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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
)
 Complainant,)
)
 v.) Docket TV-143601
)
 ADAM'S MOVING AND DELIVERY)
SERVICE, LLC,)
)
 Respondent.)

BRIEF ADJUDICATIVE PROCEEDING, VOLUME I

PAGES 1 - 61

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

9:35 A.M.

MARCH 17, 2015

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest, Room 206
Olympia, Washington 98504-7250

REPORTED BY: RYAN ZIEGLER, RPR, CCR #3348

Buell Realtime Reporting, LLC
1325 Fourth Avenue
Suite 1840
Seattle, Washington 98101
206.287.9066 | Seattle
360.534.9066 | Olympia
800.846.6989 | National
www.buellrealtime.com

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A P P E A R A N C E S

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3 ADMINISTRATIVE LAW JUDGE:

4

RAYNE PEARSON
Utilities and Transportation Commission
PO Box 47250
1300 South Evergreen Drive Southwest
Olympia, Washington 98504
360.664.1136

7

8 FOR COMMISSION STAFF:

9

JULIAN BEATTIE
Assistant Attorney General
PO Box 40128
1400 South Evergreen Park Drive Southwest
Olympia, Washington 98504
360.664.1225
jbeattie@utc.wa.gov

10

11

12

13

FOR ADAM'S MOVING AND DELIVERY SERVICE, LLC:

14

15

PHILLIP J. FRENCH
Attorney at Law
5611 76th Street West
Suite A
Lakewood, Washington 98488
253.473.4262
pjfrench@comcast.net

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OLYMPIA, WASHINGTON; MARCH 17, 2015

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9:35 A.M.

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P R O C E E D I N G S

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JUDGE PEARSON: Let's be on the record.

7

Good morning. This is Docket TV-143601,

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captioned Washington Utilities and Transportation

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Commission versus Adam's Moving and Delivery Service, LLC,

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which is a Complaint for Penalties for violations of state

11

laws and Commission rules governing household goods

12

carriers.

13

My name is Rayne Pearson. I'm the

14

administrative law judge presiding over today's brief

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adjudicative proceeding that the Commission gave notice of

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in its complaint. Today is Tuesday, March 17th, 2015, and

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the time is approximately 9:35 a.m.

18

Since both parties have filed notices of

19

appearance, let's take short appearances, beginning with

20

Commission Staff.

21

MR. BEATTIE: Thank you, Judge Pearson. My

22

name is Julian Beattie. I'm with the Attorney General's

23

Office, and I'm here to represent Commission Staff in this

24

docket.

25

JUDGE PEARSON: Thank you.

0005

1 And for the Company?

2 MR. PHILLIP FRENCH: Good morning, Your
3 Honor. It's Phillip French. My bar number's 11030. I'm
4 here on behalf of Adam's Moving and Delivery Service, and
5 sitting to my right is Adam French, who is the CEO of --

6 JUDGE PEARSON: Is your microphone turned on?
7 If the red light is illuminated --

8 MR. PHILLIP FRENCH: There's no light.

9 MS. PAUL: Try the other one. See if that --

10 MR. PHILLIP FRENCH: Oh, here we -- we have a
11 light now. I think I can hear my...

12 JUDGE PEARSON: Okay. So, I don't believe
13 that there's anyone on the bridge line.

14 MR. PHILLIP FRENCH: Is there supposed to be
15 a red light?

16 JUDGE PEARSON: Yes. It's kind of
17 counterintuitive, but there is supposed to be a red light.

18 MR. ADAM FRENCH: That one's not working.

19 MR. PHILLIP FRENCH: Okay. This one is --
20 okay.

21 JUDGE PEARSON: So if you could just speak
22 into the microphone when you're --

23 MR. PHILLIP FRENCH: Yes, ma'am.

24 JUDGE PEARSON: And you don't need to restate
25 what you just said unless the court reporter couldn't hear

0006

1 you.

2 COURT REPORTER: I'm fine. Thank you.

3 JUDGE PEARSON: So we can proceed, then.

4 So Mr. French, you filed a motion to dismiss
5 the seventh cause of action on behalf of the Company, so
6 before we proceed, I'll let Staff respond orally to the
7 motion, since it was filed with less than the required ten
8 days for Staff to respond writing.

9 Mr. Beattie?

10 MR. BEATTIE: Thank you, Judge Pearson.

11 Staff opposes the motion to dismiss the
12 seventh cause of action. The cause of action relates to
13 the imposition by the Company of a credit card fee,
14 sometimes called a "convenience fee" or a "surcharge."

15 As an actual matter, the allegation is
16 supported by the evidence, the evidence to be introduced at
17 this hearing. The Company, in fact, did charge 3 percent
18 credit card fees.

19 This fee is not permitted by Tariff 15-C,
20 which is the industry-wide tariff that governs all
21 operations within this industry. That's clear as a matter
22 of statutory law and as a matter of precedent, which we
23 will address at this hearing as necessary.

24 JUDGE PEARSON: Thank you.

25 So I'm going to deny the motion because I'm

0007

1 not persuaded that it would be appropriate to summarily
2 dismiss it based on the paper record that's before me right
3 now, but I will let both parties make their case today with
4 respect to the seventh cause of action.

5 And, of course, Mr. French, you'll have an
6 opportunity to respond and make your cases as to why you
7 believe that Staff's interpretation of the tariff is
8 incorrect.

9 So before we went on the record, we had a
10 brief discussion about the parties' agreement to stipulate
11 to the factual allegations contained in Staff's
12 investigation report; is that correct?

13 MR. BEATTIE: That is correct, Your Honor.
14 It's Staff's understanding that the Company admits the
15 violations as outlined in Staff's investigation report.

16 JUDGE PEARSON: Okay. Thank you.

17 Mr. French?

18 MR. PHILLIP FRENCH: That's essentially
19 correct, Your Honor. We're stipulating to the UTC
20 Exhibits 1 through 4, their admissibility.

21 We're stipulating to the pure factual
22 allegations that are contained in the complaint for
23 penalties, Cause of Actions 1 through 8, I believe it is,
24 save for Cause of Action 7, which we also admit, but deny
25 that it's a violation of the tariff.

0008

1 JUDGE PEARSON: Okay. Thank you.

2 So Mr. Beattie, you have Ms. Paul here today
3 to sponsor these four exhibits, which the Company has
4 stipulated to the admission of, so I will go ahead and
5 admit Exhibit SP-1 through SP-4 into the record.

6 MR. BEATTIE: Thank you, Judge.

7 JUDGE PEARSON: Okay. And it's my
8 understanding that Mr. French, you would like to go first
9 today?

10 MR. PHILLIP FRENCH: That's fine, Your Honor.
11 I would call Adam French.

12 You can raise your right hand.

13 Do you swear him in?

14 JUDGE PEARSON: Can you please stand and
15 raise your right hand?

16

17 ADAM FRENCH, witness herein, having been
18 first duly sworn on oath,
19 was examined and testified
20 as follows:

21

22 JUDGE PEARSON: Okay. Thank you.

23 E X A M I N A T I O N

24 BY MR. PHILLIP FRENCH:

25 Q. Adam, are you the owner/sole proprietor of Adam's

0009

1 Moving and Delivery Service?

2 A. I am.

3 Q. Okay. And you're here this morning to respond to
4 the allegations in the Complaint for Penalties that was set
5 for hearing this morning?

6 A. Yes.

7 Q. And if I may draw your attention to the first
8 cause of action, which alleges failure to provide moving
9 guides. My understanding is that you admit that, in the
10 past, that there was a practice in your company to not
11 necessarily always provide copies of the moving guides to
12 prospective customers?

13 A. Yeah, that's correct. We had -- we had a link to
14 the customer handbook; we just did not have a documentation
15 that it was received.

16 We have since corrected that by using the UTC
17 estimates sheet, which has a signature spot, stating that
18 they have received a copy of the consumer handbook.

19 Q. And when you made that change in your practice,
20 was that in conjunction with contact you had with the UTC,
21 and specifically, Susie Paul?

22 A. It was.

23 Q. And you discussed this issue with her?

24 A. Yes.

25 Q. Okay. And can you assure the hearing officer this

0010

1 morning that, going forward, you're in line with the
2 requirement that all prospective customers be provided with
3 a copy of the moving guide?

4 A. Everyone's provided with a copy, and we get a
5 signature on every move, stating that they've received a
6 copy of the guide.

7 Q. And you're asking the Court to take -- I say,
8 "Court." You're asking Judge Pearson to take into account
9 with respect to the fashioning of penalty that you have
10 made that correction?

11 A. I am.

12 Q. Now, with respect to the second cause of action,
13 failure to provide written estimates, the UTC has alleged
14 that there were 21 customers who were offered the option to
15 decline a written estimate. Do you have that in front of
16 you?

17 A. I do. We no longer ask them if they'd like to
18 decline a written estimate. We just provide a written
19 estimate on every single job using the UTC paper -- proper
20 paperwork, and every -- every single job has a UTC -- or an
21 estimate sheet to accompany it.

22 Q. Okay. And that was in response to communications
23 you had with Susie Paul about that issue?

24 A. Correct.

25 Q. Okay. With respect to the third cause of action,

0011

1 it indicates incomplete estimates, and they're alleging
2 that there were 34 violations?

3 A. That's correct. We -- we have since just taken
4 the estimate form directly off the UTC website. We've
5 added our -- our address, our full name, our UTC number,
6 all the -- all the guidelines stated in the tariff, and are
7 in full compliance.

8 Q. Do you indicate on the estimate whether it's a
9 binding or nonbinding estimate?

10 A. We do.

11 Q. Okay. Do you have the customer sign or initial
12 indicating that they received a copy of the moving guide?

13 A. We do.

14 Q. Do you -- in the estimates, do you indicate,
15 pursuant to Item 85(2), Subsection 1, that on local moves,
16 the number of hours each carrier personnel will be involved
17 in the --

18 A. Yes.

19 Q. -- move and associated rates and charges?

20 A. Yes.

21 Q. Okay. Is this essentially a bill of lading, or
22 what is this?

23 A. It's very similar to a bill of lading. It's an
24 estimate that is conducted before the move takes place to
25 give the customer an idea of the cost of the move.

0012

1 Q. And have you provided to Susie Paul or the UTC the
2 current exemplars of documents that you are now using to
3 bring yourself in compliance with those estimates?

4 A. We have offered to provide examples of our new
5 policy and new system, and we have not -- we were informed
6 that once those were requested, we'd be notified in
7 writing.

8 Q. And was the resulting -- they indicated to you
9 that if they requested -- you didn't have to provide unless
10 they requested in writing to you?

11 A. Excuse me. Correct.

12 Q. Okay. The fourth cause of action indicates
13 failure to provide cube sheets. What are cube sheets?

14 A. Cube sheets are -- is a form that you -- you
15 determine the -- basically, an inventory of what's being
16 moved to get an idea of the weight. It's basically a
17 checklist of what's being moved that is also accompanied
18 with each -- each move we provide.

19 Q. And the Complainant indicates that they've
20 reviewed your records and found 55 moves where there was a
21 failure to provide cube sheets?

22 A. Right.

23 Q. Okay. Do you acknowledge that that was the case?

24 A. I do.

25 Q. And what have you done to correct that?

0013

1 A. Every move has a cube sheet that's filled out and
2 attached to the paperwork.

3 Q. And is there a form that you use now?

4 A. We -- yeah. We use it from -- the form on the UTC
5 website.

6 Q. Okay. And you're asking the -- in this hearing to
7 take into account the corrections that you've made to bring
8 yourself in compliance with respect to cube sheets?

9 A. Yes, I am.

10 Q. Okay. The fifth cause of action indicates
11 incorrect or incomplete bills of lading. There's several
12 different items that are listed there, and I believe that
13 the allegation is that your bills of lading were -- that
14 they examined were in violation of one or more of these
15 items that are listed on page 4 of the complaint; is that
16 correct? Is that your understanding?

17 A. That's correct. We -- we've since printed off the
18 bill of lading off the UTC website, added our own -- the
19 information at the top of the sheet, which was required by
20 the UTC, and are now fully and 100 percent in compliance
21 with -- with the paperwork.

22 Q. Okay. The sixth cause of action indicates
23 unauthorized minimum charge, and I believe the allegation
24 is that one violation was found. Do you recall that
25 particular job?

0014

1 A. I don't -- I don't recall the particular move.
2 It's my understanding that if -- if you're need -- if you
3 want to accommodate the move on a Friday but the Company is
4 unavailable, we can accommodate the move on a weekend and
5 waive the four-hour minimum.

6 Q. And what's that four-hour minimum that you're
7 referring to?

8 A. The four-hour minimum is -- is within --

9 MR. BEATTIE: Your Honor, I object. This is
10 outside the scope. There's no violation alleged in
11 connection with a weekend move. The violation, as alleged,
12 is regarding a Monday move, so this would be outside the
13 scope of this hearing.

14 JUDGE PEARSON: Okay. I sustain your
15 objection.

16 BY MR. PHILLIP FRENCH:

17 Q. And you've indicated you don't recall the
18 particular move that was involved, that's alleged in the
19 sixth cause of action?

20 A. I don't -- I do not.

21 Q. Okay. With respect to the eighth cause of action,
22 improper advertisements, ten violations are alleged. Did
23 you bring some pictures with you this morning?

24 A. We brought pictures of the logo on our truck from
25 before and after. We -- we recently got rid of all of our

0015

1 trucks.

2 MR. BEATTIE: Your Honor, same, similar type
3 of objection. The allegation here, which has already been
4 admitted, goes to website -- craigslist, Facebook, social
5 media-type advertising -- and so there's no allegation
6 regarding advertising on trucks.

7 MR. PHILLIP FRENCH: I'll withdraw the
8 question, then.

9 JUDGE PEARSON: Okay. Thank you.

10 BY MR. PHILLIP FRENCH:

11 Q. The allegation is that, I guess, with respect to
12 website advertising only, that there was a failure to
13 always list your permit number, the physical address of
14 your business, and the name or trade name as recorded at
15 the Commission on its website.

16 First of all, your business address is also your
17 home; is that correct?

18 A. That's correct.

19 Q. Okay. And was there a reason -- were you aware of
20 these requirements, or was there a reason why your
21 advertising didn't list all that information?

22 A. I am -- I am aware. I have -- I do have -- hire a
23 third-party marketing company to do a lot of our
24 advertising for us. You know, I have worked with Susie
25 Paul, as well as the marketing company, to bring our

0016

1 advertisements into compliance, whether it's a website or
2 it's some kind of a promotion.

3 You know, I -- we do have -- I do run the business
4 out of my home, and that is our physical address, and I do
5 feel, you know, putting my home address all over the
6 Internet, you know, I -- I have a 14-month-old and, you
7 know, a fiancée that lives with me and have just felt
8 hesitant to do that on -- specifically on craigslist, a
9 craigslist ad.

10 I haven't seen anyone's physical address on a
11 Craigslist ad -- advertisement before.

12 Q. Have you seen any other household good moving
13 service that has --

14 A. Oh, there's hundreds. There's hundred --

15 Q. -- that put --

16 A. -- every day.

17 Q. And you don't -- do you see physical addresses
18 listed there by other companies?

19 A. I do not.

20 Q. Have you given some thought to getting a
21 commercial address so that you don't have to use your home
22 address?

23 A. Yeah. We were going to look into getting a PO Box
24 set up.

25 Q. So what we've gone over on these other causes of

0017

1 action, other than the seventh cause of action, are you
2 asking the UTC and Judge Pearson to fashion a -- you're
3 not -- you're not asking that the -- Judge Pearson not
4 impose any penalties at all for these violations are you?

