

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Petitioner,

v.

SUPER FRIENDS MOVING L.L.C.,
D/B/A SUPER FRIENDS MOVING,
Respondent.

DOCKET TV-200820

ORDER 01

PREHEARING CONFERENCE
ORDER; DEFAULT ORDER

BACKGROUND

- 1 **Procedural History.** On September 30, 2020, the Commission issued a Complaint for Penalties; Notice of Prehearing Conference set for Thursday, October 22, 2020, at 9:30 a.m. The Complaint alleges that Super Friends Moving L.L.C., d/b/a Super Friends Moving, (Super Friends or Company) violated RCW 81.80.075(1) and the Commission’s cease and desist order in Docket TV-170206 by (1) offering on at least one occasion and (2) advertising on at least one occasion to transport household goods within the state of Washington without the necessary permit required for such operations.
- 2 **Conference.** The Commission convened a virtual prehearing conference (PHC) in this docket on October 22, 2020, before Administrative Law Judge Samantha Doyle. Commission staff (Staff) and the Public Counsel Unit of the Office of the Attorney General (Public Counsel) were the only parties who appeared at the PHC. Commission Staff moved for default pursuant to RCW 34.05.440(2) and WAC 480-07-450. Commission Staff also requested that it be allowed to present a prima facie case demonstrating that Super Friends had operated and advertised as a household goods carrier without the required permit from the Commission and in violation of the Commission’s cease and desist order.
- 3 RCW 34.05.440(2) allows the presiding officer discretion to enter a “default or other dispositive order” if a party fails to appear at the hearing. Based on the failure of Super Friends to appear, the Administrative Law Judge granted Commission Staff’s request to enter a default order and to allow for presentation of its case.
- 4 Commission Staff presented the testimony of one witness, Jacque Hawkins-Jones.

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

5 **Default Initial Order.** The Commission finds Super Friends in default pursuant to RCW 34.05.440(2) and WAC 480-07-450(1). The Commission also finds that Super Friends previously operated and advertised as a household goods carrier without a permit. Further, the Commission orders Super Friends to pay a \$20,000 penalty for two (2) violations of RCW 81.80.075(1) and the Commission’s cease and desist order in Docket TV-170206.

6 **Appearances.** Jeff Roberson, Assistant Attorney General, Lacey, Washington, represents Commission Staff.¹ Lisa Gafken, Assistant Attorney General, Seattle, Washington, represents Public Counsel.

DISCUSSION

A. Default

7 The Complaint for Penalties and Notice of Prehearing Conference includes a notice that any party who fails to attend or participate in the hearing may be held in default in accordance with the terms of RCW 34.05.440 and WAC 480-07-450. RCW 34.05.440(2) provides: “If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding ... the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.” WAC 480-07-450(1) provides that that the Commission may find a party in default if the party fails to appear at the time and place set for a hearing.

8 Staff moved to hold Super Friends in default pursuant to RCW 34.05.440(2) and WAC 480-07-450. Public Counsel did not oppose the motion for default but noted that the Company had failed to appear at a PHC in a previous docket and nevertheless participated in subsequent proceedings. Based on Super Friends’ failure to appear, the Administrative Law Judge orally granted Staff’s request to enter a default order and to hear Staff’s case on the merits.

9 **Decision.** The Commission electronically served Super Friends with the Notice on September 30, 2020, 22 days in advance of the PHC. Accordingly, Super Friends was

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

properly and legally served and provided due and proper notice of the time and place set for hearing. Super Friends did not appear at the PHC and is therefore held in default.

10 Super Friends' failure to appear at the PHC is unacceptable. Both the Commission and the parties expended resources preparing for, and attending, the PHC. This default order imposes the maximum statutory penalty, as discussed below, and should serve to impress upon Super Friends the importance of responding to the Commission's communications and notices.

11 WAC 480-07-450(2) provides that: "A party who is dismissed from a proceeding or found in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process." A notice appearing at the end of this order provides instructions for filing such a notice with the Commission.

B. Operating as a Household Goods Carrier Without Authority

12 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.

13 RCW 81.80.075 prohibits household goods carriers from operating for compensation in Washington without first obtaining the required permit from the 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.

14 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. 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 \$10,000 per violation.

15 Jacque Hawkins-Jones, a compliance investigator with the Commission, testified concerning her investigation into the operations and business practices of Super Friends.

Hawkins-Jones prepared an exhibit summarizing the findings.² Hawkins-Jones testified that Super Friends advertised its services and provided a quote for services in August 2020 without a permit.

- 16 **Decision.** By failing to appear at the hearing held on October 22, 2020, Super Friends has also failed to meet the burden of proving that the Company did not violate RCW 81.80.075 or the Commission's cease and desist order in Docket TV-170206. The evidence presented by Staff through exhibits and witness testimony establishes that Super Friends has engaged in business as a household goods carrier without the necessary permit required by RCW 81.80.075.

FINDINGS AND CONCLUSIONS

- 17 (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.
- 18 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Super Friends.
- 19 (3) On at least one occasion, Super Friends 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 and in violation of the Commission's cease and desist order in Docket TV-170206.
- 20 (4) On at least one occasion, Super Friends advertised to transport household goods without first having obtained a household goods carrier permit from the Commission in violation of RCW 81.80.075 and in violation of the Commission's cease and desist order in Docket TV-170206 .
- 21 (5) Pursuant to RCW 34.05.440(2), Super Friends is held in default for failing to appear at the October 22, 2020, PHC.
- 22 (6) The Commission should penalize Super Friends \$10,000 for each of the two violations of RCW 81.80.075 and the Commission's cease and desist order in Docket TV-170206 for a total penalty of \$20,000.

² See Exhibit 1.

ORDER

THE COMMISSION ORDERS:

- 23 (1) Super Friends Moving L.L.C., d/b/a Super Friends Moving, is held in default. Should Super Friends Moving L.L.C., d/b/a Super Friends Moving, fail to respond to this Order by filing a written motion within ten (10) days requesting that the order be vacated pursuant to WAC 480-07-450(2), the default in this proceeding shall remain in place.
- 24 (2) Super Friends Moving L.L.C., d/b/a Super Friends Moving, is assessed a penalty of \$20,000, which is due and payable immediately.
- 25 (3) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

Dated at Lacey, Washington, and effective November 2, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Samantha Doyle
SAMANTHA DOYLE
Administrative Law Judge

NOTICE TO 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 480-07-450(2) states that a party held in default has 10 days after service of a default order to file a written motion requesting the order be vacated and the proceeding reopened for further process. The party held in default must state the grounds relied upon, including its reasons for failing to appear.

WAC 480-07-825(2)(a) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file an answer (Answer) to a Petition within 10 days after service of the petition.

A party held in default must file a written motion requesting the order be vacated pursuant to WAC 480-07-450(2) within 10 days after service in order to have the Commission consider a Petition for Administrative Review from that party.

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) 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).

