

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper	)	DOCKET TV-131603
Carrier Classification of, and Complaint)	
for Penalties against:	)	ORDER 03
)	
GREEN, CHANA d/b/a	)	INITIAL ORDER REQUIRING
GREAT AMERICAN MOVING &	)	RESPONDENT TO CEASE AND
STORAGE	)	DESIST FROM CONDUCTING
	)	BUSINESS AS A HOUSEHOLD
Respondent.	)	GOODS MOVING COMPANY
	)	WITHOUT THE NECESSARY
	)	CERTIFICATE; IMPOSING
.....	)	PENALTIES

BACKGROUND

¹ **PROCEEDING.** The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine whether Chana Green d/b/a Great American Moving & Storage (Great American Moving or Company), 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.¹ The Commission, through its regulatory staff (Staff),² also complained against the Company asserting two violations of RCW 81.80.075(1) and requests that the Commission impose penalties of \$2,500 per violation for a total of \$5,000.³

¹ Docket TV-131603, Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing (September 6, 2013).

² 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.

³ The maximum penalty for each of these violations under RCW 81.80.075(4) is \$5,000.

2 The Commission convened an initial hearing in this docket at Olympia, Washington
on October 8, 2013, which the parties used as a prehearing conference.⁴ The
Commission conducted an evidentiary hearing on November 14, 2013.

3 **PARTY REPRESENTATIVES.** Robert D. Cedarbaum, Assistant Attorney
General, Olympia, Washington, represents Staff. Chana Green, Houston, Texas,
represents herself and her company, Great American Moving, *pro se*.

4 **JURISDICTION:** The Commission's jurisdiction to institute a special proceeding
to determine whether Chana Green d/b/a Great American Moving & Storage is
conducting business requiring operating authority, or has performed or is performing
any act requiring Commission approval without securing such approval, is found in
RCW 80.01.040, RCW 81.01.010, and RCW 81.04.510. If the Respondent is
determined to be conducting such business, RCW 81.04.510 authorizes and directs
the Commission to order the Respondent to cease and desist from such conduct.

5 The Commission is authorized, in addition, to file a complaint on its own motion, as
provided by RCW 81.04.110, setting forth any act or omission by any public service
company that violates any law or any order or rule of the Commission. The
Commission is empowered to impose penalties for any such violations.

EVIDENCE

6 Staff witness Lauren McCloy, a Commission Compliance Investigator, testified that
she initiated an investigation into the Company in June 2013.⁵ Ms. McCloy reviewed
Commission records and determined that Great American Moving did not have a
household goods carrier permit.⁶

7 On May 13, 2013, Ms. McCloy searched the Internet for Great American Moving
advertising. She found the Company's own website and additional advertisements on

⁴ Docket TV-131603, Order 02, Prehearing Conference Order; Notice of Hearing (October 9, 2013).

⁵ McCloy, TR. 108:8-18; *see also* Exh. 1 at 1, ¶ 2.

⁶ TR. 109:13-22; *see also* Exh. 1 at 1-2, ¶ 3.

Angie's List, Seattle Mover, and Yelp. Ms. McCloy confirmed that as of October 29, 2013, these websites remained operational and appeared substantially the same.⁷

8 The "Moving" portion of Great American Moving's website has a tab for "Local" moves that leads users to specific information on "Washington moving" that includes advice on interstate moves and "staying put" within the state, with additional specific tabs for "Seattle Moving" and "Tacoma Moving."⁸ The Washington moving page states that moving in Washington "can be a hassle even if you only move a few blocks."⁹ The Tacoma moving page states that the Company "specializes in moving property in, out and around Washington."¹⁰

9 The other advertising pages contain similar language referring to "local" moves. Angie's List describes Great American Moving's service as including "local" relocation.¹¹ Seattle Mover explains that the Company can assist with a customer's "need to ship property from one location to another," "even within your own city."¹² Yelp indicates that Great American Moving serves "Tacoma and surrounding area."¹³

10 Ms. McCloy further testified that she contacted Great American Moving on June 19, 2013, by calling the toll-free number listed on its web page. Ms. McCloy spoke to "Amber" and requested an estimate for a household goods move between Lakewood, Washington, and Olympia, Washington. According to Ms. McCloy, the Company quoted a rate of \$99 per hour for two movers and a truck.¹⁴

11 Ms. Green testified that the Company's website does not advertise intrastate moving services and that the on-line quote system would not process estimates between two zip codes both located in Washington state. Although the Company site and the

⁷ TR. 110:1 – 115:19; *see also* Exh. 1 at 2, ¶ 4, and at 10-22.

⁸ Exh. 1 at 11-15; *see also* TR. 110:12 – 112:23.

⁹ Exh. 1 at 13.

¹⁰ Exh. 1 at 15.

