

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

3RD GENERATION MOVERS AND
HAULING, A+ ALWAYS MOVING, INC.,
A A STAR TRANSFER CO. INC.,
ALWAYS ABLE MOVING SERVICE,
LLC, ARAYS MOVING SERVICE LLC,
GRAYPORT TRANSFER & STORAGE
CO., INC., THUNDER MOVERS LLC,

Respondents.

DOCKET TV-121722

COMMISSION STAFF'S
PETITION FOR
RECONSIDERATION

I. INTRODUCTION

I Staff of the Washington Utilities and Transportation Commission (Commission) petitions under WAC 480-07-850 for reconsideration of Order 02, the Commission's Final Order Accepting Petition for Administrative Review, Reopening Record, and Cancelling Permit Only if 3rd Generation Movers and Hauling Fails to Pay Penalty Assessment served June 20, 2013 (Final Order). The Final Order provides that the permit of 3rd Generation Movers and Hauling (Third Generation) will be canceled if Third Generation does not pay a penalty that the Commission assessed against the company in another proceeding. Because the decision misconstrues the evidence and is unfair to Third Generation vis-à-vis other

carriers with outstanding penalty assessments, Commission Staff (Staff) seeks reinstatement of Third Generation's permit without the penalty payment condition.

II. FACTS

2 Each year household goods carriers holding authority from the Commission must file annual reports¹ and pay regulatory fees² by May 1.³ Carriers that fail to timely pay regulatory fees are subject to statutory late fees and interest that accrues on the delinquent regulatory fees.⁴ The Commission provides each household goods carrier with an annual report form and requires the carrier to report information pursuant to the form.⁵ The form contains a regulatory fee calculation schedule, which provides for the calculation of any statutory late fees and interest at lines 3 through 5.⁶

3 In addition, the Commission assesses penalties under RCW 81.04.405 against carriers that have failed to timely submit regulatory fees and/or annual reports (“the discretionary penalties”).⁷ The Commission issued such a penalty assessment, in the amount of \$2,100, to Third Generation⁸ as well as to other carriers on July 23, 2012. After these discretionary penalties are assessed, the Commission determines which carriers still have not filed an annual report or paid regulatory fees and initiates a proceeding by filing a complaint to cancel these carriers' permits.⁹ Third Generation was named in the complaint in the instant proceeding as one of the respondent carriers that still had not filed its annual report

¹ RCW 81.04.080.

² RCW 81.80.321.

³ WAC 480-15-480(4).

⁴ RCW 81.80.321.

⁵ WAC 480-15-480.

⁶ *E.g.*, Declaration of Mathew Perkinson dated April 1, 2013 (Decl. of Perkinson), attached to Petition of Commission Staff for Administrative Review of Order 01, filed April 1, 2013, p. 15 (“Penalties on Regulatory Fees filed after May 1” and “Interest on Regulatory Fees filed after May 1”).

⁷ *E.g.*, Docket TV-120900. *See, e.g.*, Decl. of Perkinson at ¶¶ 3-6.

⁸ Docket TV-120900.

⁹ *See, e.g.*, TR. 11:18-12:17.

or paid regulatory fees. The Commission held a hearing on February 4, 2013, to receive evidence concerning the respondent carriers' violation of annual report and regulatory fee submission requirements.

4 By the time of the hearing, four respondent carriers had filed their annual reports and paid regulatory fees, A+ Always Moving, Inc. (A+), AA Star Transfer Co., Inc. (AA Star), Arays Moving Service, LLC, and Grayport Transfer & Storage (Grayport).¹⁰ Two of these carriers, AA Star and Grayport, failed to pay the late fees and interest required by RCW 81.80.321.¹¹ Staff recommended that these two carriers' permits not be cancelled on the condition that they pay the statutory late fees and interest within ten days after the Commission issued its order in the proceeding.¹² During the hearing, Staff referred to the late fees and interest set forth in RCW 81.80.321 somewhat interchangeably as a "penalty" or "statutory penalty" and "fee" respectively.¹³ Staff recommended that the Commission cancel Third Generation's permit.¹⁴

5 The Bench inquired about payment of the discretionary penalties.¹⁵ Staff testified that, of the companies that finally had filed annual reports and paid regulatory fees, AA Star,

¹⁰ TR. 13:24-14:25 (A+ Always Moving, Inc.); TR. 15:9-16:11 (AA Star Transfer Co., Inc.); TR. 18:22-19:23 (Arays Moving Service, LLC); TR. 20:24-22:9 (Grayport Transfer & Storage).

¹¹ TR. 16:12-17:13 (AA Star); TR. 21:14-19 (Grayport).

¹² TR. 25:7-15; TR. 18:5-10 (AA Star); TR. 22:17-21 (Grayport).

¹³ *E.g.*, TR. 16:25-17:8

Ms. Cameron-Rulkowski: Your Honor, I'm referring only to the penalty, the 2 percent penalty, that is required under RCW 81.80.321 for late-filed annual reports. When a company does then pay its— sorry, for late-filed regulatory fees. When a company does pay its regulatory fee, then they are required in that statute to add a penalty, that is provided for right in that statute, and then also a fee. That's set forth in RCW 81.80.321;

TR. 18:7-10

I recommend that [AA Star's] permit not be cancelled on the condition that the company pay the statutory penalty and fee within ten days after the order in this proceeding is issued.

¹⁴ TR. 13:17-23.

¹⁵ TR. 23:8-24:20; note also TR. 16: 22-24, where it is possible that the Bench was referring to the Discretionary Penalty notwithstanding the RCW 81.80.321 context of Staff's testimony.

Grayport, and A+ had not paid the discretionary penalties.¹⁶

6 Before any orders were entered, Third Generation filed its annual report, paid its regulatory fee, and submitted a letter dated February 28, 2013, asking the Commission not to cancel the company's permit. In its Order 01, Initial Order Dismissing Certain Complaints, Dismissing Other Complaints Subject to Condition, and Cancelling Permits (Initial Order), served March 12, 2013, the Commission declined to reopen the record to receive evidence of Third Generation's late compliance and canceled Third Generation's permit, relying for its decision on the company's failure to make the requisite filings prior to the evidentiary hearing.¹⁷

7 With regard to AA Star and Grayport, in its Initial Order the Commission apparently adopted Staff's recommendation, except that the companies were allowed 20 days instead of 10 days in which to pay the "statutory penalty."¹⁸ In the Initial Order, "statutory penalty" appears to refer to the late fees and interest in RCW 81.80.321 because the relevant citations to the record in the Initial Order's discussion of AA Star and Grayport refer to Staff's testimony on the late fees and interest that Grayport and AA Star still owed pursuant to RCW 81.80.321;¹⁹ and none of the remaining citations in that discussion refer to the discretionary penalties.²⁰

8 Staff petitioned for administrative review on April 1, 2012, seeking to reopen the record to admit evidence of Third Generation's compliance and seeking to reverse the decision to cancel Third Generation's permit. In its Final Order, the Commission reopened the record to admit evidence of Third Generation's compliance with regulatory

¹⁶ TR. 23:8-24:20.

¹⁷ Initial Order at ¶ 18.

¹⁸ *Id.* at ¶ 15.

¹⁹ *Id.* at ¶ 7, n. 6 (TR. 21:1-25; 22:1-21).

²⁰ *Id.* at ¶ 7, n. 6. Staff testified at TR. 23:8-15 that AA Star and Grayport had not paid the discretionary penalties.

requirements.²¹ The Commission acknowledged that Third Generation had come into compliance before the cancellation order was entered and agreed with Staff that the Commission's primary concern is ensuring that companies comply with their regulatory obligations.²² Stating, however, that Staff "offers no basis for not requiring [Third] Generation to pay the penalty assessed against the Company last July," the Commission ordered that Third Generation's permit would be canceled if the company did not pay the discretionary penalty.²³ The Commission characterized this condition as "the same condition the Commission adopted for similarly-situated companies in the March 12 order"²⁴ (the Initial Order).

III. ARGUMENT

A. Procedure for Reconsideration

9 Staff petitions for reconsideration of the Final Order under RCW 34.05.470 and WAC 480-07-850. In the alternative, Staff urges the Commission to act on its own initiative under RCW 81.04.210 and WAC 480-07-875 to amend its Final Order and reinstate Third Generation's permit without the condition that the company pay the \$2,100 penalty assessed in Docket TV-120900.

10 Any party to a proceeding may petition for reconsideration of a final order within ten days after the order is served.²⁵ Under the Administrative Procedure Act (APA), any person, which includes an agency,²⁶ may waive any rights conferred by the APA.²⁷ Furthermore, Washington law allows the Commission to alter, amend, or rescind any order that it has

²¹ Final Order at ¶ 4.

²² *Id.* at ¶ 4.

²³ *Id.* at ¶ 5.

²⁴ *Id.* at ¶ 5.

²⁵ RCW 34.05.470 and WAC 480-07-850

²⁶ RCW 34.05.010(14).