5 A. No, I'm not.

6 Q. Are you aware of any customers that have -- how do
7 you handle complaints from customers?

8 A. There's -- there's a process. We've been in
9 business for a long time. We've had one customer over the
10 course of a decade contact the UTC for help resolving a
11 dispute.

12 And, you know, we -- whatever it takes, we make
13 sure that the customer is -- is satisfied with the
14 resolution. I mean, we're moving furniture. Things are
15 going to happen, and we take great strides to make sure
16 that -- that people are happy.

17 Q. And during the time period that we're addressing
18 here this morning, did you devote a considerable amount of
19 your time out in the field performing jobs, moving
20 furniture and so forth, for the customers?

21 A. Absolutely.

22 Q. And so as your business got bigger and the --
23 dealing with the tariff requirements, these technical
24 requirements, did it, at some point, become somewhat -- a
25 little bit overwhelming for you?

0019

1 cause of action, that was the only cause of action where I
2 didn't hear a plan for compliance going forward. You just
3 stated that you didn't recall the move.

4 THE WITNESS: I don't -- I don't recall the
5 move. We have a one-hour minimum Monday through Friday,
6 unless it's a holiday, and then a four-hour minimum on
7 weekends.

8 JUDGE PEARSON: Okay. So what is your plan
9 to ensure compliance with that rule going forward?

10 THE WITNESS: We are in compliance. We have
11 it on all of our marketing information. I did provide a
12 printout of an introduction e-mail that someone would
13 receive when filling out our quote from on our website,
14 which clearly states that there is a four-hour minimum on
15 the weekends and a one-hour minimum during the week.

16 JUDGE PEARSON: Thank you.

17 MR. PHILLIP FRENCH: If -- may I follow up,
18 Your Honor?

19 JUDGE PEARSON: Sure.

20 BY MR. PHILLIP FRENCH:

21 Q. I'm looking at the investigative report, page 17,
22 "Tariff rates and charges." I wondered if this would
23 refresh your recollection, where they recite a -- they
24 indicate that Adam's Moving charged a two-hour minimum on
25 Monday, August 19, for customers Al and Jenny Noriega.

0020

1 Does that --

2 A. That must be it.

3 Q. Does that refresh your recollection about that
4 particular incident?

5 A. It --

6 COURT REPORTER: I'm sorry. I couldn't hear
7 that.

8 A. It does not.

9 COURT REPORTER: Thank you.

10 MR. PHILLIP FRENCH: Okay. Thanks.

11 JUDGE PEARSON: Okay. Mr. Beattie?

12 MR. BEATTIE: Thank you, Judge.

13 E X A M I N A T I O N

14 BY MR. BEATTIE:

15 Q. And Mr. French, and I refer to Adam French, the
16 owner of the moving company, you state that the compliance
17 with Commission rules and laws is overwhelming, correct?

18 A. No. I -- it's not overwhelming. It's -- it is a
19 lot, but it's not overwhelming.

20 Q. It's not overwhelming. You have difficulty
21 complying with the laws?

22 A. No. It's not -- it's not diff- -- it's -- it's a
23 lot to comply with, and it takes a lot of effort, but we
24 are in compliance now, and we've made -- we've worked very
25 hard to make sure we are in compliance.

0021

1 Q. Looking back to the period encompassed in Staff's
2 investigation report, there are violations that the Company
3 has admitted. You're aware that the Commission offers
4 training, correct?

5 A. Correct.

6 Q. You did not attend that training until
7 November 2013?

8 A. At the time that I applied for the permit, the UTC
9 was providing in-home, in-office training by -- from a
10 field trainer.

11 Q. But my question is: You did not attend until
12 November 2013 for the first time, correct?

13 A. Correct.

14 Q. But in November -- excuse me -- in March 2010,
15 Staff sent you a letter explaining that a training was
16 available to you?

17 A. I get a letter every three months or so saying
18 that there's a new training opportunity that's open to all
19 carriers.

20 Q. So then you don't disagree that you received a
21 letter in 2010 explaining that the training was available?

22 A. I knew the training was available, absolutely. I
23 was never directly ordered to attend. It was -- I was -- a
24 notification that this training was available.

25 Q. Your company has been the subject of five Staff

0022

1 investigations prior to the one that is at issue in the
2 current docket?

3 MR. PHILLIP FRENCH: Object. You know, I
4 object on the basis of relevancy.

5 JUDGE PEARSON: I'm going to overrule that
6 objection. It is relevant to what the Company's past, not
7 only compliance history is, but the technical assistance
8 that has been received from Commission Staff.

9 MR. PHILLIP FRENCH: It does open up, Your
10 Honor, though, a can of worms in terms of just leaving it
11 there and then moving on, what was the nature of the
12 investigations, the factual basis, and any ultimate
13 resolutions or findings.

14 JUDGE PEARSON: Well, all of that's in the
15 investigation report, so I have all that in the record.

16 MR. BEATTIE: Thank you, Your Honor.

17 BY MR. BEATTIE:

18 Q. In connection with the 2012 investigation, you
19 were sent a letter from Sharon Wallace, who is Commission
20 Staff. She instructed you to attend the household goods
21 training; is that correct?

22 MR. PHILLIP FRENCH: Could counsel refer to
23 what appendix that is he's referring to?

24 MR. BEATTIE: If you would turn to
25 Appendix H. Excuse me. One minute, please.

0023

1 Excuse me. Appendix G. This is on page 37
2 of the investigation report.

3 BY MR. BEATTIE:

4 Q. Mr. French, do you recall receiving this letter?

5 A. It's my recollection I updated my website and had
6 correspondence with Ms. Wallace, and to my knowledge, it
7 was resolved.

8 Q. If I could have you read the -- I suppose it's the
9 first full paragraph on this page, starting with, "The
10 Commission recognizes that your company has not received
11 technical assistance on these issues," and down through the
12 end of the letter, and I'll have you read it.

13 MR. PHILLIP FRENCH: I object. The document
14 speaks for itself, and he's acknowledged that he received
15 it.

16 BY MR. BEATTIE:

17 Q. Well, then, you would agree that Ms. Wallace, in
18 2012 --

19 MR. PHILLIP FRENCH: I have an objection
20 before the Judge.

21 MR. BEATTIE: Very well.

22 JUDGE PEARSON: And can you rephrase the
23 question?

24 MR. BEATTIE: Yes.

25

0024

1 BY MR. BEATTIE:

2 Q. Mr. French, you would agree, then, that
3 Ms. Wallace stated that technical assistance would be the
4 end result of this investigation, so long as you attended a
5 household goods training on Wednesday, July 11th -- now,
6 this is in -- 2012?

7 A. I guess my understanding was to fix the issues on
8 the website, report back, provide examples that it had been
9 changed, which they were immediately.

10 Q. But you did not attend the training as suggested,
11 to put it lightly, by Ms. Wallace?

12 A. That's correct.

13 Q. I want to turn to a new issue, the issue of
14 advertisements. If you could refer to the exhibit that has
15 been marked SP-4 -- excuse me, that has been admitted as
16 SP-4, and this is not in the investigation report. It's a
17 separate exhibit. I believe your counsel has a copy. This
18 is a printout of your website; is it not?

19 MR. PHILLIP FRENCH: It looks like it. Is
20 this the current? Is this printed out how your website
21 currently appears?

22 A. It's slightly different.

23 BY MR. BEATTIE:

24 Q. How so?

25 A. It was a printout of my website at one point in

0025

1 time. We've undergone a number of redesigns over the past
2 couple of years.

3 Q. This exhibit was admitted under the description as
4 being printed out on March 10th, 2015. You disagree that
5 this --

6 A. Oh, March 10th, 2015?

7 Q. Correct. You would disagree that this is a
8 printout representing your website as it stood on
9 March 10th, 2015?

10 A. We -- we just went under -- we just underwent a
11 redesign in the last two weeks, and so I haven't -- I have
12 not spent a lot of time with it, but I will admit this --
13 this is our website.

14 Q. Your household goods carrier permit is HG-62045,
15 correct?

16 A. Correct.

17 Q. Nowhere in this printout will I find that permit
18 number listed, correct?

19 A. There is -- the bottom of the page, it's hard to
20 read what's -- what's down there.

21 Q. So you're saying it may be --

22 A. To my understanding --

23 Q. -- somewhere in this printout?

24 A. -- it should be on every page at the bottom next
25 to our name, our address, and our phone number.

0026

1 Q. Should be. But is?

2 A. To my knowledge, it's there.

3 Q. It is there. You're saying it's there, but you
4 can't point me to where it is?

5 A. I can't point it to you on -- on your printout.

6 Q. Thank you.

7 And your -- the address listed, you would agree,
8 is 130 Northeast 95th Street, which, you have stated, is
9 not your physical address?

10 A. Correct. That's a marketing address.

11 Q. So it is not your physical address?

12 A. Correct.

13 Q. What is your company name as filed with the
14 Commission?

15 A. Adam's Moving and Delivery Service, LLC.

16 Q. And that is not the name that is listed on your
17 website, correct?

18 A. It's not the name that's in our logo.

19 Q. Thank you.

20 MR. BEATTIE: Your Honor, I am finished with
21 my questions. Thank you.

22 JUDGE PEARSON: Thank you.

23 Mr. French, would you like to redirect?

24 MR. PHILLIP FRENCH: One moment, Your Honor,
25 if I may.

0027

1 EXAMINATION

2 BY MR. PHILLIP FRENCH:

3 Q. Just for the record, what is the name on your logo
4 that's printed on the website?

5 A. It says, "Adam's Moving Service;" however, in the
6 "about us" page, it does say, "Adam's Moving and Delivery
7 Service." It's --

8 Q. Was there any intent to deceive consumers by
9 having a logo that doesn't have the full name of the
10 company?

11 A. Absolutely not.

12 (Mr. French conferred with his client.)

13 MR. PHILLIP FRENCH: For the record, Your
14 Honor, I'm going to ask Adam to pull up his website on his
15 cell phone, I mean, just so that there's no confusion, one
16 way or the other, whether the permit number is on the
17 website.

18 JUDGE PEARSON: Okay.

19 MR. PHILLIP FRENCH: We're looking at a black
20 and white photocopy that I'm not sure that -- whether
21 there's information that didn't copy correctly.

22 JUDGE PEARSON: That's fine.

23 THE WITNESS: Well, I'm looking at a
24 mobile -- an optimized mobile website. It's different than
25 what you would see on a desktop.

0028

1 JUDGE PEARSON: Okay. Is the permit number
2 visible?

3 THE WITNESS: I cannot confirm that.

4 JUDGE PEARSON: So it's not visible from the
5 mobile website?

6 THE WITNESS: It was not on the main page
7 there.

8 JUDGE PEARSON: Okay. Thank you.

9 MR. PHILLIP FRENCH: And I don't have any
10 further follow-up questions, Your Honor. Thank you.

11 JUDGE PEARSON: Thank you.

12 Are we ready to move on to the seventh cause
13 of action, Mr. Beattie, or did you have anything further?

14 MR. BEATTIE: Nothing further. I am happy to
15 address the seventh cause of action. I suppose we would
16 maintain the same order of presentation.

17 MR. PHILLIP FRENCH: And that's fine.

18 JUDGE PEARSON: That sounds great.

19 Okay. Mr. French, then, whenever you're
20 ready.

21 MR. PHILLIP FRENCH: I'd like to call Susie
22 Paul to testify.

23 JUDGE PEARSON: If you can stand and raise
24 your right hand.

25

0029

1 SUSIE PAUL, witness herein, having been
2 first duly sworn on oath,
3 was examined and testified
4 as follows:

5

6 E X A M I N A T I O N

7 BY MR. PHILLIP FRENCH:

8 Q. State your name for the record, please.

9 A. Susie Paul, S-U-S-I-E, P-A-U-L.

10 Q. And what's your present -- who is your present
11 employer and what's your --

12 COURT REPORTER: I'm sorry?

13 BY MR. PHILLIP FRENCH:

14 Q. Who's your present employer, and what is your job
15 title?

16 A. I'm employed by the Washington Utilities and
17 Transportation Commission as a compliance investigator.

18 Q. Okay. And do you have occasion to investigate
19 household goods moving businesses?

20 A. Yes. I investigate the business practices of
21 regulated utility or transportation companies, and as part
22 of that, household good movers are involved.

23 Q. Okay. And are you familiar with the contents of
24 Tariff 15-C?

25 A. Yes.

0030

1 Q. And what's the history of that tariff? When was
2 it promulgated? This version. The current version.

3 A. I'm -- I'm not sure of the date of the version.

4 Q. Okay. Was there -- there was a prior 15-B? 15-A?

5 A. There have been different versions for -- for
6 changes.

7 Q. Okay. And you have taken the position in this
8 investigation that Adam's Moving Service charging 3 percent
9 bank fees that are actually incurred based upon the
10 customer's convenient choice of payment method is a
11 violation of Tariff 15-C?

12 A. Yes.

13 Q. And specifically, with that, are you referring to
14 Item No. 80?

15 A. I have to -- I would have to look at that. In my
16 report, I have, "Tariff 15-C."

17 Q. Well, that's a pretty thick document, Tariff 15-C,
18 isn't it?

19 A. Yes.

20 Q. Anywhere in your investigative report, have you
21 made a more specific reference to a specific provision of
22 Tariff 15-C that you allege is a -- that constitutes a
23 violation?

24 A. There were numerous conversations with --

25 Q. That's not my question.

0031

1 A. Okay.

2 Q. In your investigative report, do you specifically
3 cite any WAC provision, any RCW, or any 15-C specific
4 provision under which you rely in making the claim that
5 charging a 3 percent bank fee for a credit or debit charge
6 is a violation?

7 A. I do cite WAC 480.15.490(3) and then Tariff 15-C.

8 Q. Okay. What does that WAC provision say? Let me
9 find it. Isn't WAC 480.15.490 simply a general provision
10 which adopts Tariff 15-C?

11 A. I don't --

12 MR. BEATTIE: Calls for a legal conclusion.

13 JUDGE PEARSON: Can you rephrase the
14 question, please?

15 MR. PHILLIP FRENCH: Okay.

16 BY MR. PHILLIP FRENCH:

17 Q. What does WAC 480.15.490 say?

18 MR. BEATTIE: Your Honor, I have a copy of
19 it. May I provide the witness with the text of the rules?

20 JUDGE PEARSON: Absolutely.

21 MR. PHILLIP FRENCH: No objection.

22 THE WITNESS: I have it before me.

23 BY MR. PHILLIP FRENCH:

24 Q. What does it say?

25 A. "Tariff and rates, general. A tariff is a

0032

1 publication containing the rates and charges that household
2 good carriers must assess on shipments of household goods,
3 including rules that govern how rates and charges are
4 assessed."

5 Q. Let me just stop you right there, now.

6 A. Okay.

7 Q. Are you familiar with the what the purpose of that
8 particular subsection is? Is that to assure both fair
9 competition amongst household good moving companies, as
10 well as protect the consumer? Would that be a fair
11 statement of what the purpose of that --

12 A. Well, the purpose is that the rates and charges
13 for household goods are regulated and they must fall within
14 a certain rate.

15 Q. And what -- do you have an opinion as to why they
16 must fall within a certain rate? Is there a purpose?

17 A. To keep a level playing field for the household
18 good carriers.

19 Q. So, essentially, to assure some kind of fair
20 competition?

21 A. Yes.

22 Q. And then Subsection 2, that -- let me just read it
23 to you, and you can tell me whether I'm reading this
24 correctly or not. It says, "The Commission publishes
25 tariffs that all household goods carriers must use and

0033

1 allows household goods carriers to file individual tariffs
2 if the Commission finds it is impractical to include
3 certain commodities or services in its tariff."

