

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

**SUPERHEROES MOVING AND
STORAGE LLC**

For Compliance with WAC 480-15 and
RCW 81.80.075(1)

DOCKET TV-220321

ORDER 01

CANCELING PROVISIONAL
HOUSEHOLD GOODS PERMIT;
DENYING APPLICATION FOR
PERMANENT AUTHORITY;
IMPOSING AND SUSPENDING
PENALTIES SUBJECT TO
CONDITIONS

BACKGROUND

- 1 On May 10, 2022, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements in the Matter of the Investigation of Superheroes Moving and Storage LLC (Superheroes Moving or Company) for Compliance with Washington Administrative Code (WAC) 480-15 (Notice). On May 26, 2022, the Commission issued a revised Notice that included a Complaint for Penalties (Complaint).
- 2 The Notice explained that Commission staff (Staff) conducted a compliance review of Superheroes Moving's operations between March and April 2022 and cited the Company for critical violations of federal and state safety regulations, as well as operating without a household goods permit on 76 occasions between July 2021 and January 2022. Staff's review resulted in a proposed unsatisfactory safety rating. Based on its review, Staff recommends the Commission cancel Superheroes Moving's household goods carrier permit unless the Company obtains Commission approval of a safety management plan. The Notice directed Superheroes Moving to file a proposed safety management plan by July 11, 2022. The Notice also set a prehearing conference for June 23, 2022, and an evidentiary hearing for July 7, 2022.
- 3 The revised Notice included a Complaint recommending the Commission impose penalties for the following violations:
 - 76 violations of Revised Code of Washington (RCW) 81.80.075(1) for transporting household goods for compensation without the permit required for

such operations. Staff requested the Commission assess penalties of up to \$5,000 for each of these violations.

- 14 violations of WAC 480-15-555 for failing to perform criminal background checks on persons hired. Staff requested the Commission assess penalties of up to \$1,000 for each of these violations.
- 1 violation of WAC 480-15-480(4) for failing to file an annual report for 2019 and 2020. Staff requested the Commission assess penalties of up to \$1,000 for each of these violations.
- 121 violations of safety rules contained in WAC 480-15-560 and WAC 480-15-570, which adopt federal regulations found in Code of Federal Regulations (C.F.R.) Parts 391, 393, 395, and 396. Staff requested the Commission assess penalties of up to \$1,000 for each of these violations.

4 The Commission convened a prehearing conference on June 23, 2022. The Company explained that it was continuing to work on its safety management plan but had not yet filed a plan that was acceptable to Staff.

5 On July 7, 2022, the Commission convened an evidentiary hearing before administrative law judge Rayne Pearson.

6 Staff presented the testimony of Tracy Cobile, transportation safety investigator, and Jason Sharp, transportation planning specialist. Cobile testified about the safety investigation and the violations Staff discovered and documented in its Safety Investigation Report, which led to the proposed unsatisfactory safety rating for Superheroes Moving. Cobile further testified that Superheroes Moving operated on 76 occasions between July 2021 and January 2022, while the Company's household goods permit was canceled for insufficient proof of insurance.¹ Cobile explained that the Company holds a provisional household goods permit and has not yet been granted permanent authority to operate as a household goods moving company.²

7 Ryan Doherty, Company owner, testified on behalf of Superheroes Moving. Doherty stipulated to the violations and explained that he plans to cease operating by the date the Commission intends to cancel the Company's permit, or July 17, 2022. Doherty testified that complying with Commission rules was too complicated and difficult for someone

¹ Superheroes Moving's provisional household goods permit THG069055 was canceled for insufficient proof of insurance in Docket TV-210576 on July 26, 2021, and was reinstated on January 5, 2022, in Docket TV-210935.

² Superheroes Moving filed an application for permanent household goods moving authority on January 9, 2020.

like him, who has no previous experience working in the household goods moving industry.

8 At the conclusion of the hearing, Staff witness Sharp recommended the Commission assess a total penalty of \$385,400 as follows:

- \$5,000 for each of the 76 violations of RCW 81.80.075(1) for a total penalty of \$380,000.
- \$100 for each of the 31 violations of 49 C.F.R. § 391.45(a) for a total penalty of \$3,100.
- \$100 for 4 violations of 49 C.F.R. § 391.51(b)(2).
- \$100 for 26 violations of 49 C.F.R. § 395.8(a)(1).
- \$100 for each of the 14 violations of WAC 480-15-555 for a total penalty of \$1,400.
- \$100 for 16 violations of 49 C.F.R. § 396.11(a).
- \$100 for 3 violations of 49 C.F.R. § 396.17(a).
- \$100 for 1 violation of 49 C.F.R. § 393.9(a).
- \$100 for 1 violation of 49 C.F.R. § 393.47(a).
- \$100 for 1 violation of 49 C.F.R. § 393.45(d).
- \$100 for 1 violation of 49 C.F.R. § 393.75(a)(3).
- \$100 for 1 violation of 49 C.F.R. § 396.3(a)(1).