²⁷ RCW 34.05.050.

entered, after providing notice and an opportunity to be heard to the public service company affected.²⁸

11 Staff's petition is late-filed because internal discussions concerning the Final Order had to take place and were spread out over a period of weeks due, in large part, to summer vacation schedules. Accordingly, Staff did not reach the decision to address the issues in the Final Order by way of a petition for reconsideration until after the filing deadline had passed. Staff respectfully requests that the Commission accept Staff's late-filed petition for reconsideration, or amend the Final Order on its own motion.

B. Fairness

12 The Commission is under the misapprehension that the Final Order imposes the same condition on Third Generation that the Commission imposed on similarly situated companies in the Initial Order. The condition that the Commission imposed requires Third Generation to pay the discretionary penalty in installments due on certain dates or face cancellation of its permit. In fact, the Commission did not require any other household goods carrier to pay delinquent discretionary penalties as a condition of retaining a household goods carrier permit.

13 A+ is the most similarly situated company in the proceeding. A+ came into compliance by filing its annual report and paying its regulatory fee but, as Staff testified at hearing, had not paid the discretionary penalty assessed against it the previous summer. In the Initial Order, the Commission dismissed A+ from the proceeding. Third Generation also came into compliance and had not paid the discretionary penalty, but the Commission ordered the company's permit be cancelled unless Third Generation met the condition of paying the discretionary penalty. The distinction between the two companies, drawn

²⁸ RCW 81.04.210. See also WAC 480-07-875.

implicitly in the Initial Order, is that A+ achieved compliance with the annual report and regulatory fee requirements before the evidentiary hearing, while Third Generation came into compliance only after the hearing. Although the initial order relies for its decision to cancel Third Generation's permit on the fact that the company failed to make the requisite filings prior to the evidentiary hearing, the Final Order accepts the evidence of Third Generation's compliance into the record, recognizes that compliance occurred before the Initial Order was entered, and apparently relies on other grounds for conditionally cancelling the company's permit in the Final Order. The decision in the Final Order appears to rest predominately if not solely on the fact of Third Generation's unpaid discretionary penalty. Assuming that the Final Order no longer turns on whether the company achieved compliance before or after the evidentiary hearing, any distinction between A+ and Third Generation evaporates, and the two similarly situated companies have been subjected to disparate treatment in this proceeding.

14 AA Star and Grayport did not come into complete compliance before the evidentiary hearing because, although they filed their annual reports and paid their regulatory fees, they remained in violation of RCW 81.80.321 due to their failure to pay the late fees and interest mandated in that statute. In the Initial Order, based on its citations to the testimony in the record on late fees and interest, the Commission ordered that AA Star and Grayport were dismissed from the proceeding on the condition that the companies pay the late fees and interest within 20 days. The Initial Order, by its language, does not discuss the discretionary penalties at all. The Initial Order cites RCW 81.80.321, which requires companies to, among other things, pay late fees and interest if they submit regulatory fees late; but the Initial Order does not mention the statute authorizing the discretionary penalties at issue,

RCW 81.04.405. The Initial Order refers to a “statutory penalty,” which could mean the late fees or the discretionary penalties. Staff used the term “statutory penalty” at hearing, however, multiple times to refer to the late fees due pursuant to RCW 81.80.321; and, again, the Initial Order does not cite to any portion of the record containing a discussion of the discretionary penalties. In sum, based on the actual language used in the Initial Order, the word “penalty” must mean the payments required by RCW 81.80.321 and not the discretionary penalties. Because the condition imposed on AA Star and Grayport concerned late fees and interest rather than discretionary penalties, it is not the same condition that the Commission imposed on Third Generation.

15 It is unfair that Third Generation’s permit will be canceled if it does not pay the discretionary penalty of \$2,100, yet A+, which also had not paid the discretionary penalty, is allowed to retain its permit unconditionally. It is unfair to Third Generation that, according to the language of the Initial Order, AA Star and Grayport, neither of which paid the discretionary penalty, need pay only the late fees and interest, which Third Generation already paid, to retain their permits. Furthermore, to the extent that other household goods carriers have not paid the discretionary penalties, it is unfair that they also retain their permits while Third Generation faces cancellation for nonpayment of its discretionary penalty.

IV. CONCLUSION

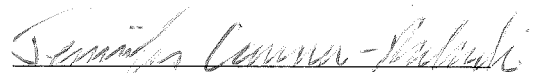
16 In the Final Order the Commission imposes a condition on Third Generation that the Commission imposed on no other household goods carrier in this proceeding. Because of the disparate treatment of Third Generation in the Commission’s decision, Staff respectfully

requests that the Commission amend its Final Order to remove the condition requiring Third Generation to pay the discretionary penalty to avoid cancellation.

DATED this 22nd day of July, 2013.

Respectfully submitted,

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