

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

SUPERHEROES MOVING AND
STORAGE LLC

For Compliance with WAC 480-15-530,
WAC 480-15-550, WAC 480-15-555, WAC
480-15-560, and WAC 480-15-570.

DOCKET TV-220321

REVISED NOTICE OF INTENT TO
CANCEL

NOTICE RESCHEDULING BRIEF
ADJUDICATIVE PROCEEDING;
SETTING TIME FOR ORAL
STATEMENTS
(Set for July 7, 2022, at 9:30 a.m.)

COMPLAINT FOR PENALTIES

NOTICE OF PREHEARING
CONFERENCE
(Set for July 7, 2022, at 9:30 a.m.)

1 The Washington Utilities and Transportation Commission (Commission), on its own motion, and through its regulatory staff (Staff), alleges as follows:

I. PARTIES

2 The Commission is an agency of the state of Washington authorized by statute to regulate the rates, services, facilities, and practices of public service companies, including household goods carriers.

3 Superheroes Moving and Storage LLC (Superheroes) is a Washington limited liability company engaging in business as a household goods carrier. Superheroes currently holds Commission-issued provisional permit number THG-069055

II. BACKGROUND

4 In January 2020, the Commission issued to Superheroes provisional household goods carrier permit THG069055.¹

¹ Decl. of Tracy Coble at 1 ¶ 4.

- 5 On July 26, 2021, the Commission cancelled Superheroes' provisional permit for failure to submit acceptable proof of insurance.² The notice of cancellation informed Superheroes that it needed to cease all operations associated with the permit and notified the company that the Commission could take enforcement action if Superheroes continued to operate as a household goods carrier without a valid permit.³
- 6 Superheroes applied for reinstatement in early December 2021 and the Commission re-issued to Superheroes permit THG069055 on January 5, 2022.⁴
- 7 Between March and April 2022, the Commission's staff (Staff) reviewed Superheroes' compliance with the requirements of state laws governing the operations of household goods carriers.
- 8 During its compliance investigation, Staff documented 76 occasions on which Superheroes operated by transporting household goods over the public highways for compensation between the cancellation of its permit in July 2021 and the reinstatement of its permit in January 2022.⁵
- 9 Staff also documented:
- 14 critical-type violations of WAC 480-15-555 based on Superheroes' failure to perform criminal backgrounds on 14 of its employees;⁶
 - 4 critical violations (for purposes of Superheroes' proposed safety rating), with 31 individual occurrences, of 49 Code of Federal Regulations (C.F.R.) § 391.45(a) based on Superheroes' use of drivers not medically examined and certified;⁷
 - 4 critical violations of 49 C.F.R. § 391.51(b)(2) based on Superheroes' failure to retain a copy of the response of each State agency to a required inquiry concerning 4 of its drivers' driving records;⁸
 - 26 critical violations of 49 C.F.R. § 395.8(a)(1) based on Superheroes' failure to require drivers to prepare records of duty status;⁹

² *Id.* at 1 ¶ 3.

³ *Id.*

⁴ *Id.* at ¶ 6.

⁵ *Id.* at 1-2 ¶ 7.

⁶ *Id.* at 2 ¶ 8.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

- 16 critical violations of 49 C.F.R. § 396.11(a) based on Superheroes' failure to require drivers to prepare driver vehicle inspection reports;¹⁰
- 3 critical violations of 49 C.F.R. § 396.17(a) based on Superheroes' use of 3 vehicles that had not been periodically inspected;¹¹
- 1 critical-type violation of 49 C.F.R. § 391.51(a) based on Superheroes' failure to maintain driver qualification files for each driver employed;¹²
- 5 violations of 49 C.F.R. § 391.21(a) based on Superheroes' use of 5 drivers who had not furnished complete employment applications;¹³
- 1 violation of 49 C.F.R. § 391.23(a)(2) based on Superheroes' failure to investigate one of its drivers' performance history with employers regulated by the United States Department of Transportation;¹⁴
- 4 violations of 49 C.F.R. § 391.51(b)(3) based on Superheroes' failure to maintain 4 of its drivers' road test certificates, or an acceptable equivalent;¹⁵
- 2 violations of 49 C.F.R. § 391.51(b)(4) based on Superheroes' failure to maintain the responses of the relevant state agencies to a required annual driver record inquiry;¹⁶
- 1 violation of 49 C.F.R. § 391.51(b)(9) based on Superheroes' failure to place a note related to the required verification of the medical examiner's listing on the National Registry of Certified Medical Examiners;¹⁷
- 7 violations of 49 C.F.R. § 391.51(c) based on Superheroes' failure to keep driver qualification files for at least 3 years after the termination of employment of 7 drivers;¹⁸
- 1 violation of 49 C.F.R. § 393.9(a) based on Superheroes operating a commercial motor vehicle with inoperable headlamps, resulting in an out-of-service condition;

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

- 1 violation of 49 C.F.R. § 393.45(d) based on Superheroes operating a commercial motor vehicle with a brake hose with an applied air leak at other than a proper connection, resulting in an out-of-service condition;
- 1 violation of 49 C.F.R. § 393.47(a) based on Superheroes operating a commercial motor vehicle with cracked brake linings exceeding 1.5 inches, resulting in an out-of-service condition;
- 1 violation of 49 C.F.R. § 393.75(a)(3) based on Superheroes operation of a commercial motor vehicles with a flat tire, resulting in an out-of-service condition;
- 1 violation of 49 C.F.R. § 396.3(a)(1) based on Superheroes operating a commercial motor vehicle that failed an air loss rate test, resulting in an out-of-service condition;
- 5 violations of 49 C.F.R. § 396.3(b)(1) based on Superheroes' failure to retain vehicle records containing the identification of the vehicle, including its company number (if applicable), make, serial number, year, and tire size;¹⁹
- 5 violations of 49 C.F.R. § 396.3(b)(2) based on Superheroes failure have a means of indicating the nature and due date of inspection and maintenance to be performed on 5 of its vehicles;²⁰
- 5 violations of 49 C.F.R. § 396.3(b)(3) based on Superheroes' failure to keep a record of the dates and nature of its inspection, repair, and maintenance of 5 of its vehicles;²¹ and
- 1 violation of WAC 480-15-480(4) based on Superheroes' failure to file annual reports with the Commission.²²

10 On April 28, 2022, Staff completed its investigation and notified Superheroes that the investigation produced a proposed unsatisfactory safety rating for the company.

11 On May 10, 2022, the Commission issued a Notice of Intent to Cancel; Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements (Original Notice of Intent to Cancel) which, among other things, scheduled a brief adjudicative proceeding (BAP) for June 15, 2022, at 9:30 a.m. and required the Company to obtain Commission approval of a safety management plan by June 24, 2022. The Original Notice of Intent to Cancel did not include a complaint for penalties.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

III. JURISDICTION

12 The Commission has jurisdiction over the subject matter of this complaint under chapter 34.05 RCW, RCW 80.01.040, RCW 80.01.060, RCW 81.01.010, RCW 81.04.010, RCW 81.04.020, RCW 81.04.110, RCW 81.04.380, RCW 81.04.460, RCW 81.04.510, RCW 81.80.075, RCW 81.80.130, WAC 480-15-180, WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570.

IV. APPLICABLE LAW

13 The Commission regulates public service companies pursuant to a delegation of authority from the legislature. *See* RCW 80.01.040(2); RCW 81.01.010.

14 Household goods carriers are common carriers, RCW 81.04.010(11), and therefore public service companies. RCW 81.04.010(16).

15 State law defines the term “household goods carrier” to mean “a person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods as defined by the Commission.” RCW 81.80.010(5); *see* WAC 480-15-020, -180.

16 The Commission’s rules define household goods as “the personal effects and property used, or to be used, in a residence when transported or arranged to be transported between residences or between a residence and a storage facility with the intent to later transport to a residence or when referenced in connection with advertising, soliciting, offering, or entering into an agreement for such transportation. Transportation of the goods must be arranged and paid for by the customer or by another individual, company or organization on behalf of the customer.” WAC 480-15-010.

17 WAC 480-15-555 requires household goods carriers to “complete a criminal background check for every person the carrier intends to hire.” WAC 480-15-555(1). Carriers must retain evidence that they have performed the necessary backgrounds checks for no less than three years after the date the employee ceases his or her employment by the carrier. WAC 480-15-555(2)

18 WAC 480-15-560 incorporates into the Commission’s rules federal regulations governing equipment safety requirements codified in various Parts of Title 49 Code of Federal Regulations (C.F.R.), including all of Parts 375, 380, 382, 383, 385, 387, 390, 391, 395, and 397.

- 19 WAC 480-15-570 incorporates into the Commission's rules federal regulations governing driver safety requirements codified in various Parts of Title 49 C.F.R., including all of Parts 375, 379, 380, 385, 390, 392, 393, 396, and 397.
- 20 Federal law incorporated into the Commission's rules prohibits motor carriers from operating beginning the 61st day after the date of the notice of a proposed unsatisfactory safety rating. 49 C.F.R. 385.13(a)(2).
- 21 A carrier may request a change in its proposed safety rating based on evidence that it has taken corrective action to address the identified violations and that its operations currently meet the safety standard specified in 49 C.F.R. §§ 385.5 and 385.7
- 22 State law forbids a person from "engaging in business as a household goods carrier without first obtaining a household goods carrier permit from the [C]ommission." RCW 81.80.075(1); WAC 480-15-180.
- 23 The Commission may file a complaint upon 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.
- 24 A public service company that violates or fails to comply with any provision of Title 81 RCW, "or which fails, omits, or neglects to obey, observe, or comply with any order, rule, or any direction, demand or requirement of the commission" is subject to a penalty of up \$1,000 for each "offense." RCW 81.04.380.
- 25 Any person engaging in business as a household goods carrier without first obtaining the permit required by RCW 81.80.075(1) is subject to a penalty of up to \$5,000 per violation. RCW 81.80.075(4).

IV. REVISED NOTICE OF INTENT TO CANCEL HOUSEHOLD GOODS CARRIER PERMIT

- 26 The Commission now revises the deadline by which Superheroes must come into compliance with applicable laws by obtaining Commission approval of a safety management plan to no later than July 15, 2022. If Superheroes fails to come into compliance by that date, the Commission will cancel its household goods carrier permit effective July 18, 2022. Superheroes would thereafter be prohibited from engaging in the business of a household goods carrier.
- 27 **THE COMMISSION GIVES NOTICE That it intends to cancel the permit and authority of Superheroes to provide services as a household goods carrier effective July**

18, 2022, for cause, following a hearing on the factual allegations set out above, unless Superheroes obtains Commission approval of a safety management plan prior to that date.

V. NOTICE OF BRIEF ADJUDICATIVE PROCEEDING

- 28 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission schedules a hearing on its own initiative and determines that a brief adjudicative proceeding is appropriate to determine whether the Commission should cancel Superheroes' household goods carrier permit.
- 29 **THE COMMISSION GIVES NOTICE That it will hold a virtual brief adjudicative proceeding in this matter at 9:30 a.m., on July 7, 2022. To attend the hearing by telephone, please call (253) 215-8782 and enter the Meeting ID: 811 8721 0456# and Passcode: 569843#. To attend via Zoom, please use the following link: [Click to Join Meeting](#).**
- 30 The record in this case will consist of any documents regarding the matter that are considered by or prepared for the presiding officer for the brief adjudicative proceeding and a transcript of any oral statements given at the hearing, which statements will be given under oath.
- 31 Written notice of any other stage in the proceeding or other formal proceedings that the Commission may deem appropriate will be given during the course of this case. The Commission will provide at its offices in Lacey, Washington, copies of documents in the current record for use by the parties or others who may want to review them.
- 32 **Superheroes must submit its proposed safety management plan no later than 5:00 p.m. on June 23, 2022.** Parties wishing to submit any other documents for consideration at the brief adjudicative proceeding must file with the Commission a list enumerating and describing any such documents **no later than 5:00 p.m. on June 30, 2022**, and bring an original and three (3) copies of those documents to the hearing. Filing shall be in accordance with WAC 480-07-140 and -145.
- 33 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the brief adjudicative proceeding set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

V. FIRST CAUSE OF ACTION

- 34 The Commission re-alleges paragraphs 2 through 24, above.

35 The Commission alleges that Superheroes violated RCW 81.80.075(1) on 76 occasions by transporting household goods for compensation over the public highways of Washington State without first obtaining a permit authorizing it to engage in business as a household goods.

