



Phillip J. French
Attorney at Law

Office 253.473.4262
Fax 253.474.1171
Email pjfrench@comcast.net

March 5, 2015

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

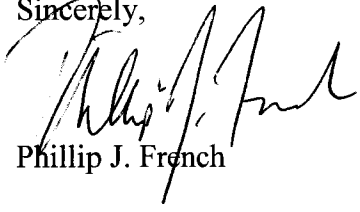
RE: Adam's Moving and Delivery Service, LLC, Docket TV-143601

Att'n: Records Management

Greetings:

Enclosed please find an original Motion to Dismiss Seventh Cause of Action and Memorandum in connection with a WUTC complaint for penalties. This matter is scheduled for a Brief Adjudicative Proceeding March 17, 2015. Kindly file this Motion. Thank you.

Sincerely,

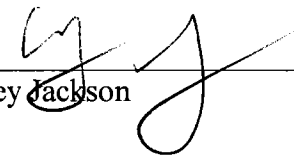


Phillip J. French

RECEIVED
RECORDS MANAGEMENT
2015 MAR 10 AM 8:34
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

1 I hereby certify that I have this day served this document upon all parties of record in this
2 proceeding, by depositing the same in the United States Mail addressed to each party of
3 record pursuant to WAC 480-07-150

4 Dated at Lakewood, Washington, this 5th day of March, 2015.

5 
6 _____
7 Casey Jackson

8 RECEIVED
9 RECORDS MANAGEMENT
10 2015 MAR 10 AM 8:34
11 STATE OF WASH
12 UTIL. AND TRANSP
13 COMMISSION

14 BEFORE THE WASHINGTON

15 UTILITIES AND TRANSPORTATION COMMISSION

16 WASHINGTON UTILITIES AND)
17 TRANSPORTATION COMMISSION) DOCKET TV-143601
18)
19 Complainant,) MOTION TO DISMISS SEVENTH
20) CAUSE OF ACTION OF WUTC
21 vs.) COMPLAINT FOR PENALTIES
22) AND MEMORANDUM OF
23 ADAM'S MOVING AND DELIVERY)
24 SERVICE, LLC,) AUTHORITIES
25 Respondent.)
26 _____)

27 **I. MOTION**

28 Respondent, by and through its attorney, hereby moves to dismiss the WUTC
Seventh Cause of Action herein, for and upon the grounds that the conduct complained
of, charging bank fees incurred as a result of customer payments by debit or credit card
does not violate any provisions of Tariff 15-C, or other provisions of applicable law.

II. MEMORANDUM OF AUTHORITIES

1 For its Seventh Cause of Action, WUTC alleges that Adam's Moving "improperly
2 charged a credit card fee in connection with 14 residential moves, in violation of WAC
3 480-15-490(3). In its request for relief, WUTC requests a penalty of \$7,000.00 and that
4 "the Commission order Adam's Moving to issue refunds to all customers who were
5 improperly charged a credit card fee during the two year period preceeding the service
6 date of this complaint."

7 Respondent respectfully submits that charging a bank fee actually incurred by the
8 carrier as a convenience of payment method to the customer does not violate any
9 provisions of the WUIC rules or regulations as set forth in the Washington
10 Administrative Code or Tariff 15-C, or any other applicable provision of law.
11 Respondent further respectfully submits that the 3% bank fee that is charged to the
12 customer whose preferred method of payment is by debit or credit card is outside the
13 scope of WUTC's regulatory authority of household goods carriers or at the very least,
14 constitutes a practice that to date WUTC has not chosen to regulate, limit, or proscribe.
15

16 In its Seventh Cause of Action in the Complaint for penalties, WUTC recites the
17 bank charges as violating WAC 480-15-490(3). WAC 480-15-490 provides as follows:
18

19 WAC 480-15-490 Tariff and rates, general.

20 (1) A tariff is a publication containing the rates and charges that
21 household goods carriers must assess on shipments of household goods,
22 including rules that govern how rates and charges are assessed.

23 (2) The commission publishes tariffs that all household goods carriers
24 must use and allows household goods carriers to file individual tariffs if
25 the commission finds it is impractical to include certain commodities or
26 services in its tariff.

1 (3) All household goods carriers are required to follow the terms,
2 conditions, rates and all other requirements imposed by the commission-
3 published tariff.

4 (4) The commission will set minimum and maximum rates carriers may
5 charge within the tariff.

6 (5) Every household goods permit holder must obtain at least one copy of
7 the current tariff, and may pay applicable tariff maintenance fees. Any
8 interested person may purchase a copy by paying the applicable fees in
9 advance.

