

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET TV-143601
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	ORDER 01
	)	
v.	)	
	)	INITIAL ORDER IMPOSING AND
ADAM’S MOVING AND DELIVERY	)	SUSPENDING PENALTIES, IN
SERVICE, LLC,	)	PART
	)	
Respondent.	)	
.....	)	

**BACKGROUND**

- 1 On June 28, 2015, the Washington Utilities and Transportation Commission (Commission) through its regulatory staff (Staff)<sup>1</sup> filed a complaint against Adam’s Moving and Delivery Service, LLC (Adam’s Moving or Company) and a Notice of Brief Adjudicative Proceeding set for Tuesday, March 17, 2015, at 9:30 a.m. The complaint alleges that Adam’s Moving committed 579 violations of Commission rules and state statutes, and seeks penalties of \$14,000 and refunds for credit card fees for a two-year period.
- 2 On March 10, 2015, Adam’s Moving filed a Motion to Dismiss Seventh Cause of Action.
- 3 The Commission conducted a brief adjudicative proceeding on March 17, 2015, before Administrative Law Judge Rayne Pearson. The parties stipulated to the violations, which limited the scope of the hearing to mitigation of the penalty and the remaining legal question related to the seventh cause of action. Adam’s Moving’s

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<sup>1</sup> In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

Motion to Dismiss the Seventh Cause of Action was denied. The parties addressed, in turn, each category of violations alleged in the complaint.

4 Julian Beattie, Assistant Attorney General, Olympia, represents Staff. Philip J. French, Attorney at Law, Lakewood, represents Adam's Moving.

## DISCUSSION AND DECISION

### First Cause of Action

5 Staff alleges, and Adam's Moving admits, that the Company failed to provide a copy of the Commission publication, "Moving in Washington State" (Moving Guide) in connection with 55 residential moves. WAC 480-15-620(1) requires moving companies to provide a copy of the Moving Guide in conjunction with each estimate the Company prepares, and obtain the customer's signature on the estimate form to acknowledge its receipt.

6 Adam French, owner of Adam's Moving, testified at hearing that although he provides an electronic link to the Moving Guide to each of his customers via email, he has never collected signatures, electronic or otherwise, to acknowledge receipt of the guide as required. Mr. French provided assurances that, following conversations with Staff, he now understands the requirements of WAC 480-15-620(1) and will obtain signatures from each customer on the written estimate form acknowledging receipt of the guide.

7 According to Staff's investigation report, Adam's Moving has not received previous technical assistance for these violations. Nonetheless, because the Moving Guide provides valuable information about the Commission's consumer rules, Staff recommends a penalty of up to \$1,000 for 55 violations.

8 **Decision.** The Commission-published Moving Guide is critical to ensuring consumer protections; it explains, in detail, consumers' rights and responsibilities, and the Commission's role in regulation and enforcement. This is, however, a first-time violation, and Adam's Moving has not received any previous technical assistance in this area. Accordingly, the Commission will assess a penalty of \$100 for 55 violations of WAC 480-15-620(1).

### **Second Cause of Action**

9 Staff alleges, and Adam's Moving admits, that the Company failed to provide written estimates to customers prior to moving a shipment of household goods on 21 occasions. WAC 480-15-630 requires carriers to issue a written estimate, based on a visual inspection of a customer's goods, prior to performing a move. A written estimate is an approximation of the cost of move, and the form must be prepared according to the requirements set forth in Tariff 15-C, Item 85. Prior to Staff's investigation, Adam's Moving used a bill of lading form that included a provision giving customers the option to decline a written estimate; 21 customers during the investigation review period chose that option.

10 Mr. French testified at hearing that he now understands the requirements of WAC 480-15-630 and Tariff 15-C, Item 85, including the requirement that he provide an estimate based on a visual inspection in connection with every move the Company performs.

11 According to Staff's investigation report, Adam's Moving has not received prior technical assistance for these violations. Because failing to provide a written estimate affects consumers' ability to make a fully informed decision, Staff recommends a penalty of up to \$1,000 for 21 violations of WAC 480-15-630.