VI. SECOND CAUSE OF ACTION

36 The Commission re-alleges paragraphs 2 through 24, above.

37 The Commission alleges that Superheroes violated WAC 480-15-555 on 14 occasions by failing to perform criminal backgrounds checks on persons it hired.

VII. THIRD CAUSE OF ACTION

38 The Commission re-alleges paragraphs 2 through 24, above.

39 The Commission alleges that Superheroes violated WAC 480-15-480(4) on 1 occasion by failing to file its annual report for the years 2019 and 2020.

VIII. FOURTH CAUSE OF ACTION

40 The Commission re-alleges paragraphs 2 through 24, above.

41 The Commission alleges that Superheroes violated the safety rules codified in WAC 480-15-560 and WAC 480-15-570 121 times by violating the federal regulations found in 49 C.F.R. Parts 391, 393, 395, and 396 incorporated into those rules.

IX. REQUEST FOR RELIEF

42 Staff requests that the Commission, pursuant to its authority under RCW 81.80.075(4), assess penalties of up to \$5,000 for each violation of RCW 81.80.075(1).

43 Additionally, Staff requests that the Commission, pursuant to its authority under RCW 81.04.380, assess penalties of up to \$1,000 for each violation of WAC 480-15-480(4), WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570.

44 Staff further requests that the Commission order such other or further relief as is appropriate under the circumstances.

X. PROBABLE CAUSE

45 Based on a review of the declarations of Tracy Cobile, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this complaint.

XI. NOTICE OF PREHEARING CONFERENCE

46 The Commission will hear the complaint in this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission's procedural rules, chapter 480-07 WAC, will apply in this proceeding.

47 **THE COMMISSION GIVES NOTICE That it will hold a virtual prehearing conference in this matter at 9:30 a.m. on July 7, 2022. To participate by phone, call (253) 215-8782 and enter the Meeting ID: 811 8721 0456# and Passcode 569843#. To attend via Zoom, please use the following link: [Click to join meeting](#).**

48 The purpose of the prehearing conference is to consider requests for intervention, resolve scheduling matters including establishing dates for distributing evidence, identify the issues in the proceeding, and determine other matters to assist the Commission in resolving the matter, as listed in WAC 480-07-430.

49 **INTERVENTION:** Persons who wish to intervene should file a petition to intervene in writing at least three business days before the date of the prehearing conference.²³ The Commission will consider oral petitions to intervene during the conference, but strongly prefers written petitions to intervene. Party representatives must file a notice of appearance with the Commission no later than the business day before the conference.²⁴ Parties with more than one representative must identify one individual as the "lead" for purposes of official service. Any party or witness in need of an interpreter or other assistance should fill out the form attached to this notice and return it to the Commission. The Commission will set the time and place for any evidentiary hearings at the prehearing conference, on the record of a later conference or hearing session, or by later written notice.

50 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the prehearing conference set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

²³ WAC 480-07-355(a).

²⁴ WAC 480-07-345(2).

51 The names and mailing addresses of all parties and their known representatives are shown as follows:

Commission: Washington Utilities and
Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Representative: Jeff Roberson
Assistant Attorney General
P.O. Box 41028
Olympia, WA 98504-0128
(360) 664-1188
jeff.roberson@utc.wa.gov

Respondent: Superheroes Moving and Storage LLC
Ryan Doherty, Governor
4630 16th St. E., Suite B6
Federal Way, WA 98424
(253) 328-1012
owner@superheroesmoving.com

52 Administrative Law Judge Andrew O’Connell, from the Commission’s Administrative Law Division, will preside during this proceeding.²⁵

DATED at Lacey, Washington and effective May 26, 2022.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

Amanda Maxwell
Executive Director and Secretary

Inquiries may be addressed to:

Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

²⁵ Judge O’Connell can be reached at (360) 664-1285 or andrew.j.oconnell@utc.wa.gov.

NOTICE

Hearings are accessible to persons with disabilities and persons who do not speak English as a first language. 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.

If you need an interpreter, or have other special needs, please provide the information requested below via email to Paige Doyle, paralegal, at paige.doyle@utc.wa.gov:

(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: _____