDENCE RELIED UPON**

8           Staff relies upon the declaration of Patrick Remfrey and the pleadings on file in this docket.

**VI. ARGUMENT**

9           The Commission’s rules limit a party’s ability to truncate a proceeding once commenced. The relevant rule provides that

Once the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW, a party may withdraw from that proceeding, or may withdraw the party's tariff, complaint, petition, or application on which a proceeding is based, only upon permission granted by the commission in response to a written motion.<sup>14</sup>

10          While WAC 480-07-380(3)(a) does not expressly apply here, it should nevertheless govern. The Commission intended WAC 480-07-380(3) to prevent abandonment of an

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<sup>11</sup> Decl. of Patrick Remfrey at 2 ¶ 6.

<sup>12</sup> Decl. of Patrick Remfrey at 2 ¶ 6.

<sup>13</sup> Decl. of Patrick Remfrey at 2 ¶ 6.

<sup>14</sup> WAC 480-07-380(3)(a).

otherwise meritorious adjudication – any party wishing to withdraw from or end a proceeding must seek the Commission’s leave. While this adjudication does not arise from a complaint or a petition, as do the ones WAC 480-07-380(3)’s text explicitly applies to, it is an adjudication nevertheless, one brought by the Commission through its Staff pursuant to a recommendation from Staff.

11           Here, the facts underlying Staff’s recommendation changed after Staff offered that recommendation. Mr. Higbee successfully expunged the 2021 assault conviction from his record. The removal of that conviction eliminates both the per se bar to the grant of his application and any trace of fraud or misrepresentation from JNS’s application. It also changes the sum total of Mr. Higbee’s criminal history, enough so that Staff no longer believes that the “nature and extent” of Mr. Higbee’s convictions will “interfere with the proper operation of a household goods moving company.”<sup>15</sup>

12           Given the change in relevant facts, Staff concludes that it should revise its recommendation. The Commission should allow it to do so and, consequently, withdraw the notice of its intent to deny JNS’s application.

## VII. CONCLUSION

13           Staff requests that the Commission grant it leave to revise its recommendation and also that the Commission withdraw the Notice of Intent to Deny JNS’s application, allowing Staff to approve JNS’s application for a permit to operate as a household goods carrier.

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<sup>15</sup> WAC 480-15-302(8)(b).

DATED this 18th day of July 2023.

Respectfully submitted,

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Attorney General

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