12 **Decision.** Estimates are an essential component of every household goods move that protect both the consumer and the carrier. Without performing a visual inspection, a carrier cannot reasonably or accurately calculate the time it will take to perform a move. Because this is a first-time violation and Adam's Moving has not received any previous technical assistance in this area, however, the Commission will assess a penalty of \$100 for 21 violations of WAC 480-15-630.

### **Third Cause of Action**

13 Staff alleges, and Adam's Moving admits, that the Company failed to provide properly formatted written estimates on 34 occasions. WAC 480-15-630(7) requires estimates to include each of the elements listed in Tariff 15-C, Item 85.<sup>2</sup> Critical

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<sup>2</sup> Staff's investigation found that the estimate form used by Adam's Moving failed to include the following: the carrier's address, whether the estimate is binding or nonbinding, a space for the customer to sign acknowledging receipt of the Moving Guide, a space to record the number of carrier personnel and associated hourly rate, a statement guaranteeing the cost for a binding

information, including the terms and conditions for both binding and nonbinding estimates, was missing from the version of the Company's form that Staff reviewed.

14 To ensure compliance going forward, Mr. French testified that he now uses the Commission-published estimate form in connection with every move.

15 Staff's investigation report documents previous technical assistance for these same violations provided to the Company in connection with a consumer complaint filed in February 2012. According to Commission records, the Company agreed at that time to download and use the estimate form published on the Commission's website. Staff's investigation found, however, that the Company continued to use an estimate form that fails to comply with Commission rules and Tariff 15-C. Accordingly, Staff recommends a penalty of up to \$1,000 for 34 violations of WAC 480-15-630(7).

16 **Decision.** Estimates formatted in compliance with Tariff 15-C provide important consumer protections. For example, customers are never required to pay more than 125 percent of the estimated amount for a nonbinding estimate, and carriers must release a shipment upon payment of 110 percent of the estimated amount and extend credit for the remaining balance. The Company's estimate form is missing this critical information. Because the Company received and ignored previous technical assistance in this area, we agree with Staff's recommendation and assess a penalty of \$1,000 for 34 violations of WAC 480-15-630(7).

#### **Fourth Cause of Action**

17 Staff alleges, and Adam's Moving admits, that the Company failed to provide cube sheet inventories on 55 occasions. WAC 480-15-630(7) provides that carriers "must complete the estimates as required by tariff," and Tariff 15-C, Item 85(2)(g), requires carriers to include with each estimate "[a] household goods cube sheet inventory of the items upon which the estimate is based and the estimated cubic footage for each item."

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estimate, and a statement explaining the conditions of a nonbinding estimate related to payment and release of shipment.

18 Mr. French testified at hearing that he mistakenly believed cube sheet inventories were only required for mileage rated moves, but now understands that they must be completed in connection with each move, even those that are hourly-rated.

19 Staff's investigation report documents previous technical assistance provided to the Company for these same violations in connection with a consumer complaint filed in February 2012. The Company was instructed to complete a cube sheet inventory in connection with each move, and, in response, the Company provided assurances to Commission Staff that it would do so going forward. Mr. French was also advised to attend the next Commission-sponsored household goods carrier training, but did not. Staff recommends a penalty of up to \$1,000 for 55 violations of WAC 480-15-630(7).

20 **Decision.** Cube sheet inventories are an integral part of the estimate process. In addition to providing an itemized list of the customer's goods, cube sheets also provide a basis for estimating the time it will take to complete a move, as well as calculating constructive weight for the purpose of valuation. Because Adam's Moving received and ignored previous technical assistance in this area, we find Staff's recommendation reasonable and assess a penalty of \$1,000 for 55 violations of WAC 480-15-630(7).