9 Because Staff anticipates that the Commission will cancel the Company's permit effective July 18, 2022, Staff recommends the Commission suspend all but \$5,000 of the recommended penalty for a period of two years, and then waive it, subject to the conditions that (1) Superheroes Moving ceases and desists operations as a household goods moving company unless and until the Company obtains a permit, and (2) if Superheroes Moving applies to reinstate its permit, the Company must first submit an acceptable safety management plan and pay the \$5,400 penalty related to the safety violations identified in Staff's safety investigation report.

DISCUSSION AND DECISION

1. Safety Rating

- 10 Washington law requires household goods carriers to comply with federal safety requirements and undergo routine safety inspections. Staff's 2022 compliance review of Superheroes Moving found numerous violations of critical safety regulations, which resulted in a proposed unsatisfactory safety rating. Violations classified as "critical" are indicative of a breakdown in a carrier's management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.
- 11 Superheroes Moving received notice of the proposed unsatisfactory safety rating on April 28, 2022. Household goods moving companies that receive a proposed unsatisfactory safety rating have 60 days to request and receive a change to the proposed rating. Staff extended Superheroes Moving's deadline to request and receive an update to its safety rating until July 15, 2022.
- 12 In its May 26, 2022, revised Notice, the Commission instructed the Company to submit its proposed safety management plan by June 23, 2022. Company owner Ryan Doherty testified at hearing that he was unable to obtain approval of a safety management plan, that the Company no longer intends to seek approval of a proposed safety management plan, and that it will cease operating as a household goods carrier when the Commission cancels its permit.
- 13 Based on the evidence in the record, the Commission finds that the Company failed to take corrective action to address the violations in the Complaint. Accordingly, the Commission finds good cause to cancel the Company's provisional household goods permit effective July 18, 2022, and to deny the Company's application for permanent authority. Superheroes Moving must cease and desist from providing, advertising, or offering to provide household goods moves regulated by the Commission effective July 18, 2022. Pursuant to WAC 480-15-450(3), Superheroes Moving also must notify all its customers that its permit has been canceled and provide proof to the Commission within 10 days of the date of this Order that such notice has been provided.

2. Penalty

- 14 We decline to adopt Staff's recommendation to assess a \$380,000 penalty for 76 violations of RCW 81.80.075(1). We find that assessing such a large penalty for these violations would be inconsistent with Commission policy and practice for the reasons

explained below.

- 15 The Commission considers several factors when determining an appropriate penalty for violations of applicable laws and Commission rules, including the size of a company. Our Enforcement Policy provides that the Commission does not intend to take enforcement actions disproportionate to companies of a similar size with similar penalties.³
- 16 Two cases, *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against, Dolly, Inc., (Dolly)*⁴ and *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against Ghostruck, Inc., (Ghostruck)*⁵ are instructive here. In *Dolly*, Commission Staff alleged that Dolly, Inc., (Dolly) had operated as a household goods mover, common carrier, and solid waste collection company on a total of 25 occasions. Dolly was a large, sophisticated company that operated in multiple states, employed a staff attorney, and was represented by counsel. Dolly had a three-year history of noncompliance with Commission rules despite receiving extensive technical assistance from Staff. The Commission assessed a \$69,000 penalty against Dolly for 25 violations of applicable laws.
- 17 Similarly, Ghostruck, Inc., (Ghostruck) was a sophisticated company that was represented by counsel and had a three-year history of noncompliance with Commission rules that included using five separate platforms to advertise its services despite receiving extensive technical assistance from Staff. The Commission assessed a penalty of \$75,500, which represented a \$500 penalty for each of the 141 violations alleged in the Complaint.
- 18 In light of this precedent, assessing a \$380,000 penalty against Superheroes Movers, which is a similarly sized company that does not have legal representation or a history of noncompliance comparable to Dolly's or Ghostruck's, would be inconsistent with Commission practice.

³ Staff's Safety Investigation Report states that the Company's gross revenue for 2021 was \$831,910. RCW 34.05.110(9)(a) defines a small business as a business with 250 or fewer employees or gross revenue of less than \$7 million annually. Accordingly, Superheroes Moving qualifies as a small business.

⁴ Docket TV-171212, Order 02 (March 29, 2018); affirmed by Final Order 04 Denying Petition for Administrative Review (May 18, 2018).

⁵ Docket TV-161308, Order 04 (April 25, 2017); affirmed by Final Order 05 Denying Petition for Administrative Review (June 1, 2017).

- 19 We nevertheless recognize the importance of impressing upon the Company that it must comply with Commission regulations given its unpermitted operations during the six-month period that its household goods permit was canceled for insufficient proof of insurance. Accordingly, we assess penalties of \$1,000 for each of the 76 violations of RCW 81.80.075, for a total penalty of \$76,000. This amount is substantial enough to deter future unauthorized operations, proportionate to both the Company's size and the seriousness of the violations, and consistent with our precedent in *Dolly* and *Ghostruck*.
- 20 We agree with Staff that the Commission should assess the recommended penalty of \$5,400 for the safety violations alleged in the Complaint and to which the Company stipulated. The Company stated that it was unable or unwilling to come into compliance and that intends to cease operations. Absent a showing that the Company has taken steps to correct these violations or otherwise come into compliance, we find that mitigation of these penalties is not warranted. We also agree that the Company should be required to pay this portion of the penalty should it decide to apply for a household goods permit in the future.
- 21 We decline to adopt Staff's recommendation to suspend all but a \$5,000 portion of the penalty. Because the Company has agreed to cease and desist performing household goods moves, suspending the penalty in its entirety better serves the Commission's enforcement goal of deterring future unauthorized operations. Accordingly, the Commission assesses a total penalty of \$81,400 and suspends the penalty in its entirety for two years, and then waives it, subject to the conditions that (1) the Company ceases and desists providing, advertising, or offering to provide household goods moves, and (2) if the Company applies for a household goods permit in the future, it must first submit an acceptable safety management plan and pay the \$5,400 penalty related to the safety violations to which it stipulated before it obtains a permit.

FINDINGS AND CONCLUSIONS

- 22 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including common carriers such as household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 23 (2) Superheroes Moving is a household goods carrier subject to Commission regulation.

- 24 (3) Superheroes Moving stipulated to the violations alleged in the Complaint.
- 25 (4) Superheroes Moving failed to cure the deficiencies that led to the Company's proposed unsatisfactory safety rating. Accordingly, Superheroes Moving's provisional household goods permit should be canceled effective July 18, 2022, and its application for permanent authority should be denied.
- 26 (5) Superheroes Moving should be required to cease and desist providing, advertising, or offering to provide household goods moves regulated by the Commission effective July 18, 2022.
- 27 (6) Pursuant to WAC 480-15-450(3), Superheroes Moving should also be required to immediately notify all its customers that its permit has been canceled effective July 18, 2022, and to provide proof to the Commission within 10 days of the date of this Order that such notice has been provided.
- 28 (7) The Commission should assess an \$81,400 penalty for 76 violations of RCW 81.80.075(1) and 121 violations of Commission safety rules. The Commission should suspend the entire penalty for a period of two years, and then waive it, subject to the following conditions: (1) the Company must cease and desist providing, advertising, or offering to provide household goods moves, and (2) if the Company applies for a household goods permit in the future, it must first submit an acceptable safety management plan and pay the \$5,400 penalty related to the safety violations before it obtains a permit.

ORDER

THE COMMISSION ORDERS THAT:

- 29 (1) Superheroes Moving and Storage LLC's provisional household goods permit is CANCELED effective July 18, 2022.
- 30 (2) Superheroes Moving and Storage LLC must cease and desist providing, advertising, or offering to provide household goods moves subject to Commission regulation effective July 18, 2022.
- 31 (3) Superheroes Moving and Storage LLC must immediately notify its customers that its permit is canceled and provide proof of such notice to the Commission within 10 days of the date of this Order.
- 32 (4) Superheroes Moving and Storage LLC's application for permanent authority is DENIED.

- 33 (5) The Commission assesses an \$81,400 penalty against Superheroes Moving and Storage LLC. The Commission suspends the entire penalty for a period of two years and then waives it, subject to the following conditions: (1) Superheroes Moving and Storage LLC must cease and desist all operations as a household goods moving company, and (2) if Superheroes Moving and Storage LLC applies to reinstate its household goods moving permit or applies for a new household goods moving permit, it must first pay the \$5,400 portion of the penalty related to its safety regulation violations.
- 34 (6) If Superheroes Moving and Storage LLC violates this Order, the entire \$81,400 penalty will become immediately due and payable.

DATED at Lacey, Washington, and effective July 13, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

Pursuant to WAC 480-15-450(4)(a), a carrier whose household goods permit has been cancelled involuntarily may apply for reinstatement if the carrier corrects all conditions that led to cancellation of the permit. To reinstate the permit within thirty (30) days of cancellation, the carrier must file an application for reinstatement and pay the applicable reinstatement fees as stated in WAC 480-15-230. If the carrier files an application for reinstatement after thirty (30) days of cancellation, the application will be considered in all aspects to be an application for new authority and will be subject to all terms and conditions specified in WAC 480-15-302 for new entrants.

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)(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.

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).