4 Did I read that correctly?

5 A. Yes.

6 Q. Okay. And then moving on to Subsection 3, it
7 says, "All household goods carriers are required to follow
8 the terms, conditions, rates, and all other requirements
9 imposed by the Commission-published tariff."

10 Did I read that correctly?

11 A. Yes.

12 Q. Subsection 4, "The Commission will set minimum and
13 maximum rates carriers may charge within the tariff."

14 A. Yes.

15 Q. Did I read that correctly?

16 A. Yes.

17 Q. And then, finally, Subsection 5, "Every household
18 goods permit holder must obtain at least one copy of the
19 current tariff and may pay applicable tariff maintenance
20 fees. Any interested person may purchase a copy by paying
21 the applicable fees in advance."

22 Did I read that correctly?

23 A. Yes.

24 Q. Now, there's nothing in that, in the plain
25 language of WAC 480.15.490, that prohibits --

0034

1 MR. BEATTIE: Object to the form as "plain
2 language" is a legal term of art.

3 MR. PHILLIP FRENCH: Let me finish the
4 question.

5 MR. BEATTIE: Object to the form as stated so
6 far.

7 JUDGE PEARSON: I'm going to sustain the
8 objection. Can you please rephrase the question?

9 MR. PHILLIP FRENCH: Yes.

10 BY MR. PHILLIP FRENCH:

11 Q. Is there anything in the language of
12 WAC 480.15.490, which you have recited as a provision that
13 was violated by virtue of charging these bank fees --

14 A. Yes.

15 Q. -- that specifically prohibits a household goods
16 moving company from charging a 3 percent bank fee that's
17 actually incurred?

18 A. Yes.

19 Q. And could you tell me what that language is?

20 A. It would be Subsection 3, "All household good
21 carriers are required to follow the terms, conditions,
22 rates, and other requirements imposed by the
23 Commission-published tariff."

24 Q. Okay. So all that is is saying -- assuming that
25 there's a prohibition in the tariff, then, you're saying

0035

1 that, by incorporation by the WAC, this WAC provision, it
2 violates the WAC; is that what you're saying?

3 MR. BEATTIE: Objection. Leading.

4 MR. PHILLIP FRENCH: This is
5 cross-examination. Now, she's not exactly a favorable
6 witness to my client.

7 MR. BEATTIE: This is not -- is this
8 cross-examination, Your Honor? I haven't --

9 JUDGE PEARSON: It's not --

10 MR. BEATTIE: -- gone into any --

11 JUDGE PEARSON: It's not cross-examination.

12 MR. PHILLIP FRENCH: Well, I would ask that
13 the -- that you acknowledge that I have a hostile witness
14 here --

15 JUDGE PEARSON: I will not --

16 MR. PHILLIP FRENCH: -- hostile to my
17 client's position.

18 JUDGE PEARSON: -- acknowledge that Ms. Paul
19 is a hostile witness. If you could please rephrase the
20 question.

21 MR. PHILLIP FRENCH: Okay. I'll just move
22 on.

23 BY MR. PHILLIP FRENCH:

24 Q. If I may draw your attention, then, to Item No. 80
25 in Tariff 15-C.

0036

1 MR. BEATTIE: And, Your Honor, I have a copy
2 of Tariff 15-C. I suppose there will be no problem if I
3 furnish a copy?

4 JUDGE PEARSON: No problem.

5 THE WITNESS: Okay.

6 BY MR. PHILLIP FRENCH:

7 Q. Do you have that front of you?

8 A. Yes, I do.

9 Q. Okay. Would that be the applicable provision that
10 you would -- on behalf of the UTC, would claim prohibits a
11 3 percent bank fee when a customer pays by credit or debit?

12 A. Well, I need to read it.

13 Q. Would you please read it?

14 A. Okay. I've read it.

15 Q. Okay. Would that be the provision that we're
16 looking at in terms of what you -- what the UTC would say
17 prohibits the bank fees?

18 A. Well, there is no -- no thing in the tariff that
19 states that you can charge bank fees.

20 Q. And there's nothing in the tariff that prohibits
21 directly, literally, the charging of a bank fee, correct?

22 A. You cannot charge any fee that is not in the
23 tariff.

24 Q. My question is: Is there any provision in the
25 tariff that prohibits the customer being charged a

0037

1 3 percent bank fee when they pay by credit or debit,
2 assuming that that's a bank fee that's incurred by the
3 Company?

4 A. There might not be specific language, but I must
5 say that we have not disallowed household good carriers to
6 charge a convenience fee, credit card fee, but they need to
7 allow for that rate -- allow for that charge in the rate.

8 Q. Okay. In other words, if they can -- they can
9 charge an enhanced hourly fee rate to customers that pay by
10 debit or credit?

11 A. They can charge that rate, as long as it fits
12 within the band.

13 Q. Right. But there's nothing in the tariff, you
14 can't recite any provision in the tariff, that actually
15 prohibits the separate bank fee charge?

16 A. No.

17 Q. It's a matter of interpretation; is that a fair
18 statement?

19 A. I mean, I --

20 Q. You're --

21 A. I would say --

22 Q. Let me rephrase the question.

23 A. Okay.

24 Q. You know, to be fair, you're here representing the
25 UTC, speaking --

0038

1 A. Yes.

2 Q. -- on their behalf, and would it be a fair
3 statement to summarize that the prohibition on bank fees is
4 not specifically contained in the tariff, but it's a matter
5 of that's how the UTC interprets the application of the
6 tariff?

7 A. If the charge is not in the tariff, it is not
8 allowed.

9 Q. Okay. Now, Item No. 80 authorizes different
10 methods of payment. It doesn't require the mover to accept
11 all different methods of payment, correct?

12 A. It says, "Carriers may accept or require
13 prepayment in part or full in cash, personal check,
14 cashier's check, or money order, credit card, debit card,
15 electronic fund transfers, or its own credit plan."

16 Q. Okay.

17 A. So --

18 Q. And so it's permissive in terms of allowing a
19 broad spectrum of methods of payment, correct?

20 A. Yes.

21 Q. It doesn't require the carrier to offer all those
22 different methods of payment, correct?

23 A. Correct.

24 Q. And, in fact, it even authorizes the carrier to
25 have their own credit plan, correct?

0039

1 A. Yes.

2 Q. And it doesn't specifically set any limits upon
3 what the carrier can do within the context of a credit plan
4 in terms of interest to be charged, correct?

5 A. I believe that's correct.

6 Q. Okay. And so in that area, the UTC has not
7 stepped in either with specific prohibitions or asserted
8 authority over the provisions of any credit plans that a
9 carrier might offer, correct?

10 MR. BEATTIE: Object. There's -- I'm having
11 difficulty understanding the relevance of this line of
12 questioning. There's no issue of credit plans before the
13 Commission in this brief adjudicative proceeding this
14 morning.

15 MR. PHILLIP FRENCH: If I may respond, Your
16 Honor, just tell you where I'm coming from on this, and
17 that is that I think Ms. Paul has testified that her
18 interpretation on behalf of the UTC is that bank fees,
19 because they're not authorized, they're -- by virtue of not
20 being authorized, they're prohibited.

21 They can be -- as long as they're reflected
22 in some other authorized method such as a higher hourly
23 rate within the parameters of authorized hourly rates,
24 that's okay, and so it really is a matter of interpretation
25 as to what the UTC -- from our perspective, where the UTC

0040

1 has entered in terms of regulating, and I think it's a fair
2 question.

3 By analogy, with respect to credit plans, UTC
4 has not exercised any authority that it may have, inherent
5 or otherwise, to regulate or limit interest rates on credit
6 plans, and we're just simply -- our position would be that,
7 by the same token, by omission with respect to bank fees,
8 that should be applied the same way.

