

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the	)	DOCKET NO. TV-031701
	)	
Cancellation of Temporary Authority	)	ORDER NO. 02
to Operate as a Household Goods	)	
Carrier Held by The Moving Club, Inc.	)	COMMISSION ORDER DENYING
	)	REHEARING, REOPENING, AND
	)	RECONSIDERATION
.....	)	

1     **SYNOPSIS:** *The Commission entered an order on January 13, 2004, cancelling temporary authority held by The Moving Club and dismissing its application for “permanent” authority for failure to comply with the conditions of its temporary authority. This order denies The Moving Club’s petition for reconsideration of the decision or reopening of the proceeding.*

2     **Appearances:** Respondent The Moving Club, Inc., appears by James R. Walsh, attorney, Lynnwood Washington. The Commission Staff appears by Lisa M. Watson, assistant attorney general, Olympia.

**I. BACKGROUND**

3     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).

4     In the Order Granting Temporary Authority, The Commission required The Moving Club 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.

5 The file contains statements from the Commission Staff. According to the statements, Staff made repeated efforts to conduct a compliance audit and safety review of The Moving Club, but the Company refused to allow Staff access to its vehicles and documents, acting in contravention of the Order Granting Temporary Authority. The Moving Club also failed to submit the required certified statements regarding its operations.

6 The Commission issued a Notice of Pending Cancellation of Authority (Notice) on October 21, 2003, based on The Moving Club's failure to comply with the Order Granting Temporary Authority. 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.

- 7 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 by October 31, 2003, a hearing to challenge the information contained in the Notice.
- 8 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.
- 9 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 Cancelling 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. REOPENING, REHEARING, OR RECONSIDERATION**

- 10 The Moving Club petitions for either rehearing or reopening the record in this docket. The petition reads as follows, in its entirety:

MIKE THE MOVER<sup>1</sup> requests the application of these proceedings for the purpose of determining if in fact there was temporary authority in the first

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<sup>1</sup> Mr. Mover is a principal in The Moving Club, Inc.

instance allowing him authority to operate his household goods carrier and for the purpose of allowing the case to be determined on the merits to avoid substantial hardship to him and his business whether deemed temporary or permanent as far as the scope of his authority to operate as a household goods carrier.

11 **Reopening.** Reopening is governed by WAC 480-09-820,<sup>2</sup> which reads in part as follows:

(2) Reopening. Any party to an adjudication may file a petition for reopening with the commission at any time after the close of the record and before entry of a final order. \* \* \*

Here, assuming for purposes of this discussion that this process has the elements of an adjudication under RCW 34.05.482 through -.491,<sup>3</sup> a final order has been entered and the opportunity for reconsideration has passed.

12 **Rehearing.** 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.*

13 The Moving Club did not request a hearing, so the Commission did not hold an oral hearing before cancelling The Moving Club's authority. The Commission's action was a valid exercise of agency discretion. Under RCW 34.05.422(1)(c), an

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<sup>2</sup> WAC 480-09-820 was superseded on January 1, 2004, by WAC 480-07-830, which reads in part as follows: "Any party may file a motion to reopen the record at any time after the close of the record and before entry of the final order."

<sup>3</sup> It may also be argued that inasmuch as The Moving Club, Inc., made no request for a hearing, this is an administrative procedure to which reopening is by the rule's definition inapplicable.

agency may revoke a license if it provides the licensee with notice and the opportunity for an appropriate adjudicative proceeding. The Moving Club received notice of the pending cancellation and of the opportunity to request a hearing, failed to seek a hearing, and offers no explanation for any of its actions.

14 A petition for rehearing must set forth the grounds for rehearing. A petition for rehearing must show one of the following under RCW 80.04.200: (1) that conditions have changed since the entry of the order, (2) that a result injuriously affecting the petitioner occurred that 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.

15 The Moving Club's petition does not make the minimum showing required under RCW 81.04.200: the petitioner makes no allegation of change since entry of the order; although canceling a company's authority to operate may be viewed as "injurious," that result was both considered and anticipated in this proceeding; The Moving Club received notice that its temporary authority would be cancelled unless the Company took certain action, and the effect of the order (cancellation) was contemplated by the Commission and The Moving Club. Finally, although the Company offers two reasons in support of its petition, the Company has not set forth any good and sufficient cause that was not considered and determined in the proceeding.

16 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 petitioner stated no reason for the Commission to do so. The Moving Club's petition for rehearing should be rejected as untimely.

17 Thus, the Commission should deny the petition for rehearing.

18 **Reconsideration.** 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.*

19 Commission rules require the Commission to view pleadings liberally, to effect justice. WAC 480-09-425(4). 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.

20 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 that its authority should not be cancelled. Finally, the petition does not offer argument in support of The Moving Club's position.

21 The Moving Club appears to offer two reasons in support of its petition. The first reason is divined from its request to determine whether The Moving Club held temporary or permanent authority to operate as a household goods carrier. The Moving Club may therefore be challenging whether it possessed temporary or permanent authority.<sup>4</sup>

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<sup>4</sup> 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.

- 22 The Commission attached the Order Granting Temporary Authority to the Notice initiating the process of cancellation. 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. In addition, the Commission determined in this proceeding the extent of The Moving Club's authority and The Moving Company failed to appear to contest the provisions of the notice or the nature of its authority.
- 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. 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.
- 24 Finally, 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. It is possible that the hardship from cancellation of the permit might be remedied by a further application.

**III. CONCLUSION**

25 The Commission denies 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.

26 The Commission denies reopening; denies rehearing; and denies reconsideration of its decision cancelling temporary authority and dismissing the application for permanent authority of The Moving Company.

DATED at Olympia, Washington, and effective this 12th day of February, 2004

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner