

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of	DOCKET TV-230083
ACCURATE NW MOVES LLC	INITIAL ORDER 01
for a Permit to Operate as a Motor Carrier of Household Goods	DENYING APPLICATION FOR PROVISIONAL AND PERMANENT AUTHORITY TO OPERATE AS A HOUSEHOLD GOODS CARRIER

PROCEDURAL HISTORY

- 1 On July 1, 2023, Accurate NW Moves LLC (Accurate NW or Company) filed with the Washington Utilities and Transportation Commission (Commission) an application for provisional and permanent authority to operate as a household goods carrier in the state of Washington (Application).
- 2 On February 17, 2023, the Commission issued a Notice of Intent to Deny Application for Permanent Authority and Notice of Opportunity for Hearing in this matter based on its review and investigation of the Application (Notice of Intent to Deny). The Notice of Intent to Deny provided Accurate NW the opportunity to request a hearing to contest the factual allegations by March 6, 2023.
- 3 On February 20, 2023, Accurate NW filed with the Commission a Request for Hearing. The Commission set a hearing, which was later rescheduled to April 26, 2023.
- 4 On April 26, 2023, the Commission conducted a brief adjudicative proceeding in this matter before Administrative Law Judge Rayne Pearson.
- 5 Jackie Neira, Assistant Attorney General, Lacey, Washington, represents Commission staff (Staff).¹ Andrew Gibbs, *pro se*, Poulsbo, Washington, represents Accurate NW Moves.

¹ In adjudications the Commission's regulatory staff participates like any other party, while the Administrative Law Judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the

BACKGROUND

6 The Application identifies Andrew Gibbs as 100 percent owner of the Company and identifies Jackie Millican as Company manager. At the brief adjudicative proceeding, Staff explained that it opposes granting a permit to Accurate NW based on two factors: (1) the nature and extent of Gibbs’s criminal history; and (2) the Application’s failure to disclose all of Gibbs’s criminal history except for the 2014 conviction for possession of a controlled substance and “2013 and prior” convictions for “borrowing a car without permission” and “burgler 2 [sic].”²

7 Staff presented the Application at hearing. Staff testified that the Applicant’s failure to disclose Gibbs’s full criminal history indicates fraud, misrepresentation, or erroneous information in the Application. Such conduct constitutes a basis for denying the application under WAC 480-15-302(2).

8 Staff also presented a Washington Access to Criminal History (WATCH) report from the Washington state patrol, identifying Gibbs’s criminal history. According to that report, Gibbs’s criminal history includes the following convictions:³

2017: Assault 3rd Degree
2014: Vehicle Prowling 2nd Degree
Burglary 2nd Degree
Taking a Motor Vehicle Without Permission 2nd Degree
Possession of Stolen Property 1st Degree
2013: Possession of a Controlled Substance (2 counts)
2012: Obstructing a Law Enforcement Officer
Making False or Misleading Statements to a Public Servant (2 counts)

9 Staff testified that the discrepancies between the crimes listed on the Application and those listed in Gibbs’s background check were concerning because the omission of multiple convictions indicates “a level of dishonesty and a willingness to ignore statutes and rules governing the household goods industry in Washington.”⁴ Staff further testified

proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² Application, p. 5.

³ Remfrey, Exh. PR-2.

⁴ Remfrey, TR 28:13-17.

that “the nature and extent of these offenses, as well as the frequency with which they occurred, to include their omission on the household goods application will likely interfere with the proper operation of a household goods company. Many of these offenses were for crimes specifically listed in WAC 480-15-302.”⁵

10 Gibbs testified that he was using drugs when he committed the crimes at issue and that he has since rehabilitated himself.⁶ He explained that he attends Alcoholics Anonymous meetings once a week and stated that he has been clean and sober since May 15, 2022.⁷ Gibbs also testified that he has not been arrested since he was released from community custody in 2021.⁸

11 Gibbs offered as supporting evidence two chemical dependency program completion certificates, a Department of Corrections end of community supervision court form, a copy of his criminal record, three letters of recommendation, and information regarding the Company’s moving truck.

12 Millican, who completed the Application on Gibbs’s behalf, testified that she did not intentionally omit any of Gibbs’s criminal history on the Application.⁹ Millican acknowledged that she failed to list Gibbs’s criminal convictions correctly, but noted that she “already knew there would be a background check for him.”¹⁰

13 Darcee Allbee, who worked as a substance disorder counselor at the facility where Gibbs completed a chemical dependency treatment program, testified that Gibbs was committed to turning his life around and has made significant changes.¹¹ Laurie Nielsen testified that Gibbs helped her move and that she was impressed by his hard work.¹² Nielsen stated she trusts Gibbs and believes he is a genuinely good person.¹³

⁵ *Id.* at 28:23-29:4.

⁶ Gibbs, TR 36:6-10.

⁷ *Id.* at 36:21-37:9.

⁸ *Id.* at 36:11-12.

⁹ Millican, TR 38:18-22.

¹⁰ *Id.* at 38:24-25.

¹¹ Allbee, TR 41:11-16.

¹² Nielsen, TR 44:3-11.

¹³ *Id.* at 44:16-17.

14 Kim Damalas, another moving customer, testified that Gibbs is friendly and professional with an “unmatched” work ethic.¹⁴ Dominick Demming, who knows Gibbs from the recovery community, testified that Gibbs has a positive impact on many others in recovery.¹⁵ John Shultz, Gibbs’s former coworker, testified that Gibbs has “top notch” customer service and is a very nice person.¹⁶ Kristine Damalas, a moving customer, testified that her best moves have been with Gibbs, and she recommends him to friends and family.¹⁷

DISCUSSION AND DECISION

15 We find that Gibbs failed to satisfactorily rebut the factual allegations Staff set out in the Notice of Intent to Deny. For the reasons explained below, we deny the Application.

16 WAC 480-15-302 and -305 set out the various criteria for obtaining provisional or permanent authority to operate as a household goods company. As relevant to this matter, the rules explain that the Commission may deny an application if it contains any indication of fraud, misrepresentation, or erroneous information,¹⁸ or if a person named in the application has been convicted of “any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance more than five years prior to the date of the application and the nature or extent of the crime or crimes will likely interfere with the proper operation of a household goods moving company.”¹⁹

17 First, we address whether the Application contains any indication of fraud, misrepresentation, or erroneous information pursuant to WAC 480-15-302(2). The language in the application for a household goods permit clearly describes which portions of an applicant’s criminal history must be disclosed. Question 9 asks “Has any person named in this application ever been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture,

¹⁴ Kim Damalas, TR 45:24-46:2.

¹⁵ Demming, TR 49:17-21.

¹⁶ Shultz, TR 51:5-10.

¹⁷ Kristine Damalas, TR 52:17-53:12.

¹⁸ WAC 480-15-302(2).

¹⁹ WAC 480-15-302(8)(b).

sale, or distribution of a controlled substance?” Gibbs’s failure to disclose all his criminal history raises concerns about his trustworthiness and integrity.

18 In past decisions where the Commission approved applications that Staff recommended it deny on the basis that they contained misrepresentations or erroneous information, the applicant provided significant mitigating testimony and evidence. For example, in *In re Application of Richard and Laura Bell d/b/a Bell’s Reliable Moving for a Permit to Operate as a Motor Carrier of Household Goods*, the applicant established that six of his alleged convictions were included in error.²⁰ In *In re Application of Americam Movers LLC for a Permit to Operate as a Motor Carrier of Household Goods*, the applicant failed to disclose all of his convictions, but received admittedly confusing instructions from Staff and included with his application a letter explaining, in detail, the circumstances surrounding his convictions and his subsequent rehabilitation efforts.²¹

19 In this case, Gibbs failed to introduce any extenuating circumstances that would mitigate the misrepresentation of his criminal history on the Application. To explain the omission of seven of his ten convictions, Gibbs testified that the Application “said it was only going back five years, so I think that was just a common misunderstanding.”²² Gibbs’s mistaken belief is unpersuasive given that the crimes listed in the Application were committed nine and ten years ago, respectively. Millican gave somewhat conflicting testimony that, despite having obtained a copy of Gibbs’s criminal history, her failure to list all his convictions was an “oversight.”²³ Taken together, these explanations fail to rebut Staff’s conclusion that the Application’s failure to disclose all of Gibbs’s criminal history constitutes an indication of misrepresentation or erroneous information under WAC 480-15-302(2).

20 Second, we address whether the nature and extent of Gibbs’s criminal convictions, including those involving assault, burglary, and theft, will likely interfere with the proper operation of a household goods moving company. Like Staff, we are concerned by the nature and extent of Gibbs’s criminal history, and Gibbs provided very little testimony

²⁰ *In re Application of Richard and Laura Bell d/b/a Bell’s Reliable Moving for a Permit to Operate as a Motor Carrier of Household Goods*, Docket TV-160264, Order 01 (June 13, 2016).

²¹ *In re Application of Americam Movers LLC for a Permit to Operate as a Motor Carrier of Household Goods*, Docket TV-190858, Order 01 ¶22 (Feb. 24, 2020).

²² Gibbs, TR 30:15-19.

²³ Millican, TR 39:18-22.

about the circumstances that led to his convictions. Gibbs offered the following by way of explanation:

I was on drugs, you know. It was a long time ago and I'm, you know, I'm not that person whatsoever anymore ... I've kept up to AA. I've completed treatments, I've completed DOC, I've stayed out of jail, once I've been off DOC I've not been back to jail.²⁴

21 Gibbs went on to testify, however, that he relapsed following his release from community custody in July 2021, and he has been clean and sober for just shy of one year.²⁵

22 This case presents a difficult decision. The Commission recognizes that Gibbs is working diligently to make positive changes in his life and is maintaining his sobriety. Witnesses for the Company provided supportive testimony that speaks strongly of the strides Gibbs has made to establish himself as a contributing member of the community. Nevertheless, after weighing all the available evidence, the Commission cannot yet determine with an acceptable level of certainty that Gibbs is sufficiently trustworthy to be granted a household goods permit.

23 In the case *In re Application of Ivan Ingram d/b/a AA Eagle Relocation Service for a Permit to Operate as a Motor Carrier of Household Goods*, the Commission denied an application for household goods authority because the applicant had criminal convictions more than five years prior to the date of the application.²⁶ In that case, the company's owner, Ivan Ingram, had an extensive criminal history that included 22 felony convictions for multiple crimes, including theft, identity theft, and possession of stolen property. While the Commission recognized that Ingram had made significant progress toward personal rehabilitation, the Commission balanced the 12-year length of Ingram's criminal history with the three years he had been in the community since his release from prison, ultimately concluding that it would not be in the public interest to issue a permit to Ingram at that time.

24 Here, Gibbs's criminal history spans nine years between his first conviction in 2012 and the end of his probation in 2021. Like Ingram, Gibbs's period of rehabilitation comprises only a fraction of that time. Gibbs was released from community supervision less than

²⁴ Gibbs, TR 36:6-12.

²⁵ *Id.* at TR 54:4-25.

²⁶ *In re Application of Ivan Ingram d/b/a AA Eagle Relocation Service for a Permit to Operate as a Motor Carrier of Household Goods*, Docket TV-120721, Order 01 (Dec. 21, 2012).

two years ago, and he has been clean and sober for only one year. Although Gibbs could apply for and be granted a household goods permit in the future, we conclude that it is not in the public interest to approve the Application until a more appreciable length of time has passed without incident. Should Gibbs choose to apply for a household goods permit in the future, he should ensure the Application includes a complete criminal history.

25 Considering all the available evidence, the Commission finds that the Applicant failed to rebut Staff's allegations that the Application contains indications of misrepresentation or erroneous information and that the nature and extent of Gibbs's criminal history is likely to interfere with the proper operation of a household goods company. Accordingly, we conclude that the Application should be denied.

FINDINGS AND CONCLUSIONS

- 26 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including household goods companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 27 (2) Andrew Gibbs is named as sole company owner on Accurate NW's Application, submitted to the Commission on July 1, 2023.
- 28 (3) On February 17, 2023, the Commission issued a Notice of Intent to Deny Application for Permanent Authority and Notice of Opportunity for Hearing in this matter based on its review and investigation of the Application.
- 29 (4) On February 20, 2023, Accurate NW requested a hearing, and, by agreement of the parties, a hearing was held on April 26, 2023.
- 30 (5) Accurate NW's Application did not disclose Gibbs's full criminal history in response to Question 9.
- 31 (6) Gibbs failed to provide a satisfactory explanation to mitigate the lack of disclosure.
- 32 (7) Gibbs was convicted of six gross misdemeanors between 2012 and 2014, including convictions for vehicle prowling and possession of a controlled substance.

- 33 (8) Gibbs was convicted of four felonies, including assault, possession of stolen property, burglary, and taking a motor vehicle without permission.
- 34 (9) Gibbs's criminal convictions involving assault, theft, and burglary require the Commission to exercise its discretion in determining whether to issue any authority to operate as a household goods moving company under WAC 480-15-302(8)(b).
- 35 (10) In light of Gibbs's relatively brief time in the community without recidivating as compared to the length of his criminal history, the Commission is unable to conclude with a satisfactory degree of certainty that the nature and extent of Gibbs's criminal history is not likely to interfere with the proper operations of a household goods moving company.
- 36 (11) The Application should be denied because the Application contains indications of misrepresentation, and there is insufficient evidence to support a finding that Gibbs's criminal history is not likely to interfere with the proper operations of a household goods moving company.

ORDER

THE COMMISSION ORDERS:

- 37 The Application filed by Accurate NW Moves LLC on July 1, 2023, for a permit to operate as a household goods carrier in the state of Washington is DENIED.

DATED at Lacey, Washington, and effective May 19, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
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 480-07-610(7) provides that any party to this proceeding has 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 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 that is 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 give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) 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 does not 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).