9 MR. BEATTIE: Well --

10 MR. PHILLIP FRENCH: That it's not
11 specifically prohibited, it doesn't have anything to do
12 with the actual moving or labor charges or hourly rates.
13 It's a separate -- completely separate aspect of the
14 transaction, which in the credit plan area, the UTC has not
15 entered. I think it's a fair question.

16 MR. BEATTIE: Well, the very fact that we --
17 it took that long to explain the questioning using legal
18 arguments confirms my suspicion that we've drifted into a
19 line of questioning that is really asking this fact witness
20 to make legal pronouncements on behalf of the Commission,
21 which is not an appropriate line of questioning.

22 JUDGE PEARSON: And I --

23 MR. PHILLIP FRENCH: She's --

24 JUDGE PEARSON: I agree with that, and also,
25 Mr. French, I mean, you just made your point to me. I

0041

1 don't need Ms. Paul to answer that question. You just made
2 that argument for yourself, and I understand the analogy
3 and I understand the point that you're trying to make, so
4 she doesn't need to answer that question.

5 MR. PHILLIP FRENCH: Okay, and I respect that
6 ruling, Your Honor. That -- my only concern is that she's
7 here to speak on behalf of the UTC, the agency has given
8 deference in terms of its interpretation of its own
9 regulations and tariffs and so forth, and I think it is a
10 fair area of inquiry as to how she goes about interpreting
11 a prohibition that's not there. That's what I was driving
12 at, but I respect the Court's ruling as well, so I'll move
13 on. Thank you.

14 JUDGE PEARSON: Okay. Thank you.

15 BY MR. PHILLIP FRENCH:

16 Q. You've had some communications with Adam's Moving
17 Service regarding alternate ways of, essentially, rolling
18 over those credit card charges that are actually incurred
19 to the customer, but just simply couching it in terms of
20 hourly fees; is that correct?

21 A. Yes.

22 Q. And you would acknowledge on behalf of the UTC
23 that if the customer were charged a higher hourly rate,
24 within the law, where the customer chooses to pay by credit
25 or debit, that that's perfectly within the guidelines of

0042

1 Tariff 15-C?

2 A. Yes.

3 Q. Okay. And so, really, we're -- because, in the
4 past, Adam's Moving Service has directly characterized that
5 particular charge to the customer as a bank charge that the
6 Company was incurring, because of the -- for the
7 convenience of the customer's payment method, you -- it's
8 your position that that's a violation of 15-C, correct?

9 A. Yes.

10 MR. PHILLIP FRENCH: Okay. Thank you.

11 I don't have any other questions.

12 JUDGE PEARSON: Thank you.

13 Mr. Beattie, did you have any questions for
14 Ms. Paul?

15 MR. BEATTIE: I do not.

16 JUDGE PEARSON: Okay. Thank you. You're
17 dismissed, then, Ms. Paul.

18 And Mr. French, you can continue if you have
19 more argument to make with respect to the seventh cause of
20 action, or else we can --

21 MR. PHILLIP FRENCH: The witnesses, we're
22 finished with. So are we going to closing arguments, then?

23 JUDGE PEARSON: Did you have anything else
24 you wanted to say with respect to the seventh cause of
25 action? Because Mr. Beattie will have the chance to

0043

1 respond to that before we go to closing arguments.

2 MR. PHILLIP FRENCH: No. I'll defer to
3 Mr. Beattie.

4 JUDGE PEARSON: Okay. Mr. Beattie?

5 MR. BEATTIE: And the question is, Your
6 Honor?

7 JUDGE PEARSON: If you wanted to respond to
8 the seventh cause of action issue --

9 MR. BEATTIE: Absolutely.

10 JUDGE PEARSON: -- on behalf of Staff. Okay.

11 MR. BEATTIE: And if I could have one moment,
12 please?

13 JUDGE PEARSON: Sure. We can actually go off
14 the record and take a two-minute break and then just come
15 right back. That would work for me.

16 (Pause in the proceedings.)

17 JUDGE PEARSON: Let's be back on the record.

18 And Mr. Beattie, you can proceed whenever
19 you're ready.

20 MR. BEATTIE: Thank you, Judge, and may I
21 ask, point of clarification, I'm addressing the seventh
22 cause of action now, but will there be another opportunity
23 to say a word or two about the other causes of action?

24 JUDGE PEARSON: Yes.

25 MR. BEATTIE: Thank you.

0044

1 So the seventh cause of action has to do with
2 charging a credit card fee which is, in other contexts,
3 called a "surcharge" or a "convenience fee." The idea is
4 to provide a convenience to the customer to use a credit or
5 debit card.

6 Staff is -- understands that merchants incur
7 fees when customers pay with a credit card. That's a cost
8 of doing business. That cost is built into the rates
9 structure as outlined in Tariff 15-C. The rate band, the
10 minimum and maximum rates in Tariff 15-C already account
11 for the fact that sometimes merchants incur fees as a cost
12 of doing business, and so the credit card fee is already
13 built in.

14 Now, when -- the most fundamental point that
15 needs to be made in this hearing is that Tariff 15-C is
16 essentially an industry-wide contract. It's notice to the
17 world of the rates and the fees that can be charged and the
18 manner in which companies, regulated companies, may do so.

19 It's industry-wide. All regulated carriers
20 play by the same set of rules. If something is not
21 authorized by the tariff, a regulated carrier cannot do
22 that. It must be in the tariff.

23 Now, there -- this is not just some principle
24 that has been pulled out of thin air as has sometimes been
25 insinuated by the Company. Tariff -- or WAC 480.15.490

0045

1 states that, "A tariff is a publication containing the
2 rates and charges that household good carriers must
3 assess."

4 "The rates," not "some rates" that it may
5 assess and, "If it's not in there, go ahead and do it." It
6 contains the universe of the rules that apply to household
7 goods carriers.

8 WAC 480.15.490, Subsection 3, states that
9 household goods carriers are required to follow the terms,
10 conditions, rates, and all other requirements imposed by
11 the tariff. Again, it's -- the tariff contains the
12 universe of the rules, and it's notice to the world as to
13 what those rules are.

14 But in case that is not clear, RCW 81.80.220
15 codifies what is sometimes called a filed rate doctrine,
16 and this statutory provision specifically applies to the
17 household goods carrier industry.

18 And reading from the first line of the
19 statute, quote, "A household goods carrier shall not
20 collect or receive a greater, less, or different
21 remuneration for the transportation of property or for any
22 service in connection therewith than the rates and charges
23 that are either legally established and filed with the
24 Commission or are specified in the contract or contracts
25 filed."

0046

1 The Company has no alternate tariff or
2 contracts filed with the Commission. It is subject to
3 Tariff 15-C, and so this statute states that the carrier
4 shall not, in other words, must not, collect or receive any
5 different remuneration than is legally established. I'm
6 picking and choosing the most pertinent words of the
7 statute, Your Honor. No different remuneration than is
8 legally established.

9 A credit card surcharge is not,
10 quote/unquote, "legally established" by Tariff 15-C, which
11 is the tariff that applies to this carrier. Therefore, the
12 Company may not charge for that service.

13 There was also a statement made in counsel's
14 motion that was before the Commission, that has been
15 denied, but nevertheless, the argument was being made that
16 the Commission has not imposed this understanding on any
17 regulated carrier. That is not true.

18 In Docket TV-060855, we have a final order of
19 the Washington Utilities and Transportation --

20 JUDGE PEARSON: Sorry. Can you read me that
21 docket number again?

22 MR. BEATTIE: Certainly. It's Docket
23 TV-060855.

24 JUDGE PEARSON: Thank you.

25 MR. BEATTIE: And the final order to which I

0047

1 refer was included in my materials that are before you, and
2 although this has not been admitted formally, I would ask
3 you to take judicial notice or official notice of this
4 docket, as it is a Commission docket, that provides
5 precedent.