### **Fifth Cause of Action**

21 Staff alleges, and Adam's Moving admits, that the Company failed to issue a properly formatted bill of lading on 55 occasions. WAC 480-15-710(2) requires household goods movers to issue a bill of lading in connection with every move that includes each of the requirements set forth in Tariff 15-C, Item 95. The bill of lading is a contract between the carrier and the customer that describes the mover's responsibilities, the charges for the move, and the liability the carrier assumes for handling and transporting the shipment. Staff's investigation found that the forms used by Adam's Moving during the review period contained a total of 389 violations of WAC 480-15-710(2) and Tariff 15-C, Item 95 in nine categories.<sup>3</sup>

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<sup>3</sup> Staff found the following violations of WAC 480-15-710(2) and Tariff 15-C, Item 95: failure to include complete or correct company information such as company name, permit number, address, telephone number, fax number, website, and email address; failure to record complete customer name and telephone number; failure to record exact origin and destination address; failure to record additional stops; failure to indicate whether the estimate was binding or nonbinding; failure to include a statement regarding the required release of shipment; failure to

22 Mr. French testified at hearing that as a result of Staff's investigation, the Company now uses the bill of lading form provided on the Commission's website.

23 Adam's Moving received technical assistance related to two of the nine violation categories cited in Staff's investigation report in connection with a consumer complaint filed in February 2012. Staff notified the Company that it must modify its bill of lading to comply with Tariff 15-C. In response to Staff's instructions, Mr. French provided assurances that he would download and use the Commission-published Uniform Household Goods bill of lading form going forward. According to Staff's investigation, however, Adam's Moving continued to use an improperly formatted bill of lading. Staff notes that 233 of the 389 violations cited are repeat violations, and recommends a penalty of up to \$1,000 for 389 violations of WAC 480-15-710(2).

24 **Decision.** Because the bill of lading is a binding contract between a carrier and a customer, it is crucial that it contain accurate information and describe, in full, the carrier's obligations with respect to transporting and releasing the customer's shipment. Because Adam's Moving received and ignored previous technical assistance related to 233 of the 389 violations documented in Staff's investigation report, we assess a \$1,000 penalty for 389 violations of WAC 480-15-710(2).

#### **Sixth Cause of Action**

25 Staff alleges, and Adam's Moving admits, that the Company assessed an unauthorized two-hour minimum charge on one occasion. WAC 480-15-490(3) requires carriers to bill charges according to the tariff. Tariff 15-C, Item 230(7) requires a one-hour minimum charge for hourly-rated moves that occur Monday through Friday between 8 a.m. and 5 p.m. On Monday, August 19, 2014, Adam's Moving charged a two-hour minimum for move that began at 11:15 a.m.

26 Mr. French testified at hearing that he does not recall the move in question, and provided assurances that he no longer charges a two-hour minimum for hourly-rated

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include a statement about extension of credit; failure to include language regarding replacement cost coverage; failure to adequately document start, stop, and interruption times; and including unidentified line item charges.

moves. Mr. French further testified that all references to a two-hour minimum have been removed from his marketing materials and email template.

27 According to Staff's investigation report, the Company received technical assistance related to hourly minimums in March 2010. At that time, Mr. French was instructed to remove the reference to two-hour minimums from his website. Although Mr. French complied with Staff's request, he continued to advertise a two-hour minimum through emails to customers, and continued to charge a two-hour minimum for residential household goods moves. Staff recommends a \$1,000 penalty for one violation of WAC 480-15-490(3).

28 **Decision.** We agree with Staff's recommendation and assess a \$1,000 penalty for one violation of WAC 480-15-490(3). The Company was notified and acknowledged the violation, then feigned compliance by changing the language on its website while continuing to charge and advertise a two-hour minimum in less detectable ways. Although Staff cites only one violation of WAC 480-15-490(3) for violating the rule on one occasion, Staff's investigation report states that the Company "continued to advertise a two-hour minimum rate through emails and charged customers a two-hour minimum rate."<sup>4</sup> Rather than addressing an isolated incident, the penalty captures both the Company's ongoing conduct over a period of years and its willful noncompliance with Commission rules.

### **Seventh Cause of Action**

29 Staff alleges 14 violations of WAC 480-15-490(3) for assessing an unauthorized credit card fee in connection with 14 residential moves. Adam's Moving admits the conduct that gave rise to the violations, but disputes whether the conduct violates WAC 480-15-490(3) and Tariff 15-C.

30 Staff's investigation report addresses the Company's "introductory emails," which include a description of payment that discloses a three percent fee for charges made with debit or credit cards, and a three percent discount for cash payments. Staff argues that while a carrier may charge a higher rate for moves paid for by credit or debit card, the Company may not assess a separate three percent line-item charge for those transactions. Instead, Staff contends, all surcharges are intended to be

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<sup>4</sup> Paul, Exh. No. SP-1, at 17.

embedded in the rate band, which provides a minimum and maximum rate to allow carriers to account for costs incurred in the course of doing business. Staff argues that the tariff represents the entire universe of allowable charges, and that carriers may not assess a charge that is not expressly authorized by Tariff 15-C.

31 Adam's Moving argues that while WAC 480-15-490(3) requires household goods carriers to follow the terms, conditions, rates and all other requirements imposed by the tariff, Tariff 15-C, Item 80, Payment of Charges contains no provision prohibiting bank charges incurred by the carrier when the customer chooses to pay by credit or debit card. That same provision authorizes carriers to accept various methods of payment, but does not require carriers to accept all payment methods; it also permits finance charges and late fees for credit extensions, but places no limit on those charges or fees.

32 **Decision.** Although Tariff 15-C does not expressly permit carriers to assess credit and debit card fees, Staff does not contend that the Company may not charge and collect those fees. Rather, Staff's position is that Adam's Moving must charge a different rate in lieu of attaching a percentage-based fee to the standard rate if the Company wishes to recover credit card fees.<sup>5</sup> Whether the Company discloses the three percent fee to its customers, however, the outcome is the same. We fail to see how concealing the credit card fee protects consumers, or why increased disclosure and transparency should be prohibited. So long as a company's rates fall within the authorized rate band, companies should be permitted to provide more information for consumers to consider without facing enforcement action from the Commission.

33 Nevertheless, we recognize that companies regulated by the Commission, across all industries, may not charge or collect credit card fees unless they are expressly authorized by a company's tariff. Under the existing version of Tariff 15-C, no such fee is permitted. Staff is correct that credit and debit card fees are presently captured as a cost of doing business embedded in the rate band. At the same time, however, Staff allows stated discounts for cash payments even though no such discounts are expressly authorized by the tariff, which is equally inconsistent with a strict interpretation of the tariff. To the extent that Tariff 15-C precludes disclosure of both

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<sup>5</sup> For example, with a standard rate of \$110, the Company would collect \$113.30 per hour for a move paid by debit or credit card to capture the three percent fee.



credit card fees and discounts, we encourage Staff to consider revising the tariff with input from regulated carriers and other stakeholders.

34 Although it would be reasonable to disclose both the credit card fee and the discount to customers before they select a method of payment, the tariff does not expressly authorize those options. In addition, the Company ignored Staff's guidance and continued to violate the tariff. The rates the Company charged its customers, however, were within the authorized bands and thus neither harmed customers nor allowed the Company to collect any amount it was not otherwise entitled to collect. Accordingly, we decline to adopt Staff's recommendation of a \$7,000 penalty and refunds. Instead, we assess a \$500 penalty for fourteen violations of WAC 480-15-490(3) and Tariff 15-C.

**Eighth Cause of Action**

35 Staff alleges, and the Company admits, that it failed to include required information in Company advertisements on ten occasions. WAC 480-15-610 requires carriers to display a Commission-issued permit number, the company's physical address as recorded at the Commission, and the company's name as recorded at the Commission in all advertisements.

36 Staff's investigation found that Adam's Moving failed to display the Company's permit number, the Company's address on file with the Commission, and the Company's name as recorded at the Commission on its website, Facebook page, and in customer correspondence.

37 Mr. French testified that he has hired a third-party marketing company to manage the Company's website, and is working to ensure each of the necessary changes are made to all of the Company's advertisements.

38 Staff provided technical assistance related to the Company's failure to include its permit number on the Company's website in both 2010 and 2011, but Adam's Moving failed to make any changes. Staff recommends a penalty of \$1,000 for ten violations of WAC 480-15-610.

39 **Decision.** Ensuring that all advertisements comply with Commission rules protects consumers by providing accurate information about the Company's name, physical

address, and Commission-issued permit number. While we do not believe that Adam's Moving intended to confuse or deceive consumers by violating the Commission's advertising rules, the Company ignored Staff's technical assistance related to its website. Accordingly, we find the recommended penalty amount appropriate, and assess a \$1,000 penalty for ten violations of WAC 480-15-610.

**Penalties**

40 The Commission may consider a number of factors when determining appropriate penalties, including a company's history of compliance, whether the violations were promptly corrected, and the likelihood the violations will recur.<sup>6</sup>

41 Here, we find 579 violations of Commission rules and impose a total penalty of \$5,700. Adam's Moving has received extensive technical assistance in a number of the areas addressed in the complaint and Staff's investigation report. The Company made repeated misrepresentations that violations had been corrected, and ignored Staff's directions to attend rule and tariff training on multiple occasions. The Company's poor compliance history suggests that violations are likely to recur absent a penalty. Accordingly, we have assessed minimal penalties for first-time violations and more substantial penalties for repeat violations. On balance, the total penalty is significant but not unduly punitive.

42 Because the Commission's primary goal is compliance, we will exercise our discretion to suspend a \$2,850 portion of the penalty for a two-year period on the condition that Adam's Moving incurs no repeat violations of the rules and tariff provisions for which penalties were assessed in this Order. Staff will conduct a follow-up investigation at the end of the two-year period and provide a recommendation regarding whether the Commission should waive or impose the suspended portion of the penalty.

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<sup>6</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

### FINDINGS AND CONCLUSIONS

- 43 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including household goods companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 44 (2) Adam's Moving is a household goods company subject to Commission regulation.
- 45 (3) Adam's Moving should be penalized \$100 for 55 violations of WAC 480-15-620(1) for failing to provide a copy of the Moving Guide as required on 55 occasions.
- 46 (4) Adam's Moving should be penalized \$100 for 21 violations of WAC 480-15-630 for failing to provide estimates as required on 21 occasions.
- 47 (5) Adam's Moving should be penalized \$1,000 for 34 violations of WAC 480-15-630(7) for failing to issue properly formatted estimates as required on 34 occasions.
- 48 (6) Adam's Moving should be penalized \$1,000 for 55 violations of WAC 480-15-630(7) for failing to provide cube sheet inventories as required on 55 occasions.
- 49 (7) Adam's Moving should be penalized \$1,000 for 389 violations of WAC 480-15-710(2) for failing to issue properly formatted bills of lading as required.
- 50 (8) Adam's Moving should be penalized \$1,000 for one violation of WAC 480-15-490(3) for assessing an unauthorized two-hour minimum charge on one occasion.
- 51 (9) Adam's Moving should be penalized \$500 for 14 violations of WAC 480-15-490(3) for assessing improper credit or debit card fees on 14 occasions.

- 52 (10) Adam's Moving should be penalized \$1,000 for ten violations of WAC 480-15-610 for failing to include required information in Company advertisements on ten occasions.
- 53 (11) A \$2,850 portion of the \$5,700 penalty should be suspended for a period of two years from the date of this order, then waived, provided Adam's Moving incurs no repeat violations of the rules cited in paragraphs 47 through 54, above.
- 54 (12) Staff should conduct a follow-up investigation in two years to determine whether the suspended penalty should be waived or imposed.

**ORDER**

THE COMMISSION ORDERS That

- 55 (1) Adam's Moving and Delivery Service, LLC is assessed a penalty of \$5,700, a \$2,850 portion of which is suspended for a period of two years from the effective date of this Order conditioned on Adam's Moving, LLC complying with the terms of this Order.
- 56 (2) At the end of the two-year suspension period, Staff will conduct a follow-up investigation and provide a recommendation regarding whether the Commission should waive or impose the suspended portion of the penalty.
- 57 (3) Adam's Moving and Delivery Service, LLC must pay the \$2,850 portion of the penalty that remains due and payable within ten days of the effective date of this Order. If Adam's Moving and Delivery Service, LLC fails to timely pay that amount, the entire penalty will become due and payable without further order of the Commission.

DATED at Olympia, Washington, and effective March 27, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
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) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

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.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

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