

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties against:

TOTAL EFFORT LLC

DOCKET TV-180804

ORDER 01

ORDER INSTITUTING SPECIAL
PROCEEDING; COMPLAINT
SEEKING TO IMPOSE
PENALTIES; NOTICE OF
HEARING

**(Set for November 13, 2018, at
9 a.m.)**

INTRODUCTION

- 1 The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 81.04.510, institutes this special proceeding on its own motion to determine whether Total Effort LLC (Total Effort) has engaged, and is engaging, in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.
- 2 The Commission has information from which it believes and therefore alleges that Total Effort has advertised, solicited, offered, or entered into one or more agreements to transport household goods within the state of Washington without first having obtained a household goods carrier permit from the Commission.
- 3 Pursuant to RCW 81.04.510, upon proof of these allegations, the Commission is authorized to issue an order requiring Total Effort to cease and desist activities subject to regulation under Title 81 RCW. In addition, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by Total Effort that violates any law, or any order or rule of the Commission. The Commission may impose financial penalties of up to \$5,000 for each violation shown.
- 4 At the hearing in this special proceeding that will be conducted pursuant to Part IV of the Administrative Procedure Act (APA), RCW 34.05, of which the Commission gives notice here, the Commission will also consider its Complaint against Total Effort alleging

violations of law as specified below and will decide whether the Commission should penalize Total Effort.

ORDER AND NOTICE OF HEARING

- 5 The Commission has jurisdiction to institute a special proceeding to determine whether Total Effort is conducting business requiring operating authority, or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 81.01.010, and RCW 81.04.510. In addition to the foregoing statutes, this matter involves Title 81 RCW, including but not limited to RCW 81.01.010; RCW 81.04.020; RCW 81.80.010, RCW 81.80.070, and RCW 81.80.075. This matter also involves the administrative rules set forth in WAC 480-15 and WAC 480-07.
- 6 **THE COMMISSION ORDERS that Leon Hembry, Carolyn Savage, or a representative of Total Effort, appear before the Commission in this special proceeding conducted under the authority of RCW 81.04.510 at 9 a.m., on November 13, 2018, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, to give testimony and evidence under oath as to its operations. The burden of proving that the alleged operations are not subject to the provisions of Title 81 RCW shall be upon Total Effort, as provided by RCW 81.04.510.**
- 7 **THE COMMISSION GIVES NOTICE THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.**
- 8 If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that a qualified interpreter may be appointed at no cost to the party or witness.
- 9 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Leon Hembry or Carolyn Savage
Total Effort LLC
5714 S. Ferdinand Street
Tacoma, WA 98409

Representative: Unknown

Commission: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Brian Braun
Compliance Investigator
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1129
brian.braun@utc.wa.gov

COMPLAINT SEEKING PENALTIES

PARTIES

- 10 Complainant, the Commission, is an agency of the state of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including household goods carriers, under the provisions of Title 81 RCW.
- 11 Respondent, Total Effort LLC, is a household goods carrier doing business in the state of Washington.

JURISDICTION

- 12 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 81.04.110, RCW 81.01.010, RCW 81.04.160, RCW 81.04.460, and RCW 81.80.

BACKGROUND

- 13 According to the Declaration of the Commission Compliance Investigator, presented to the undersigned administrative law judge under penalty of perjury,¹ the following facts establish probable cause for the Commission to complain against the activities of Total Effort and to seek penalties in accordance with applicable law.

¹ Administrative law judges appointed by the Commission are empowered, among other things, to “make findings of probable cause and issue complaints in the name of the commission.” RCW 80.01.060(1).

14 On or about September 11, 2018, Leon Hembry, on behalf of Total Effort, offered to transport household goods without first having obtained a household goods carrier permit from the Commission.

15 Total Effort has posted advertisements on Craigslist offering to provide household goods moving services within the state of Washington without having obtained a permit from the Commission.

APPLICABLE LAW AND REGULATION

16 Under state law, the definition of “household goods carrier” includes a person who “advertises, solicits, offers, or enters into an agreement to transport household goods” within the state of Washington. RCW 81.80.010(5).

17 The term “person” can mean a firm as well as an individual. RCW 81.04.010(6). Specifically included in this term are companies, corporations, and partnerships. WAC 480-15-020.

18 The Commission defines household goods as “the personal effects and property used, or to be used, in a residence” in the context of transportation from one residence to another, or to a storage facility. WAC 480-15-020.

19 Household goods carriers are common carriers. RCW 81.04.010(11). For the purposes of Title 81 RCW, every common carrier is a public service company. RCW 81.04.010.

20 It is illegal to engage in business as a household goods carrier within the state of Washington without first obtaining a household goods carrier permit from the Commission. RCW 81.80.075(1).

21 Any person who engages in business as a household goods carrier in the state of Washington without the required permit is subject to a penalty of up to five thousand dollars per violation. RCW 81.80.075(4). If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation. RCW 81.80.075(4)(a).

22 When deciding the amount of the penalty to be ordered for engaging in business as a household goods carrier without a household goods carrier permit, the Commission must consider (1) the carrier’s willingness to comply with the requirements of RCW 81.80.070 and the Commission’s household goods carrier rules; and (2) the carrier’s history of compliance with the provisions of RCW 81.80.075. RCW 81.80.075(4)(b).

23 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. RCW 81.04.110.

COMPLAINT

24 The Commission, through its Staff, re-alleges the statements contained in paragraphs 10 through 23 above.

25 Total Effort has violated RCW 81.80.075(1) at least once by offering to transport household goods without first having obtained a household goods carrier permit from the Commission.

26 Total Effort has violated RCW 81.80.075(1) at least once by advertising to transport household goods without first having obtained a household goods carrier permit from the Commission.

REQUEST FOR RELIEF

27 Staff requests that the Commission, pursuant to its authority under RCW 81.80.075(4), assess penalties of up to \$5,000 per violation against Total Effort. Staff will present testimonial evidence at hearing to address the statutory factors for determining an appropriate penalty amount. Further, Staff may request that some portion of any penalty actually imposed be suspended for a period of time sufficient to demonstrate Total Effort's intent to comply with all applicable laws and rules governing the household goods industry.

PROBABLE CAUSE

28 Based on a review of the Declaration of the Commission Compliance Investigator assigned to this matter, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

NOTICE OF HEARING

29 **THE COMMISSION GIVES NOTICE THAT it will conduct a hearing concerning this Complaint concurrently with the special proceeding noticed above, which will commence at 9 a.m., on November 13, 2018, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250.**

30 Administrative Law Judge Laura Chartoff, from the Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, is designated to preside at the hearing of these matters.

DATED at Olympia, Washington, and effective October 12, 2018.

Rayne Pearson
Administrative Law Judge
Director, Administrative Law Division

Inquiries should be addressed to:

Executive Director and Secretary
Washington Utilities and Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Mark L. Johnson, Executive Director and Secretary, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. **(PLEASE SUPPLY ALL REQUESTED INFORMATION)**

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes)_____ (No)_____

Do you need a certified sign language interpreter?

Visual_____ Tactile_____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____)_____