6 Turning to page 5 of Order 03, paragraph 20,
7 we see here that in the past, in fact, the Commission has
8 imposed a monetary penalty on a regulated household goods
9 carrier for the very same behavior that is at issue in this
10 docket, which is charging a credit card fee or surcharge or
11 convenience fee.

12 And so there is precedent directly on point
13 with the Commission. The full Commission, I might add,
14 having upheld and imposed a fine on a regulated carrier for
15 this behavior.

16 So, Commission Staff, in this case, is asking
17 for not only monetary penalties, but also refunds. The
18 reason that this particular cause of action is so important
19 to Staff is not just the consumer-protection element, which
20 is that customers have a right to rely on Tariff 15-C -- as
21 I mentioned several times already, it's notice to the world
22 of what the rules are -- but also that the Company has, in
23 fact, received technical assistance that is directly on
24 point.

25 In -- as outlined in the investigation report

0048

1 of Susie Paul in 2010, there was a technical assistance
2 letter from Dave Danner, then the secretary of the
3 Commission, now a Commissioner. Mr. Danner wrote to the
4 Company, quote, "You may assess only charges that are
5 authorized by Tariff 15-C."

6 Now, that had to do with a fuel charge, fuel
7 surcharge, but the principle was at least introduced. In
8 November 2011, as outlined in the investigation report,
9 there was a technical assistance e-mail from a Staff
10 employee, Charity Thompson. This is at Appendix D.

11 She writes, quote, "3 percent convenience
12 charge is a violation of Tariff 15-C." Additionally, in
13 the same e-mail, she writes, "Please confirm that you have
14 removed the language on your website in relation to the
15 3 percent credit card fee."

16 And as I mentioned, this cause of action is
17 very important to Staff. We have a Staff technical
18 assistance e-mail in which Staff is asking the Company to
19 remove the language. I understand there's a legal dispute
20 over the basis for that statement; nonetheless, we have
21 Staff stating very clearly its position.

22 The Company, did, in fact, remove the
23 language from its website, but what is seen as pernicious
24 to Staff is that the Company continued to advertise that
25 very same fee in e-mails to customers.

0049

1 You know, I -- the suspicion that Staff has
2 is that the Company was removing the website from something
3 that could be viewed publicly, but continuing to do -- you
4 know, follow the very same practice in a way that was less
5 detectable to Staff.

6 And that's why Staff is asking for a total of
7 \$7,000 imposed on this cause of action, in addition to
8 refunds, just given the very clear nature of Staff's
9 position over the years and the fact that the Company,
10 whether due to intransigence or making a -- taking a
11 calculated risk to see if the Commission would not detect
12 its behavior, continued to uphold its practice.

13 Thank you, Judge.

14 JUDGE PEARSON: Thank you, and if you'd like
15 to now respond to the other causes of action, you may do
16 that.

17 MR. BEATTIE: Well, Judge, I think that the
18 theme that Staff would like to bring before you today is
19 that it's one thing to state an interest in compliance;
20 it's another thing to actually comply.

21 And I believe we've heard the Company has
22 taken major steps to correct its practices, and certainly,
23 that is to be applauded. Of course, one element of a
24 monetary penalty is deterrence.

25 And perhaps the Company is not in need of

0050

1 deterrence, because it has represented that it has cleaned
2 up its act. Well, that should be subject to an audit and,
3 of course, Commission Staff has the opportunity under
4 statutory provisions to conduct such an audit at such time,
5 so that -- you know, that's always subject to check.

6 But just even assuming that the Company has
7 made major changes, another element of a monetary penalty
8 is sim- -- is to punish past violations, and as outlined in
9 the investigation report of Susie Paul, there have been
10 numerous Staff investigations and one customer complaint
11 against the Company since 2010.

12 At no time has one of these investigations or
13 matters resulted in a monetary penalty. The investigations
14 have always concluded with Staff offering the Company
15 technical assistance, and as we heard earlier, sometimes
16 directly urging the Company to please attend a household
17 goods training.

18 The Company did finally attend a household
19 goods training in 2013, but that was three years after it
20 was first advised to do so. So we see a pattern of repeat
21 violations in the face of extensive technical assistance,
22 and so that is why Staff is asking for monetary penalties
23 in this case.

24 There really has been a threshold that has
25 been crossed where continued technical assistance is deemed

0051

1 to be not sufficient to gain the compliance that Staff is
2 looking for.

3 Just really briefly, you know, I think --
4 I've already discussed the credit card fees in full, but
5 another issue that I think really just illustrates the
6 theme of this hearing is the issue with advertisements.

7 Putting a household goods permit number on a
8 website is important. If a customer wants to know, "Is
9 this a -- is this carrier permitted by the state?" how will
10 that customer know if the household goods number is not on
11 the advertisements?

12 Or if the customer has a complaint, how will
13 the customer know, you know, what -- you know, how will the
14 customer know to alert Staff if the household goods number
15 is not on -- or the permit number is not on their website,
16 the address is not the one that's on file with the
17 Commission, the business name is not the same as what's on
18 file with the Commission, so these are consumer protection
19 issues.

20 But, really, what I want to address is: How
21 easy would it be to throw that Commission-issued permit
22 number on the website? We see that Staff, as outlined in
23 the investigation report, again, that same technical
24 assistance letter from Secretary Dave Danner in 2010 at
25 Appendix B.

0052

1 This is Staff specifically advising the
2 Company that carriers must include their Commission-issued
3 permit number on all advertisements, including websites,
4 and that was back in 2010. It is now 2015, and the
5 Commission-issued permit number is still not on the
6 website.

7 This is not a difficult requirement to comply
8 with. Again, we see that the technical assistance has not
9 resulted in the compliance that Staff is looking for.

10 Cube sheets, though I believe that Mr. French
11 represented these are -- this issue has been corrected,
12 but, you know, again, we still, looking backwards
13 retrospectively, we have express -- we have technical
14 assistance on this issue as well.

15 Bills of lading and estimates, the Company
16 was using an e-mail estimate, which is not in and of itself
17 a problem, it's just that the e-mails did not contain all
18 the information that was required in Tariff 15-C.

19 The Company knows that it needs to update its
20 forms, and I believe it has done so now, or at least that's
21 what has been represented.

22 And then there's the issue, you know, with
23 bills of lading. Again, Tariff 15-C lays out exactly what
24 needs to be in those bills of lading. You know, it is a
25 lot of information, but at the same time, Tariff 15-C is

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1 very explicit about what information those documents need
2 to contain. Staff provided assistance on this matter, and
3 the documents were not corrected as of the time of the
4 investigation.

5 And so, again, I think what troubles me is
6 how long it has taken to get to this point. Staff has been
7 more than generous with its technical assistance, but the
8 violations, many of them were repeat that were recorded in
9 this case, and so monetary penalties and customer refunds
10 are needed in this case, you know, both to punish the
11 history of noncompliance and to ensure that the changes
12 that the Company has represented that it has made will be
13 lasting changes and this Company will come into compliance.

14 Thank you, Judge.

15 JUDGE PEARSON: Thank you.

16 Mr. French, if you have any closing
17 statements that you'd like to make?

18 MR. PHILLIP FRENCH: Thank you very much,
19 Your Honor.

20 Well, I'd like to, first of all, I guess,
21 cover two areas. One would be the Causes of Action 1
22 through 8, save for the seventh cause of action, and we've
23 acknowledged that these are violations. They're technical
24 violations.

25 I think Adam has gone a long ways towards

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1 trying to bring his company into compliance with those. I
2 would just point out -- look, there has been -- there was
3 no intent to harm any consumers, there was nothing unfair
4 or deceptive about this. These are, as the UTC indicated
5 in the Boots case, which counsel relies upon, technical
6 violations.

7 In the Boots case, what the Boots case was
8 primarily concerned about was you have this moving company
9 that is collecting 8 percent sales tax on moving jobs where
10 the moving jobs are not subject to sales tax, and of
11 course, the 8 percent fees that he was collecting weren't
12 being passed on to the state. That's a far different --
13 that's a far cry from what we're dealing with here this
14 morning.

15 When counsel provided me with a copy of the
16 Boots decision last week, I went online to the UTC website,
17 and I was unable to find this order. It may be there, and
18 maybe my research skills aren't all that great, but I
19 wasn't able to find it, so I think that -- I acknowledge
20 that a tertiary issue in the Boots decision that they --
21 that's kind of just an add-on was that he was charging
22 these credit card fees, but I -- as far as precedent and
23 notice to the industry, I don't think that Boots case has
24 much precedential value whatsoever.

25 And so I -- you know, we -- Adam's prepared

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1 to accept the fact that you're going to probably uphold
2 some of these penalties, and he has stipulated to the
3 technical violations, but I would just like to point out
4 that part of the mix should be realizing that, although
5 counsel used the word "pernicious," there was no -- these
6 are technical violations.

7 Not saying the UTC cannot regulate and that
8 they don't have a right to have technical requirements, but
9 let's not lose sight of the fact that they are technical
10 violations.

11 Moving to the seventh cause of action,
12 counsel expressed great concern that the UTC Staff has that
13 these are -- it's pernicious to charge a 3 percent credit
14 or debit card bank fee, when in fact, it's acknowledged by
15 everybody here that it's okay to pass that expense on to
16 the customer, but you have to put it in the form of an
17 increased hourly rate.

18 So let's face it. I mean, we're not talking
19 about unfair, deceptive practices that are harmful to the
20 consumer. It's a convenience to the consumer. It's a cost
21 that's actually incurred, unlike the fraudulent sales tax
22 charges that were charged in the Boots case as a way to
23 artificially come in with a lower bid, to compete unfairly
24 with competitors, and then to have this surprise add-on at
25 the end that's a windfall, a hidden charge. The bank fees

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1 were actually incurred. Nobody disputes that.

2 The statute that counsel recited is the --
3 essentially, the promulgating statute that confers upon the
4 UTC the power to regulate charges for transporting
5 household goods, as I understand that enabling statute.
6 Certainly, if the Staff was so concerned that charging a
7 3 percent bank charge fee was a pernicious practice, the
8 UTC could have put a provision in Tariff 15-C, but they
9 chose not to do that. They chose not to even enter the
10 area of regulating how much interest rates the carrier can
11 charge in any credit plans.

12 And I would liken the charge of the bank fees
13 more to the area of bank finance charges and credit finance
14 charges, rather than directly related and attributable to
15 the transportation of household goods, and I think therein
16 lies the crux of the issue.

17 Adam's Moving Service is agreeing to follow
18 the UTC's interpretation of Tariff 15-C going forward and
19 has, I believe, for some time in terms of not charging the
20 bank fee and calling it a bank fee charge, but by charging
21 a higher hourly rate for the same service where the
22 customer chooses to pay by debit or credit card.

23 So, I mean, we're not talking about any
24 threat to the consumer, any harm to the consumer. It's all
25 within the allowable maximum rates. There's no unfair

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1 competition. Counsel's nodding his head. He would agree.
2 I don't know if the investigator agrees.

3 And so, you know, what I would say would be
4 this, and what I would propose would be this: If you want
5 to fine him; okay, fine him. But to require him to go back
6 and do refunds for the last two years, that's a very, very
7 costly endeavor that, you know, we're -- my understanding
8 of the UTC purpose is to regulate, not to destroy.

9 And we're -- when we're talking about refunds
10 that -- the cost of auditing and going back and then
11 issuing refunds for costs out of pocket that were charged
12 to the Company for the convenience of the customer, I think
13 is a -- is going far beyond what any fair interpretation of
14 15-C would justify.

15 15-C is to -- I think it's subject to the
16 same rules of statutory interpretation as a statewide
17 statute, because it is given the same force and effect as a
18 statewide statute within the industry, and so I would just
19 go back to: What is the plain language? What's a fair
20 interpretation?

21 It's not just the UTC's interpretation back
22 in the Boots case, seven or eight years ago, one example
23 of, "Oh, by the way, he also was charging a 3 or 4 percent
24 bank fee, and we're going to say that that's a violation of
25 Tariff 15-A." We don't even have Tariff 15-A before us in

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1 this hearing. It's 15-C.

2 And under the rules, basic rules of
3 interpretation, I think you should give plain meaning to
4 the words in the tariff, and I don't see, in Tariff 15-C,
5 any prohibition of bank fees, but I see an intent to not
6 regulate the areas of finance charging with credit plans,
7 and I think it's most analogous to that area, where the UTC
8 has decided not to inject any regulations regarding.

9 Thank you very much.

10 JUDGE PEARSON: Thank you.

11 Mr. Beattie, did you have any closing
12 statement that you'd like to make?

13 MR. BEATTIE: Just to address one minor
14 point, Tariff 15-A, we don't need to know what's in there
15 because the point is that if it's not in a tariff, it can't
16 be charged, so the idea in the Boots case, same as now, is
17 that because the credit card fee in that case was not
18 allowed in Tariff 15-A, it couldn't be charged.

19 I'm making the same argument now. Because
20 Tariff 15-C does not allow the charge, the charge cannot be
21 made by the Company. Thank you.

22 JUDGE PEARSON: Thank you.

23 MR. PHILLIP FRENCH: Just to follow up, just
24 very, very briefly. Once again, I would just stand on the
25 fact that just because it's not authorized in Tariff 15-C,

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1 Tariff 15-C's application is to the charges for
2 transporting household goods.

3 It doesn't have apparent effect in terms of
4 regulating finance charges, and I would argue by inference,
5 therefore, because it remains silent on the bank fees, it
6 simply authorizes matters of payment, it doesn't require
7 patented methods of payment, and it doesn't prohibit, in
8 its plain language, the charging of a bank fee.

9 That's not related to transportation or
10 storage or loading or labor or anything else. It's a bank
11 fee. It's exactly what it is. And the UTC has
12 acknowledged that they don't care if that cost is passed on
13 to the customer in a different form by increased hourly
14 rates for people that pay by debit or credit card. It's
15 just we're stuck on the semantics.

16 MR. ADAM FRENCH: How it's documented.

17 MR. PHILLIP FRENCH: Pardon me?

18 MR. ADAM FRENCH: How it's documented.

19 MR. PHILLIP FRENCH: Or how it's documented.

20 Thank you, Your Honor. I appreciate your
21 time here this morning, and I apologize if I've come across
22 as being a little bit more adversarial in tone or content
23 to counsel.

24 JUDGE PEARSON: I've seen worse.

25 MR. PHILLIP FRENCH: Thank you. That makes

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1 me feel better.

2 JUDGE PEARSON: Okay. If we have nothing
3 further, then I believe we are finished today, so I just
4 want to thank you for coming here.

5 I will take everything under advisement that
6 I heard here today, and I will issue an order within ten
7 days with my findings, so if that's all, then we are
8 adjourned, and we can be off the record.

9 MR. PHILLIP FRENCH: And you do have a bench
10 copy of the motion that I had filed?

11 JUDGE PEARSON: I do.

12 MR. PHILLIP FRENCH: And that operates as,
13 essentially, my memorandum of authorities on the Cause of
14 Action 7 for closing argument. Thank you.

15 JUDGE PEARSON: Thank you.

16 (Proceedings concluded at 10:53 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KING

I, Ryan Ziegler, a Certified Shorthand Reporter in
and for the State of Washington, do hereby certify that the
foregoing transcript of the proceedings held March 17, 2015,
is true and accurate to the best of my knowledge, skill, and
ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this March 25, 2015.

RYAN ZIEGLER, RPR, CCR