¹¹ Exh. 1 at 16.

¹² Exh. 1 at 18; *see also* TR. 113:22 – 114:22.

¹³ Exh. 1 at 20; *see also* TR. 114:23 – 114:12.

¹⁴ TR. 115:25 – 116:6; *see also* Exh. 1 at 2, ¶ 6.

Seattle Movers “landing page” both stress that Great American Movers is a local company, Ms. Green pointed out that all other language on their website and the Seattle Movers website is very general in nature.¹⁵

12 Ms. Green stated expressed willingness to modify some of the language on the Company website or the Seattle Movers site.¹⁶ As to the other advertising sites, Ms. Green explained that neither she nor the Company could control the independently created content of Angie’s List or Yelp.¹⁷

13 Ms. Green further testified that the Commission had not provided her with any proof that Ms. McCloy’s alleged telephone call with Amber actually occurred or what specific questions might have been posed by Ms. McCloy.¹⁸ According to Ms. Green, she did employ a person named Amber at the time of Ms. McCloy’s phone call, but that Amber was a new employee who may have been confused about the nature of the estimate requested and perhaps mistakenly provided the quote.¹⁹

14 Ms. Green repeatedly stated that her Company does not offer to perform local moves in Washington and only provides long distance moves.²⁰ Ms. Green also presented the testimony of Mr. Rascheik Dixon and Mr. Shayla Nealy to reiterate that Great American Moving does not solicit business or actually perform local moves.²¹

DISCUSSION AND DECISION

15 RCW 81.04.510, which authorizes this special proceeding, places the burden of proof on the Respondent to show by evidence that its acts or operations are not subject to the provisions of RCW Chapter 81. Although Ms. Green testified that she and her company do not conduct intrastate moves in Washington, the weight of the evidence favors an opposite finding.

¹⁵ Green, TR. 128:9 – 131:4 and 134:2-20.

¹⁶ *Id.* at 130:11-12, 139:5-7, and 139:24 – 140:12.

¹⁷ *Id.* at 131:5 – 134:2.

¹⁸ *Id.* at 136:1-20; *see also* Exh. 2, ¶ 5 and ¶ 8.

¹⁹ TR. 155:1 – 157:21.

²⁰ *Id.* at 136:20-24, 138:19 – 139:4, 140:12-13, and 157:22 – 148:15.

²¹ Exh. 3 and Exh. 4.

A. Operating or Advertising as Household Goods Moving Company without Permit

16 Staff's Complaint alleges that Great American Moving violated RCW 81.80.075(1) at least once by advertising the Company's availability to transport household goods without having first obtained a household goods carrier permit from the Commission. Great American Moving's web site establishes at least one violation of the statute.

17 Exhibit 1 (pages 10-15) shows that Great American Moving holds itself out in advertising on the Internet as a household goods mover. Although Ms. Green and Rascheik Dixon testified that the Company conducts only interstate moves, the plain reading of the language in the ads refers to intrastate moves within Washington. The Company's own website discusses moving "only a few blocks" and touts Great American Moving's expertise in "moving property in, out *and around* Washington" (emphasis added). The Company's Seattle Movers "landing page" advertises an ability to ship a customer's property "even within your own city." This language does not speak to a company seeking to conduct only interstate business.

18 The Complaint also alleges a violation of RCW 81.80.075(1) based on Great American Moving offering to transport household goods between two cities in western Washington without having first obtained a household goods carrier permit from the Commission. This violation is established by Ms. McCloy's un rebutted credible testimony that she was able to obtain an estimate for such a local move by telephone from a Company employee on June 19, 2013.

19 Ms. Green conceded that the Company employed someone named Amber on the date of Ms. McCloy's phone call and offered no evidence to rebut this allegation. The language found in the Company's on-line advertising only reinforces the credibility of Ms. McCloy's testimony.

20 These violations are each subject to a maximum penalty of \$5,000 under RCW 81.80.075(4). The Commission determines that an appropriate penalty should be assessed for both violations.

21 The Commission also finds on the basis of this evidence that Great American Moving is conducting business requiring operating authority and has performed and is

performing acts requiring Commission approval without obtaining the necessary operating authority or approval. The Commission accordingly concludes that it should and must order Great American Moving to cease and desist from such conduct and acts, as required under RCW 81.04.510.²²

B. Enforcement Policy

- 22 RCW 81.04.075(4) authorizes penalties of up to \$5,000 per violation of RCW 81.80.075(1). Given the Company's two violations noted above, the maximum penalty the Commission could impose in this case is \$10,000. The Commission thus must determine the appropriate amount to penalize the Company for these violations. RCW 81.80.075(4)(b) requires that the Commission consider a carrier's willingness to comply with the requirements of RCW 81.80.070 and the Commission's rules under RCW Chapter 81.80, and the carrier's compliance history in deciding the amount of penalty to be imposed per violation.
- 23 Staff recommends that the Commission impose a penalty of \$5,000 in this matter.²³ Staff contends that the Company understood the requirement to obtain a permit but decided to engage in the household goods business without a permit.²⁴
- 24 Great American Moving contends that a \$5,000 penalty would not be appropriate. Ms. Green steadfastly insisted at hearing that she should not be required to obtain a certificate of operating authority because her company was not conducting intrastate moves. Nevertheless, she stated a willing to come into compliance, at least with regard to Company advertising. In her closing comments, Ms. Green contended that the Company's web page is used like a business card, not for advertising purposes, but she again expressed her willingness to make alterations to the site in order to comply with Washington law.²⁵

²² Under RCW 81.80.075, if Respondent engages in business as a household goods carrier in violation of a cease and desist order entered by the Commission, Respondent is subject to a penalty of up to \$10,000 per violation. Each day of illegal operations may be considered a separate violation.

²³ McCloy, TR. 117:8 – 118:24.

²⁴ *Id.* at 118:4-8.

²⁵ Green, TR. 179:15 – 180:16.

25 The Commission adopted an enforcement policy on January 7, 2013,²⁶ in which the Commission explained that it considers at least 11 factors²⁷ in determining the type of enforcement action to take and the level of penalty to impose in any particular case:

- 1) How serious or harmful the violation is to the public;
- 2) Whether the violation is intentional;
- 3) Whether the company self-reported the violation;
- 4) Whether the company was cooperative and responsive;
- 5) Whether the company promptly corrected the violations and remedied the impacts;
- 6) The number of violations;
- 7) The number of customers affected;
- 8) The likelihood of recurrence;
- 9) The company's past performance regarding compliance, violations, and penalties;
- 10) The company's existing compliance program; and
- 11) The size of the company.

26 After considering each party's position, we briefly consider the applicability of each of these factors to this case.

27 *Harm to the Public.* The Commission requires household goods movers to obtain a permit because of the position of trust consumers must place in companies taking temporary control and custody of their worldly possessions. In this case, no direct harm to consumers was alleged, but failure to obtain the required permit is the type of violation that facilitates harm to members of the public.

28 *Intentional Violation.* The evidence demonstrates that Great American Moving intentionally violated RCW 81.80.075(1) by providing an estimated cost to perform an intrastate move and by using language in its advertising to market its willingness and ability to perform local moves.

29 *Self-Reporting.* Great American Moving did not self-report its offering or advertising to conduct intrastate household goods moves.

²⁶ Docket A-120061.

²⁷ Several of these factors are parallel to those found in RCW 81.80.075(4)(b). The carrier's "willingness to comply" can be considered in conjunction with factors 2, 3, 4, 8, and 10. The carrier's "compliance history" is essentially the same as factor 9.

30 *Cooperation and Responsiveness.* The record demonstrates that Great American Moving was responsive to Commission subpoenas. Also, at the close of hearing, Ms. Green indicated her willingness to cooperate with Staff in redesigning the Company's website and affiliated advertisements. From the record in this case, it appears that the Company's cooperation and responsiveness came only at or after the hearing.

31 *Prompt Correction of Violations.* As of the date of hearing, Great American Moving had not yet adjusted its business practices or altered its website advertising.

32 *Number of Violations.* Great American Moving violated the statute at least two (2) times, a number the Commission does not find to be significant. However, if the continuing nature of the advertising violation is considered, it could quickly become significant. Further, given the multiple web sites directing customers to Great American Moving, Staff could have alleged multiple advertising violations.

33 *Number of Customers Affected.* Great American Moving's violations were not shown to have affected any specific customers.

34 *Likelihood of Recurrence.* Great American Moving appears determined to continue to operate only as an interstate mover. Great American Moving expressed its willingness to alter its website and advertising, but has not yet done so. It appears likely that the Company will continue to conduct intrastate business without a permit.

35 *Past Performance Regarding Compliance.* Great American Moving has not previously been penalized, but Ms. Green's original application for a permit was denied in October 2012.²⁸

36 *Existing Compliance Program.* Great American Moving has no effective program to ensure compliance with Commission rules and regulations.

37 *Size of the Company.* No evidence was offered regarding the size of Great American Moving and Storage.

²⁸ See Docket TV-120766.

38 The Commission's overarching goal is for regulated companies to comply with its rules. Penalties serve as an incentive for compliance and, when imposed in the right amount, deter future violations. Considering the factors identified in RCW 81.80.075 and the Commission's enforcement policy, the Commission determines that Ms. Green and the Company should be penalized in an amount that will both punish the statutory violations and encourage them either to permanently withdraw from the business of moving household goods in Washington or obtain the required authority to do so in full compliance with Washington law.

39 The Commission will impose a penalty of \$5,000 on Great American Moving. A penalty of this size properly punishes the Company for violating the statute and should provide Great American Moving adequate motivation to quickly modify its website and associated advertising and provide additional training to Company staff to decline all intrastate moves unless the Company obtains the required permit.

40 The Commission recognizes that it may be possible to obtain its overall goal of compliance and avoid revisiting the topic of this adjudication through use of a suspended penalty, forcing the Company to pay a portion of the penalty now and risk having to pay the remainder in the future. Suspended penalties are particularly appropriate when a company might be tempted to return to prior unlawful behavior.

41 The Commission is willing to suspend the majority of the penalty, \$3,500, on condition of future compliance. To meet this condition, Great American Moving must immediately cease its unlawful behavior, pay \$1,500 of the penalty amount, and then comply with RCW 81.80 for one year after the effective date of this order. If Great American Moving violates RCW 81.80 during this period, the \$3,500 penalty will immediately become due and payable to the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

42 Having discussed above in detail the evidence received in this proceeding regarding all material matters, the Commission now makes and enters the following summary of those facts and conclusions of law:

43 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with authority to regulate person

engaged in the business of transporting household goods for compensation or otherwise acting as a common carrier in transporting the goods of others over public roads in Washington and thereby has jurisdiction over the parties and subject matter of this proceeding.

- 44 (2) Chana Green d/b/a Great American Moving and Storage engages in business in Washington as a household goods carrier and otherwise engages in services for compensation that include transportation of property of others upon the public roads of this state.
- 45 (3) Chana Green d/b/a Great American Moving and Storage does not hold authority to transport household goods or transport the property of others over public roads within Washington.
- 46 (4) On May 13, 2013, Chana Green d/b/a Great American Moving and Storage violated RCW 81.80.075(1) on at least one occasion by advertising its availability to perform services for compensation moving household goods and transporting the property of others over public roads within Washington.
- 47 (5) On June 19, 2013, Chana Green d/b/a Great American Moving and Storage violated RCW 81.80.075(1) by agreeing to move household goods and transport the property of others for compensation over public roads within Washington.
- 48 (6) Chana Green d/b/a Great American Moving and Storage has engaged in business as a household goods carrier without first having obtained a certificate from the Washington Utilities & Transportation Commission, in violation of RCW 81.80.075.
- 49 (7) Chana Green d/b/a Great American Moving and Storage should be directed to cease and desist from household goods transportation over public roads in Washington as required under RCW 81.04.510.
- 50 (8) Chana Green d/b/a Great American Moving and Storage should be penalized in the amount of \$2,500 per violations, for a total of \$5,000, with \$3,500 of

that total penalty suspended for a period of one year subject to the condition that the Company strictly complies with the terms of this order.

ORDER

THE COMMISSION ORDERS:

- 51 (1) Chana Green d/b/a Great American Moving and Storage is classified as a household goods carrier.
- 52 (2) Chana Green d/b/a Great American Moving and Storage shall immediately cease and desist from operations in this state requiring a certificate under RCW 81.80.070 and RCW 81.80.075, or otherwise engaging in related activities that require Commission approval and authority in Washington until such time as the Company obtains a household goods permit from the Commission.
- 53 (3) Chana Green d/b/a Great American Moving and Storage is penalized in the amount of \$2,500 per violation for each of the two violations of RCW 81.80.075 shown by the evidence of record in this proceeding, for a total penalty of \$5,000.
- 54 (4) Payment of \$3,500 out of the total \$5,000 in penalties assessed is suspended for one year after the date this Order becomes final subject to the condition that Chana Green and Great American Moving and Storage strictly comply with the terms and requirements of this Order. The Commission may reopen the record to receive any evidence Staff may develop showing that Chana Green d/b/a Great American Moving and Storage has violated the terms of this Order or has otherwise violated any requirement under the provisions of RCW Chapter 81 governing the conduct of common carriers. If the Commission finds any such violation, the suspended penalties of \$3,500 will be immediately due and payable. The Commission may impose additional penalties for further violations, as appropriate. If Chana Green d/b/a Great American Moving and Storage does not violate the terms of this Order or other applicable law for one year, the suspended penalties will be extinguished.

- 55 (5) Chana Green and Great American Moving and Storage are jointly and severally liable for and required to pay within ten days after this Order becomes final, \$1,500 out of the total \$5,000 in penalties assessed.
- 56 (6) The Commission retains jurisdiction to effect the terms of this order.

DATED at Olympia, Washington, and effective December 23, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
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 480-07-825(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. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an Answer to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of 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. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

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.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and five (5) copies of any Petition or Answer must be filed by mail delivery to:

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