

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper)	DOCKET TV-121722
Carrier Classification of, and Complaint)	
for Penalties against:)	ORDER 03
)	
3 RD GENERATION MOVERS AND)	ORDER AMENDING ORDER 02
HAULING, A+ ALWAYS MOVING,)	AND DISMISSING COMPLAINT
INC., AA STAR TRANSFER CO.,)	AGAINST 3 RD GENERATION
INC., ALWAYS ABLE MOVING)	MOVERS AND HAULING
SERVICE, LLC, ARAYS MOVING)	
SERVICE, LLC, GRAYPORT)	
TRANSFER & STORAGE CO., INC.,)	
THUNDER MOVERS, LLC)	
.....)	

BACKGROUND

- 1 On December 31, 2012, the Washington Utilities and Transportation Commission (Commission) issued a complaint against 3rd Generation Movers and Hauling (3rd Generation or Company) and other household goods companies alleging failure to file an annual report for 2011 and to pay regulatory fees for 2012 as required under RCW 81.04.080 and RCW 81.80.321, respectively. On February 4, 2013, the Commission conducted an evidentiary hearing on the complaint. On March 12, 2013, the Commission issued Order 01, Initial Order Dismissing Certain Complaints, Dismissing Other Complaints Subject to Condition, and Cancelling Permits (Initial Order), finding that 3rd Generation had not filed its annual report or paid its annual fees and associated penalties and cancelling 3rd Generation’s household goods carrier permit.

- 2 On April 1, 2013, Commission Staff (Staff) filed a petition for administrative review of Order 01, stating that on March 1, 2013, 3rd Generation filed its 2011 annual report and paid its 2012 regulatory fee and requesting that the Commission consider these facts and dismiss the complaint against the Company. On June 20, 2013, the Commission entered Order 02, Final Order Accepting Petition for Administrative Review, Reopening Record, and Cancelling Permit Only if 3rd Generation Fails to Pay Penalty Assessment (Order 02). The Commission reopened the record to admit the

evidence of 3rd Generation's compliance with regulatory requirements but determined that the Company's permit would be canceled if 3rd Generation did not pay the \$2,100 penalty assessed against it in Docket TV-120900 for failure to timely file its 2011 annual report and pay its 2012 regulatory fee.

- 3 On July 22, 2013, Staff filed a petition for reconsideration of Order 02 (Petition). Staff contends that the Commission's "decision misconstrues the evidence and is unfair to Third Generation vis-à-vis other carriers with outstanding penalty assessments."¹ According to Staff, the Commission did not conditionally cancel the permits of other companies in this docket that had not yet paid their penalty assessments, and taking such action against 3rd Generation would be fundamentally unfair.²

DISCUSSION

- 4 Petitions for reconsideration must be filed within 10 days after the Commission enters a final order.³ Staff filed its Petition 32 days after the Commission entered Order 02. Staff explains that the 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."⁴ The Commission will waive filing deadlines established in its rules for good cause, but the alleged need to accommodate vacation schedules, without more, does not represent good cause. The Petition, however, raises serious fairness issues, and accordingly, we exercise our authority to review Order 02 on our own motion to consider amending that order.⁵
- 5 The household goods moving company respondents in this docket were subject to two types of penalties, authorized under two different statutes, for failure to timely file annual reports and pay regulatory fees: (1) an automatic penalty of two percent of the regulatory fee due (Mandatory Penalty);⁶ and (2) a penalty the Commission had

¹ Petition ¶ 1.

² *Id.* ¶ 3.

³ RCW 81.04.210; WAC 480-07-850.

⁴ Petition ¶ 11.

⁵ See WAC 480-07-875 (authorizing the Commission to alter or amend its orders at any time).

⁶ RCW 81.80.321.

discretion to impose of \$100 per violation of statute or Commission rule, with each day's non-compliance representing a separate violation (Discretionary Penalty).⁷ The issue is whether the Commission fairly decided to cancel 3rd Generation's permit if it failed to pay the Discretionary Penalty that the Commission previously assessed against the Company.

6 We have reviewed the record and conclude that we should not cancel 3rd Generation's permit or otherwise sanction the Company at this time for not yet having paid the Discretionary Penalty. The Initial Order dismissed the complaint against A+ Always Moving, Inc. (A+), even though that company had not yet paid the Discretionary Penalty assessed against it.⁸ The Initial Order also dismissed the complaint against AA Star Transfer Co., Inc. (AA Star), and Grayport Transfer & Storage Co., Inc. (Grayport), "on condition that each company pays its *statutory penalty* on or before 20 days after the date of this order,"⁹ and Staff used the term "statutory penalty"¹⁰ in the recommendations the Commission adopted to refer to the Mandatory Penalty.¹¹ Neither AA Star nor Grayport had paid the Discretionary Penalties assessed against them at the time of the hearing.¹²

7 While we are troubled that none of these companies had paid their Discretionary Penalties more than five months after the Commission assessed them, we are also concerned with disparate treatment of similarly situated parties within the same docket. Having dismissed the complaint against A+, AA Star, and Grayport without first requiring payment of their Discretionary Penalties, we find that we should not impose such a requirement on 3rd Generation.

⁷ RCW 81.04.405.

⁸ Initial Order ¶ 33; Perkinson, TR. 24:16-19.

⁹ Initial Order ¶ 34 (emphasis added).

¹⁰ Perkinson, TR. 16:22 - 18:10 & 22:17-21.

¹¹ The Initial Order also used the term "statutory penalty," citing only Staff's testimony and recommendations concerning these companies' failure to pay the Mandatory Penalties. Initial Order ¶¶ 7, 15 & 34. This terminology is unfortunate in that the Mandatory Penalty and Discretionary Penalties are each authorized by statute and thus both are "statutory" penalties. We trust that, now being aware of the resulting potential for confusion, all concerned will be more precise when addressing the different types of penalties at issue in future proceedings.

¹² Perkinson, TR. 23:8-15.

8 Accordingly, we find that 3rd Generation filed its annual report for 2011 and paid its regulatory fees and Mandatory Penalty for 2012, and we dismiss the complaint against the Company. We leave for another day and another docket enforcement of the Discretionary Penalties against 3RD Generation and the other respondents in this proceeding that have failed to pay those penalties.

ORDER

THE COMMISSION AMENDS ORDER 02 AND ORDERS:

- 9 (1) The complaint against 3rd Generation Movers and Hauling is dismissed.
- 10 (2) 3rd Generation Movers and Hauling's household goods moving permit will not be cancelled at this time for not yet having paid the penalty of \$2,100 assessed in Docket TV-120900 for failure to timely file its 2011 annual report and pay its 2012 regulatory fee, and the schedule for installment payments of that penalty is vacated. The Commission reserves the discretion to take appropriate action in the future to enforce that penalty assessment, up to and including cancelling the Company's permit, if the penalty remains unpaid.

DATED at Olympia, Washington, and effective, July 26, 2013.

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner