

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

WASHINGTON UTILITIES AND	)	DOCKET TV-081675
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	ORDER 02
	)	
v.	)	
	)	INITIAL ORDER ASSESSING
NEIGHBORS MOVING AND	)	PENALTIES
STORAGE OF SEATTLE, LLC,	)	
	)	
Respondent.	)	
	)	
.....	)	

1 **Synopsis:** *This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order would assess penalties in the amount of \$5,000 against Neighbors Moving and Storage of Seattle, LLC, for advertising storage rates in violation of WAC 480-15-610(4) and the Commission’s household goods tariff.*

2 **Nature of the Proceeding.** At issue in this case is whether Neighbors Moving and Storage of Seattle, LLC (Neighbors), violated WAC 480-15-610 by advertising storage rates that conflict with the Washington Utilities and Transportation Commission’s (Commission) household goods tariff. A penalty of up to one thousand dollars may be assessed for every such violation.

3 **Procedural History.** On September 25, 2008, the Commission issued a penalty assessment against Neighbors in the amount of \$5,000, alleging that Neighbors advertised storage rates that conflict with WAC 480-15-610(4) and the Commission’s household goods tariff on at least five occasions. On October 1, 2008, Administrative Law Judge (ALJ) Ann E. Rendahl entered Order 01, an Initial Order Rescinding Penalty Assessment. The Initial Order concluded that an inappropriate process had been followed to assess penalties against Neighbors and if the Commission’s

Regulatory Staff (Commission Staff or Staff)<sup>1</sup> wished to pursue penalties the Commission would issue a complaint and set this matter for hearing. On October 16, 2008, the Commission entered a Complaint against Neighbors alleging at least five violations of WAC 480-15-610, which prohibits household goods carriers from advertising services or rates and charges that conflict with those in the Commission's household goods tariff. The Complaint issued notice that each violation is subject to a penalty of up to one thousand dollars. *RCW 81.04.380*. The Commission assigned this case to ALJ Patricia Clark and set this matter for hearing on November 12, 2008.

4 On October 23, 2008, Neighbors filed a letter indicating that it had a conflict with the scheduled hearing date of November 12, 2008. On the same date, the ALJ sent an e-mail to all parties informing them that the hearing could be rescheduled and encouraging the parties to confer and select a hearing date that worked well for both parties. On October 29, 2008, Commission Staff filed a response to the request to reschedule the hearing date and indicated that both parties agreed that the hearing should be rescheduled for 2:00 p.m., on December 10, 2008. On the same date, the Commission issued a Notice Rescheduling the Hearing for the date and time mutually agreed on by the parties. ALJ Patricia Clark heard the matter, on due and proper notice, on December 10, 2008, in Olympia, Washington.

5 **Appearances.** Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Commission Staff. Mr. Joseph Tranisi, owner, represents Neighbors.

### **DISCUSSION**

6 **Applicable Law.** Household goods carriers are required to comply with the advertising requirements of WAC 480-15-610 and the Commission's Household Goods Tariff No. 15-C. The Complaint alleges that Neighbors violated WAC 480-15-610(4) and the Household Goods Tariff No. 15-C by advertising "free one month storage" on at least five occasions. By law, every public service company that

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<sup>1</sup> In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

violates any Commission rule is subject to a penalty of up to one thousand dollars for every such violation. *RCW 81.04.380*. Based on the alleged violations, Neighbors could be subject to a penalty of up to five thousand dollars.

7 **Hearing.** During the hearing on December 10, 2008, Commission Staff presented the testimony of Ms. Carlene Hughes, Transportation Program Coordinator with the Commission's Business Practices Investigation Section. Ms. Hughes sponsored four exhibits. Ms. Hughes asserted that in July 2005, Staff completed an investigation of Neighbors that resulted in the Commission assessing a penalty in the amount of \$42,475 against Neighbors for failing to charge tariffed rates.<sup>2</sup>

8 On April 6, 2007, Ms. Hughes sent Neighbors a letter informing the company that it received a complaint that Neighbors was violating a number of Commission rules and tariff requirements.<sup>3</sup> The letter cited each violation and explained the tariff provision with which it conflicted.<sup>4</sup> Ms. Hughes advised Neighbors that while Staff could recommend enforcement action against Neighbors, it was, instead requiring Neighbors to submit a compliance plan. If Neighbors failed to submit a compliance plan, Staff was likely to seek enforcement action.<sup>5</sup> Neighbors submitted a compliance plan stating, among other things, that it would revise its advertisements to comply with Commission rules.<sup>6</sup> On May 15, 2007, Staff sent Neighbors a letter advising that the compliance plan conformed to the Commission's rules and applicable tariffs, but warned Neighbors that any further findings of Neighbors using improper advertisements could result in a recommendation that penalties be imposed or other enforcement action.<sup>7</sup>

9 In May 2008, Staff received a complaint that Neighbors was improperly advertising free or reduced prices for services that are under tariff regulation.<sup>8</sup> During Staff's investigation, Staff found, among other things, that Neighbors' website provided a

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<sup>2</sup> Hughes, Exh. No. 1 at 2.

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2.

<sup>6</sup> Hughes, Exh. No. 2 at 1-2.

<sup>7</sup> Hughes, Exh. No. 3 at 1-2.

<sup>8</sup> Hughes, Exh. No. 4 at 5.

coupon for “Storage – One Month Storage Free –call for details.”<sup>9</sup> Ms. Hughes found the website advertising available on June 3, July 7, July 10, July 15, and July 16, 2008.<sup>10</sup> Ms. Hughes concluded that the advertising was in violation of the Commission’s rules, tariff, and the Commission-approved compliance plan that required Neighbors to only offer free storage in permanent, not temporary, storage situations.<sup>11</sup> Ms. Hughes recommended that the Commission impose a penalty of one thousand dollars for each violation or a total of five thousand dollars.

10 Neighbors presented the testimony of Mr. Joseph Tranisi, owner. Mr. Tranisi sponsored five exhibits.<sup>12</sup> Mr. Tranisi asserted that Neighbors is a nation-wide moving company and that there is one nation-wide website advertising the company’s services.<sup>13</sup> Mr. Tranisi stated that the local branch of the company, Neighbors Moving and Storage of Seattle, did not design, review, or edit the advertising when the coupon was placed on the website in either late April or early May, 2008. Mr. Tranisi stated that the Commission Staff did not inform him of a problem with the website and that he first learned that the website was in violation of Washington rules and the tariff when he received the Complaint in this case in October.<sup>14</sup> Mr. Tranisi asserted that the error was inadvertent and that he immediately had the website corrected. He contended that the current website coupon complies with Washington requirements.<sup>15</sup>

11 Mr. Tranisi stated that, as result of the 2007 complaint, he voluntarily entered into a compliance plan and that the terms of the compliance plan were mutually agreeable to Neighbors and Commission Staff. According to Mr. Tranisi, the \$42,275 penalty assessed in 2005 presented a significant financial hardship to the company, but the company paid the penalty.<sup>16</sup> According to Mr. Tranisi, as a result of the 2005 action

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<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.* at 6 and 10.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> Neighbors presented one exhibit regarding advertising in a Dex phone directory. (Exhibit No. 7). This exhibit is not relevant to the issues in this proceeding because the complaint is limited to advertising on the website. Neighbors also presented one exhibit regarding customer satisfaction with the services of Neighbors. (Exhibit No. 9). This exhibit is also irrelevant because the complaint in this case is based on advertising violations, not customer service complaints.

<sup>13</sup> Tranisi, Exh. No. 6 at 2.

<sup>14</sup> *Id.*

<sup>15</sup> Tranisi, Exh. No. 5.

<sup>16</sup> Tranisi, Exh. No. 6 at 1.

against the company, the Seattle office is currently not allowed to join the Better Business Bureau (BBB).<sup>17</sup> Neighbors has just become eligible to apply for membership in the BBB; any additional action would set the company back an additional three to four years before it could apply for membership.<sup>18</sup>

12 Mr. Tranisi stated that the moving industry has been hit especially hard because of the current negative economic situation.<sup>19</sup> Mr. Tranisi noted that the moving industry is directly affected by the slowing in the housing market as well as record high fuel prices.<sup>20</sup> Mr. Tranisi asserted that any fines will present a substantial hardship and should not be imposed because there was no intent to violate the law.<sup>21</sup>

13 **Discussion and Conclusion.** The Commission's rule on advertising is applicable to all forms of advertising including websites and other on-line advertising. *WAC 480-15-610(1)(c)*. The rule provides that carriers may not advertise services or rates and charges that conflict with those in the tariff. *WAC 480-15-610(4)*. Each violation of Commission rule may be assessed a penalty of up to \$1,000. *RCW 81.04.380*.

14 The current household goods tariff. Tariff 15-C, Item 100 – Storage, defines storage-in-transit as temporary storage for 90 days or less.<sup>22</sup> The tariff also specifies the minimum and maximum charges that must be imposed for storage-in-transit.<sup>23</sup> There is no provision for offering free services in association with storage-in-transit.

15 The Commission Staff alleges, and Neighbors confirms, that Neighbors advertised a free one month storage coupon on its website from approximately late April to mid-October 2008. Each day the advertisement appeared on the website is a separate violation. Despite the fact that this advertisement appeared on the website for more than 150 days, Commission Staff seeks a penalty assessment for placing the advertisement on the website for five days, or a total of \$5,000. In mid-October 2008,

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Household Goods Tariff 15-C, Item 100 – Storage, Original Page No. 25.

<sup>23</sup> *Id.* at Original Page No. 26.

Neighbors corrected its Seattle website to comply with Commission rules and tariff provisions.

16 With Neighbors' admission that the violations occurred, the only issue is whether penalties should be imposed, reduced, or eliminated. In support of its position that no penalties should be imposed, Neighbors attests that it did not receive notice from Commission Staff that its website was in violation of Commission rules. Carriers are responsible for becoming familiar with and complying with all applicable statutes, rules, and tariff provisions. The Commission's rules do not require Commission Staff to contact carriers, in advance of any enforcement action, of rule violations. Indeed, given the number of household goods carriers in Washington it would be impossible for Staff to do so. In any event, Neighbors either knew, or should have known, that it must comply with Commission rules. Neighbors received a \$42,475 penalty assessment for rule violations in 2005. In 2007, Neighbors received specific instruction from Staff regarding the content of advertisements for storage-in-transit. In 2007, Neighbors submitted a compliance plan, which was ultimately approved by Staff, that demonstrates Neighbors understood the requirements for advertisements for storage-in-transit.<sup>24</sup> The advertisements in this case do not comply with the requirements for storage-in-transit.

17 Neighbors also asserts that the violations were unintentional. There is no "mental state" requirement for violation of the Commission's rules.<sup>25</sup> In criminal proceedings, a defendant must not only commit a certain act, but must commit the act with a certain mental state, such as "intentionally." Failing to comply with the Commission's rules is not a crime; it is a civil violation that may result in a penalty. It is not pertinent whether the violation occurred unintentionally or negligently or with any other mental state. The sole issue is whether the carrier followed the Commission's rules.

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<sup>24</sup> One aspect of Mr. Tranisi's description of the compliance plan is troubling. During the hearing, Mr. Tranisi described the compliance plan as "voluntary" and indicated that its terms were "mutually agreeable" to the company and Staff. Compliance with the Commission's rules is mandatory, not voluntary or discretionary. The terms and conditions in a compliance plan must adhere to the requirements in all applicable Commission rules whether or not a carrier "agrees" with those terms. A compliance plan is not subject to "mutual agreement": Commission Staff is authorized to approve or reject such plans.

<sup>25</sup> In criminal matters, this is also referred to as the *mens rea*.

- 18 In addition, Neighbors contends that if the Commission imposes a penalty, it will not be eligible to join the BBB for an additional three to four years. The BBB was formed to provide consumers with information about local establishments to enable consumers to make informed decisions about whether or not they wanted to conduct business with a particular enterprise. The BBB, not the Commission, determines whether a local business is eligible to become a member. The governing statute authorizing the Commission to impose penalties is intended to encourage compliance with applicable rules and to deter future violations. The Commission is bound to follow the governing statute, not the BBB's membership criteria.
- 19 In conclusion, Neighbors argues that the penalty will impose a significant financial hardship. The Commission believes that a \$5,000 penalty is appropriate in this case. Neighbors had extensive violations in 2005 resulting in a \$42,475 penalty. Only two years later, Neighbors had additional violations. However, in 2007, rather than seek penalties, the Commission Staff provided additional training to Neighbors and approved a compliance plan. The letter approving the compliance plan specifically notified Neighbors that further findings of improper advertising could result in Staff recommending some form of penalty or other enforcement action. Approximately one and a half years later, in October 2008, the Commission issued the Complaint at issue in this case. In this proceeding, Neighbors is in violation not only of Commission rules and tariff provisions, but the compliance plan approved by Staff. It is important that Neighbors understand the need to familiarize itself with the Commission's requirements for conducting a household goods carrier business in Washington and monitor its activities to comply with all applicable rules and tariff provisions. Given Neighbors' repeated violation of Commission rules, a \$5,000 penalty is reasonable and should be imposed.
- 20 However, the Commission is mindful that these difficult financial times pose challenges for many businesses in Washington. Therefore, Neighbors should be given the option to pay its penalty assessment in five equal installments of \$1,000 each over a period of five months rather than in a lump sum. Neighbors must pay the penalty assessment in full or advise the Commission of its intent to discharge the obligation in installments, beginning on February 18, 2009.

**FINDINGS OF FACT**

- 21 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate public service companies, including companies that hold authority to transport household goods in the state of Washington for compensation.
- 22 (2) Neighbors Moving and Storage of Seattle, LLC, is a public service company as defined in RCW 81.04.010 and holds authority to transport household goods in the state of Washington for compensation.
- 23 (3) On October 16, 2008, the Commission entered a Complaint alleging that Neighbors Moving and Storage of Seattle, LLC failed to comply with the Commission's regulations regarding advertising.
- 24 (4) Neighbors Moving and Storage of Seattle advertised, on at least five separate occasions, "free one month storage" on its website.
- 25 (5) Each violation is subject to a penalty.
- 26 (6) Neighbors Moving and Storage of Seattle did not present factual circumstances that justify lowering or eliminating the proposed penalty for violations.
- 27 (7) Neighbors Moving and Storage of Seattle demonstrated that the penalty assessment will impose a financial hardship and should be allowed to pay the penalty assessment in installments.

**CONCLUSIONS OF LAW**

- 28 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and all parties to this proceeding.
- 29 (2) Neighbors Moving and Storage of Seattle, LLC, advertised services in violation of WAC 480-15-610(4) on at least five separate occasions. WAC 480-15-610(4).



- 30 (3) Each violation of the Commission's rules is subject to a penalty of up to one  
thousand dollars. *RCW 81.04.380.*
- 31 (4) Neighbors Moving and Storage of Seattle, LLC, should be assessed a penalty  
in the amount of five thousand dollars for violations of Commission rule.

**ORDER**

**THE COMMISSION ORDERS:**

- 32 (1) Neighbors Moving and Storage of Seattle, LLC, should be assessed a penalty  
in the amount of \$5,000 for five violations of WAC 480-15-610(4).
- 33 (2) The \$5,000 penalty is due and payable in one lump sum by February 18, 2009  
or in five, equal monthly installments due and payable by the 18<sup>th</sup> day of each  
month commencing in February 2009, and concluding in June 2009.

DATED at Olympia, Washington, and effective December 29, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK  
Administrative Law Judge

## NOTICE TO THE 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 (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 **ten (10)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250