10 WAC 480=15-490 is a general provision which implements, adopts, and requires
11 compliance with Commission Tariff 15-C. The current version of Tariff 15-C contained
12 on the WUTC website consists of 50 pages. Item 80, entitled Payment of Charges, at
13 Original Page No. 12 provides in pertinent part as follows:

- 14 1. In advance of the move, the carrier must specify the method of payment on the
15 estimate and any terms or conditions that apply to the method of payment, such as
16 interest rates charged for credit plans. Once specified, the carrier may not require
17 a different payment method. Carriers may accept or require prepayment in part or
18 in full, cash, personal check, cashier's check or money order, credit card, debit
19 card, electronic fund transfers or its own credit plan.
- 20 2. A carrier may not charge any amount above a binding estimate.
- 21 3. A carrier may only charge an additional 25 percent above a nonbidding estimate
22 plus any supplemental estimates. The additional 25 percent does not include any
23 finance-related charges the carrier may assess for extending credit, such as
24 interest or late payment fees.

25 There is no provision in Item 80 or any provision of Tariff 15-C that prohibits bank
26 charges that are incurred by the carrier where the customer's method of payment is by
27 debit or credit card. The provision authorizes a carrier to accept various payment
28 methods, but does not require a carrier to accept all payment methods. The provision
authorizes finance-related charges in connection with extending credit, but does not place
any limit whatsoever on the amount of interest or late payment fees a carrier may charge.

1 Based upon a plain reading of Tariff 15-C, the WUTC has not elected to regulate,
2 restrict, or otherwise prohibit bank charges or finance charges by carriers.

3 WUTC regulations of carrier charges are very specific and precisely defined.
4 Tariffs enacted pursuant to WUTC regulation have the force of state law. *General*
5 *Telephone Co. v. City of Bothell*, 105 Wn.2d 579, 716 P.2d 879 (1986). Basic principles
6 of statutory construction should equally apply to construction of provisions of Tariff 15-
7 C. In *Dep't of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 43 P.3d 4 (2002), the Court
8 enunciated the rule of statutory interpretation applicable to our case at 43 P.3d page 9 as
9 follows:

10 “The meaning of a statute is a question of law reviewed de novo. *State v. Breazeale*,
11 144 Wash.2d 829, 837, 31 P.3d 1155 (2001); *State v. J.M.*, 144 Wash.2d 472, 480, 28
12 P.3d 720 (2001). The court's fundamental objective is to ascertain and carry out the
13 Legislature's intent, and if the statute's meaning is plain on its face, then the court must
14 give effect to that plain meaning as an expression of legislative intent. *J.M.*, 144 Wash.2d
15 at 480, 28 P.3d 720.”

16 R.C.W. 81-80.150 prescribes the scope of the WUTC in enacting regulations and
17 rules governing household goods carriers providing as follows:

18 “The commission shall make, fix, construct, compile, promulgate, publish, and
19 distribute tariffs containing compilations of rates, charges, classifications, rules, and
20 regulations to be used by all household goods carriers.”

21 Tariff 15-C, by its terms, regulates all manner of charges for the transportation of
22 household goods, by providing that “every household goods carrier must develop,
23 establish and maintain policies, processes and procedures that ensure it complies with
24 all rates, charges, terms, conditions and directions contained in this tariff.” ITEM 05-
25 APPLICATION OF TARIFF, Tariff 15-C. The practice of charging bank fees
26 incurred by a carrier where the customer elects to pay by debit or credit card does not

1 fall within any specific tariff regulation or prohibition. Item 05 reserves to the carrier
2 the right and the duty to develop and maintain policies that are consistent with and
3 comply with specific Tariff 15-C rules.

4 Whether WUTC regulatory authority would be exceeded were the WUTC to
5 promulgate a regulation or tariff provision prohibiting bank charges by a carrier is a
6 question that need not be decided in this hearing. Respondent respectfully submits
7 that WUTC has not acted to publish any prohibition against a carrier assessing a bank
8 fee incurred as a result of a customer payment by credit or debit card.

9 In the event that it is the position of the WUTC that such bank charges
10 constitute a violation of Tariff 15-C or any other published regulation, then
11 Respondent respectfully submits that WUTC is without legislative authorization to
12 regulate or prohibit the aforementioned bank charges.

13 DATED: LAKEWOOD, WASHINGTON this 5th day of March, 2015.

14
15 

16 PHILLIP J. FRENCH
17 WSBA NO. 11030
18 Attorney for Respondent