

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of	DOCKET TV-190858
AMERICAM MOVERS LLC	ORDER 02
for a Permit to Operate as a Motor Carrier of Household Goods	EXTENDING PROVISIONAL PERIOD

BACKGROUND

- 1 On October 14, 2019, AmericaM Movers LLC (AmericaM, Applicant, 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 November 13, 2019, 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).
- 3 On January 29, 2020, the Commission held a brief adjudicative hearing in this matter. Administrative Law Judge Andrew J. O’Connell presided.
- 4 On February 24, 2020, the Commission issued Initial Order 01, Granting Provisional Household Goods Permit, Subject to Conditions (Order 01).
- 5 On April 25, 2022, Commission staff (Staff) filed a letter of compliance update with the Commission in this docket. Staff’s letter indicated that AmericaM had not met the conditions established in Order 01 regarding random alcohol testing, but that Staff believed the Company has cooperated throughout its provisional period, been accepting of technical assistance, and shown a desire to follow Commission rules and regulations. Staff therefore recommended that the Commission extend the Company’s provisional authority for an additional six months to demonstrate its compliance with the random alcohol testing conditions of Order 01.

6 On April 26, 2022, the Commission issued a Notice of Opportunity to Respond by
May 6, 2022, allowing for the Company to present any written response to Staff's
compliance letter.

7 On May 6, 2022, Camano Gahagan (part-owner and chief executive officer of the
Company) submitted a response to Staff's compliance letter requesting that the
Company's probationary period not be extended (Response).

DISCUSSION

8 The Company was granted a provisional permit to operate as a household goods carrier,
despite Staff's objections due to the nature and extent of Gahagan's criminal history and
whether omission of the majority of his criminal history from the Application constitutes
grounds to deny the Application. The Commission found that those concerns and the
potential for the nature and extent of Gahagan's crimes to interfere with the proper
operation of a household goods moving company could be mitigated by strict and
extensive conditions attached to the Commission's grant of a provisional permit. Those
conditions were the most stringent and comprehensive the Commission had imposed in
recent memory.

9 One of those conditions, intended to directly mitigate the link between Gahagan's
criminal history and his prior drug-seeking behavior, required AmericaM to implement a
random alcohol and controlled substances testing program for its drivers and, effective
immediately and for the duration of its provisional period, Gahagan must be enrolled in
that program. Another condition required the Company to maintain and provide to Staff
upon request all records of Gahagan's participation in its random alcohol and controlled
substances testing program. The Commission can and often will cancel a household
goods moving company's permit if a company fails to comply with the conditions of its
provisional permit.¹

10 In April 2021, Staff discovered that the Company's random controlled substances testing
program was administered by Gahagan. Following guidance from Staff, Gahagan ceased
administering the program and the Company enrolled in a third-party testing pool with
Drug Free Business, wherein Gahagan would not be aware of the testing dates prior to
any selections. However, Staff discovered in April 2022 that Drug Free Business had not

¹ WAC 480-15-305(3).

selected any of AmericaM's employees for alcohol testing and the Company could not, therefore, produce any evidence of random alcohol tests.

- 11 The Company's Response explains its initial confusion about the controlled substances testing program. This was the first time for Gahagan to run his own business and start a drug testing program. He states in the Response that he was eager to get the business started due to financial obligations. The Company remarks that there was little, or vague, instructions on how it should implement the testing program. The Company also admits it could have done more to ensure its actions were compliant, *e.g.*, by calling Staff and asking for better instructions.
- 12 In the Company's Response, Gahagan states its belief that Staff had extended its provisional authority an additional six months after April 2021 and is now recommending an additional extension of its provisional period. This seems to be a simple misunderstanding. In Order 01, the Commission extended the Company's provisional period until March 8, 2022, as part of the many conditions to mitigate the concerns presented by Gahagan's operation of a household goods moving company. Staff's current recommendation, that the Company's provisional period be extended until September 8, 2022, would therefore be the first extension of the Company's provisional period.
- 13 The Commission finds good cause to extend the Company's provisional period for six months until September 8, 2022.² The purpose of requiring Gahagan to participate in the Company's random testing program was to mitigate the concern that his drug-seeking behavior, and the linked criminal recidivism, might return. Gahagan's position of authority over that program brings doubt to the effectiveness of that mitigation. Staff's technical advice in April 2021, suggesting that the Company modify its program to include a third-party testing agency was proper. The Company's actions thereafter to modify its program by enrolling with Drug Free Business and removing Gahagan from a role of authority over the program were, likewise, appropriate. Unfortunately, there has not been any random alcohol tests since that modification of the Company's employees, including Gahagan. This is inconsistent with the conditions for the Company's provisional authority in Order 01.
- 14 The circumstances surrounding the Company's inability to fully satisfy the conditions in Order 01 by March 8, 2022, are not entirely of the Company's own making. After Staff's

² The Commission may extend a household goods moving company's provisional period beyond 18 months upon finding good cause. WAC 480-15-305(1)(b).

compliance investigation in April 2021, the Company properly enrolled in a random testing program. The absence of any testing of its employees by that third-party testing agency was not caused by the Company. In fact, the Company's eagerness to comply with Commission regulation and Staff's technical advice favor the conclusion that it would not be fair or just to conclude that the Company failed to comply with the conditions of Order 01.

15 The Commission agrees with Staff that the Company has thus far cooperated throughout its provisional period, has been accepting of technical assistance, and has shown a desire to follow Commission rules and regulations. Such a demonstration was the purpose and challenge of the strict conditions instated by Order 01. To this point, the Company has met this challenge and notes in its Response many accomplishments and accolades earned by the Company, both to its financial benefit and its reputation in the community. We strongly encourage the Company to continue along this path.

16 Instead of cancelling AmericaM's permit, as the Commission can and often does when a company fails to fully satisfy the conditions of its provisional permit within the prescribed time period, the circumstances in this case support a different course of action. Thus, the Commission finds good cause to provide the Company an additional six months of provisional authority to show its compliance with Order 01's conditions regarding a random testing program.

17 Due to these factors, the Commission determines the Company's provisional period should be extended by six months, until September 8, 2022. This extension will allow the Company to continue its operations under its provisional authority and also allow for Staff to follow-up and confirm random testing consistent with the conditions required by Order 01.

ORDER

18 THE COMMISSION extends AmericaM Movers LLC's provisional period for good cause until September 8, 2022.

DATED at Lacey, Washington, and effective May 18, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*

ANDREW J. O'CONNELL

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 480-07-825(2)(a) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(2)(b). WAC 480-07-825(2)(c) states that any party may file and serve an *Answer* to a Petition for Review within ten (10) days after the Petition is filed.

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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).