

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**BEST MOVING AND DELIVERY,**

**Respondent.**

**DOCKET TV-132030**

**BRIEF ON BEHALF OF COMMISSION STAFF**

**MARCH 16, 2015**

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## I. INTRODUCTION AND BACKGROUND

1 Washington Utilities and Transportation Commission Staff (“Staff”) initiated an investigation into the business practices of Best Moving and Delivery, LLC (“Best Moving” or “Company”). Staff’s investigation was required under the terms of a settlement agreement with the Company in a previous matter. In the course of Staff’s investigation, Staff determined that the Company had misrepresented and falsified documents and violated several Commission rules.

2 Upon review of Staff’s Investigation Report and associated documents, the Washington Utilities and Transportation Commission (“Commission”) found probable cause to issue a complaint against Best Moving. The Commission’s complaint included eight causes of action. The Commission conducted an evidentiary hearing involving both Staff and the Company (collectively “the Parties”) on March 9, 2015.

3 At the evidentiary hearing, the Company’s owner and officer, Mr. Ivan Ratko, acknowledged that Best Moving had committed the majority of violations alleged in the Commission’s complaint.<sup>1</sup> Staff presented evidence in the form of 64 Exhibits<sup>2</sup> and verbal testimony from Staff witness Ms. Rayne Pearson documenting and explaining that the Company had committed all of the violations alleged in the Commission’s complaint. Staff’s testimony and response to Bench Request 1<sup>3</sup> further supported the imposition of a significant monetary penalty against the Company and revocation of Best Moving’s permit for good cause.

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<sup>1</sup> In verbal testimony at the hearing, Mr. Ratko acknowledged the violations alleged in the third, fourth, fifth, sixth, and a significant portion of the eighth causes of action. Because the Parties are filing briefs within six business days of the evidentiary hearing in this matter, the transcript is not yet available for citation. Should any party dispute the statement that Mr. Ratko did acknowledge the above-noted violations, Staff can cite to the hearing transcript once it becomes available.

<sup>2</sup> Exhibits RP-1 through RP-64.

<sup>3</sup> Staff’s Response to Bench Request 1, Investigation Report Ivan Ratko DBA Best Moving & Delivery, TV-110977, December 2011, Rayne Pearson.

## II. VIOLATIONS OF COMMISSION RULES

### A. First Cause of Action (Violation of RCW 81.04.070)

4 RCW 81.04.070 provides the Commission Staff authority to inspect the books and records of a regulated company. In allowing Staff the ability to access regulated companies' books and records, RCW 81.04.070 inherently requires regulated companies to provide access to true and correct versions of those records. Therefore, any attempt by a regulated entity to falsify documents by altering dates or misrepresenting documents' content and purpose violates RCW 81.04.070.

5 Staff witness Ms. Pearson documented in her Investigation Report<sup>4</sup> and in oral testimony<sup>5</sup> on March 9, 2015, that Best Moving had provided her with falsified documents. Staff's exhibits RP-1 through RP-7 show that the Company completed and dated the estimate forms as if customers had received them prior to or at the time of their move. Ms. Pearson also testified that Mr. Ratko had represented to her that all of the estimate forms he provided to Staff had been presented to customers prior to or at the time of a move. Ms. Pearson's Investigation Report and oral testimony document direct conversations with seven customers<sup>6</sup> who specifically refuted receiving any estimate form from Best Moving.<sup>7</sup> Therefore, Best Moving, through its officer Mr. Ratko, misrepresented to Staff the contents and use of at least seven documents and falsified records to appear as if those seven customers had received estimate forms at the time of their moves.

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<sup>4</sup> Exhibit No. \_\_\_\_ (RP-64), Staff Investigation Report, Best Moving and Delivery LLC, TV-132030, April 2014, pp. 9-12

<sup>5</sup> Should any party dispute the contents of Ms. Pearson's testimony, Staff can cite to the transcript once it becomes available.

<sup>6</sup> The customers listed on estimate forms in the record as Exhibits RP-1, RP-2, RP-3, RP-4, RP-5, RP-6, and RP-7.

<sup>7</sup> Pearson, Exhibit RP-64, pp. 10 and 12.

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The Commission should uphold the allegations listed in the first of cause of action of the Complaint against Best Moving. It is important that the Commission recognize that falsified and misrepresented forms directly obstruct the Commission Staff's ability to regulate in the public interest. The Company's fraudulent activity in this case supports a significant penalty and the Commission should take clear, direct action to prevent this type of misconduct in the future.

**B. Second Cause of Action (Violation of WAC 480-15-630)**

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Under WAC 480-15-630, household goods carriers must provide an estimate form to each customer prior to conducting a move. In this case, Ms. Pearson documented and testified to direct conversations with seven separate individuals who specifically confirmed that Best Moving had not provided them with estimate forms.<sup>8</sup> Moreover, Staff's Exhibits RP-1 through RP-7 clearly indicate that those customers did not sign or date for receipt of the estimate form.<sup>9</sup> The absence of any signature or date from the customer acknowledging receipt of the estimate forms coupled with Staff's direct conversations with those seven customers demonstrate that the Company failed to provide customers with estimate forms on at least seven occasions in violation of WAC 480-15-630.

**C. Third Cause of Action (Violations of WAC 480-15-630 and Tariff 15-C)**

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Under WAC 480-15-630, household goods carriers must issue an estimate form that complies with the Commission-published tariff.<sup>10</sup> The Commission's complaint alleges a number of violations of Commission-published Tariff 15-C.<sup>11</sup>

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<sup>8</sup> Pearson, Exhibit RP-64, pp. 10 and 12. *See also* Pearson, Exhibits RP-1, RP-2, RP-3, RP-4, RP-5, RP-6, and RP-7.

<sup>9</sup> Pearson, Exhibits RP-1, RP-2, RP-3, RP-4, RP-5, RP-6, and RP-7.

<sup>10</sup> The Commission-published tariff is Tariff 15-C.

<sup>11</sup> *WUTC v. Best Moving and Delivery LLC*, Complaint and Notice of Prehearing Conference, Docket TV-132030, pp. 3-4 at ¶¶18-28, Sept. 11, 2014.

9 Staff's Investigation Report, admitted as Exhibit RP-64, documents eight violations of the Commission-published Tariff 15-C, Item 85.<sup>12</sup> Ms. Pearson testified at the hearing that all of those violations of Tariff 15-C, Item 85 alleged in her investigation report exist on each and every estimate form documented as Exhibits RP-1 through RP-31. The 31 estimate forms documenting Staff's findings have also been admitted as Exhibits RP-1 through RP-31. Lastly, in oral testimony at the March 9, 2015, evidentiary hearing, Mr. Ratko acknowledged that his Company's estimate forms contained the violations alleged in the Commission's complaint.

10 Given the evidence in this case, Staff's testimony, and Mr. Ratko's admission at the evidentiary hearing, the Commission should accept Staff's finding of 31 violations<sup>13</sup> of WAC 480-15-630 and Tariff 15-C.

**D. Fourth Cause of Action (Violation of WAC 480-15-630 and Tariff 15-C, Item 85(2)(g))**

11 Under WAC 480-15-630, household goods carriers must issue an estimate form that complies with the Commission-published Tariff 15-C. Tariff 15-C, Item 85(2)(g) requires that an estimate form include a cube sheet inventory of items on which the estimate is based and the estimated cubic footage for each item.

12 In its investigation, Staff requested Best Moving provide all documents related to each customer move conducted between June 1, 2012, through Sept. 30, 2012.<sup>14</sup> Best Moving responded to Staff's request on March 26, 2013.<sup>15</sup> Best Moving did not provide any documentation of cube sheets or estimates of cubic footage.<sup>16</sup>

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<sup>12</sup> Pearson, Exhibit RP-64, pp. 10-11

<sup>13</sup> Should the Commission agree with Staff's arguments on the first and second causes of action (falsifying seven estimate forms and then not providing them to customers), then Staff supports an alternative finding of 24 violations for the third cause of action.

<sup>14</sup> Pearson, Exhibit RP-64, p. 9.

<sup>15</sup> *Id.*

<sup>16</sup> Pearson, Exhibit RP-64, p. 13.

13 Staff's witness testified at the hearing that the Company did not provide any cube sheets. Mr. Ratko testified at the evidentiary hearing that he did not complete cube sheets but simply asked for pictures or lists from customers. The relevant rules and Commission-published tariff do not allow a picture or list as a substitute for the required cube sheet.<sup>17</sup> Therefore, the Company violated WAC 480-15-630 and Tariff 15-C on 31 occasions, and the Commission should again support Staff's finding.

**E. Fifth Cause of Action (Violation of WAC 480-15-710 and Tariff 15-C, Item 95)**

14 Under WAC 480-15-710, a household goods carrier must issue customers a bill of lading for every move, and the bill of lading must include all the information described in the Commission-published tariff. Commission-published Tariff 15-C, Item 95 sets out the information that must be included in a company's bill of lading. The Commission's complaint sets out a number of alleged violations of Tariff 15-C, item 95.<sup>18</sup>

15 Staff's Investigation Report, included in this proceeding as Exhibit RP-64, documents eight types of violations of Tariff 15-C, Item 95 on Best Moving's bill of lading. Staff Exhibits RP-32 through RP-62 provided the bases for Staff's findings and are also documented in this proceeding. Ms. Pearson testified on March 9, 2015, that each of the violations documented in her report and in fifth cause of action of the Commission's complaint exist on each and every bill of lading she reviewed, and are documented as Exhibits RP-32 through RP-62. Lastly, Mr. Ratko's testimony at the evidentiary hearing included an admission that his Company's bill of lading forms contained the violations alleged in the Commission's complaint.

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<sup>17</sup> See WAC 480-15-630, Tariff 15-C, Item 85, p. 13.

<sup>18</sup> Complaint, TV-132030, pp. 5-6 ¶¶32-42, Sept. 11, 2014.



16           Given the evidence in this case, Staff's testimony, and Mr. Ratko's admission at the evidentiary hearing, the Commission should find 31 violations of WAC 480-15-710 and Tariff 15-C, Item 95.

**F. Sixth Cause of Action (Violation of WAC 480-15-710 and Tariff 15-C, Item 95(2))**

17           Under WAC 480-15-710 and Tariff 15-C, a household goods carrier's bill of lading must include the terms and conditions set out in Tariff 15-C, Item 95(2). Tariff 15-C, Item 95(2), Section 6 states that a customer may file a claim for loss, damage, overcharge, injury, or delay within nine months of date of delivery. Best Moving's bill of lading, documented in Exhibits RP-32 through RP-62 in this proceeding, states that customers must report claims for loss or damage within 24 hours.<sup>19</sup> Therefore, Best Moving's bill of lading directly contradicts Tariff 15-C, Item 95(2).

18           Staff's Investigation Report documents the above findings and Ms. Pearson testified on March 9, 2015, that each of the Company's bills of lading in Exhibits RP-32 through RP-62 contain the impermissible language requiring notice of loss or damage within 24-hours.<sup>20</sup> On March 9, 2015, Mr. Ratko also appeared to acknowledge that his Company's bills of lading did contain the impermissible language requiring notice within 24-hours.

19           With the record in this case and the Company's apparent admission, the Commission should find an additional 31 violations of Commission rules and regulations.

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<sup>19</sup> Approximately half way down the page on the left hand side, all of the exhibits from RP-32 through RP-62 contain a statement that "Any loss or damage must be reported to 'Best Moving' within 24 hours from the time of the move."

<sup>20</sup> Pearson, Exhibit RP-64, p. 19.

**G. Seventh Cause of Action (Violation of WAC 480-15-610(1))**

20 Under WAC 480-15-610(1), a household goods carrier must include a physical address in any advertising, including websites.<sup>21</sup> In this case, Staff's witness testified that she accessed Best Moving's website on May 7, 2014, and the website did not contain the Company's physical address. Staff's witness then authenticated Exhibit RP-63 as a print out of the Company's website as of Staff's access date on May 7, 2014.<sup>22</sup> At the hearing, Mr. Ratko testified that he did not know whether or not his Company's website contained the Company's physical address. Mr. Ratko professed ignorance despite being aware of the Commission's complaint since at least September 11, 2014.<sup>23</sup>

21 The Company's inability or refusal to respond to actual notice of a violation is not a defense. Moreover, by not even being aware of whether the address could be found on his Company's website after receiving actual notice of the problem in a Commission complaint, Mr. Ratko's testimony further demonstrates Best Moving's lack of fitness to operate as a regulated carrier. The Commission should find a violation of WAC 480-15-610(1).

**H. Eighth Cause of Action (Violation of WAC 480-15-490(3))**

22 Under WAC 480-15-490(3), household goods carriers must follow the terms, conditions, rates, and other requirements in the Commission-published Tariff 15-C. Staff's testimony and exhibits in this case demonstrate that Best Moving violated Commission-required terms and conditions for weekend moves, billing increments, and fuel surcharges.

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<sup>21</sup> WAC 480-15-610(1)(c)

<sup>22</sup> Pearson, Exhibit RP-63. *See also* Pearson, Exhibit RP-64, Staff Investigation Report, p. 16 and Appendix E.

<sup>23</sup> *See* Complaint, Docket TV-132030, Sept. 11, 2014.

### 1. Weekend Moves

23 Tariff 15-C, Item 230 requires a minimum hourly charge of four hours for all weekend moves. Staff's Investigation Report documents three separate occasions where Best Moving charged less than four hours for weekend moves.<sup>24</sup> Staff exhibits RP-45, RP-61, and RP-62 clearly support Staff's finding that the Company conducted weekend moves and charged less than the required four hours. Exhibit RP-45 is dated 2/25/2012, a Saturday, and includes charges for 3.6 hours. Exhibit RP-61 is dated 2/25/2012, a Saturday, and includes charges for 3.5 hours. Exhibit RP-62 is dated 5/26/2012, a Saturday, and indicates charges for 3.5 hours. Exhibit RP-62 does include an edit to the hourly rate but clearly notes the charges are for 3.5 hours; it is also important for the Commission to recognize that other bills of lading documented as exhibits in this case do not include the altered hourly rate.<sup>25</sup>

### 2. Billing Increments

24 Tariff 15-C, Item 230 requires household goods carriers to record time in 15-minute increments. Staff's investigation report documents one occasion where the Company charged rates by tenths-of-an-hour, or increments of only six minutes.<sup>26</sup> Staff's Exhibit RP-45 also clearly indicates that Best Moving charged its customer for 3.1 hours. Due to Staff's investigation, testimony, and clear documentation in this proceeding, the Company's violation of Tariff 15-C, Item 230 for billing increments cannot seriously be disputed.

### 3. Fuel Surcharges

25 WAC 480-15-490(3) requires household goods carriers to follow the terms, conditions, and rates authorized in the Commission-published tariff. Tariff 15-C does not authorize fuel

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<sup>24</sup> Pearson, Exhibit RP-64, p. 17.

<sup>25</sup> See Pearson, Exhibits RP-32 through RP-61.

<sup>26</sup> Pearson, Exhibit RP-64, p. 17, second paragraph.

surcharges. Staff's Investigation Report documents a "gas" fee on the Company's bills of lading.<sup>27</sup> Staff's oral testimony at the evidentiary hearing further described its findings, and Exhibits RP-32 through RP-62 document a line item for charging "gas" fees. Specifically, Staff's Exhibits RP-38, RP-40, RP-41, RP-42, RP-43, and RP-44 indicate dollar-figure charges for "gas." As Ms. Pearson testified at the hearing, Exhibits RP-38, RP-40, and RP-41 appear to have gas charges that were crossed out or otherwise altered; Exhibits RP-42, RP-43, and RP-44 contain unaltered dollar-figures for gas charges.

26 As described in Staff's response to Bench Request No. 1 and Ms. Pearson's testimony on March 9, 2015, Mr. Ratko and his Company received technical assistance on this exact item in 2011.<sup>28</sup> Best Moving's ongoing failure to remedy a known violation supports Staff's findings and recommendation for penalties.

### III. PENALTIES

#### A. Overview

27 Staff recommends the Commission impose significant monetary penalties on Best Moving and cancel the Company's permit for good cause. Under WAC 480-15-450, the Commission can cancel a carrier's permit for good cause; sections (1)(f) and (1)(g) state that good cause exists where a company fails to provide the Commission with requested information or provides false, misleading, or inaccurate information. In this case, the Company provided Staff with altered documents and misrepresented those documents' prior use.<sup>29</sup> Therefore, Best Moving has provided the Commission with sufficient reason to revoke the Company's permit for good cause.

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<sup>27</sup> Pearson, Exhibit RP-64, pp. 17-18.

<sup>28</sup> *WUTC v. Best Moving and Delivery LLC*, Docket TV-132030, Staff Response to Bench Request 1, Staff Investigation Report TV-110977 (Dec. 11, 2011), March 9, 2015.

<sup>29</sup> See *supra* Section II. A. and Section II. H.

## B. Considerations for Penalties

28 Staff's Investigation Report succinctly recounts the ten factors it considered in recommending a penalty.<sup>30</sup> Ms. Pearson's testimony at the evidentiary hearing also described the factors she considered in recommending the Commission impose monetary penalties and cancel Best Moving's permit. Each of the factors considered by Ms. Pearson is reasonable and reflects the Company's overall cooperation, integrity, and willingness to comply with Commission rules. Therefore, Staff's review and analysis of appropriate penalties should be given substantial weight in the Commission's determination.

29 In particular, it is important that the Commission recognize the extensive technical assistance Commission Staff has provided Mr. Ratko dating back to 2009. Staff's Investigation Report recounts various communications between Staff and Mr. Ratko over nearly six years.<sup>31</sup> Clearly, Mr. Ratko previously received extensive technical assistance for every category of violation in the present proceeding; Ms. Pearson also testified to numerous, lengthy telephone conversations she personally had with Mr. Ratko in which they discussed the Commission's rules and requirements. Moreover, Staff initiated a complaint against Best Moving in 2011 and the parties eventually settled the dispute prior to hearing.<sup>32</sup>

30 In light of such extensive prior technical assistance, the Company's continued violations establish either an unwillingness or inability to comply with Commission rules. At this point, Staff is convinced that Best Moving will not come into compliance with Commission rules absent, at minimum, a significant monetary penalty. Mr. Ratko testified at the hearing to the

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<sup>30</sup> Pearson, Exhibit RP-64, pp. 21-22. *See also* Pearson, Exhibit RP-64, p. 20 for a general summary of Ms. Pearson's recommended penalty.

<sup>31</sup> *Id.* at pp. 6-8.

<sup>32</sup> *WUTC v. Ivan Ratko DBA Best Moving and Delivery*, Docket TV-110977, Order 01, Initial Order Approving Settlement Agreement and Mitigating Penalty to \$200, March 12, 2012. *See* Staff Response to Bench Request No. 1, Staff Investigation Report TV-110977 (Dec. 11, 2011), March 9, 2015.

constantly changing rules in the Commission-published tariff, but the relevant sections of Tariff 15-C for this case have not substantively changed since well before 2009.<sup>33</sup> After six years of discourse, Best Moving has simply left Staff no choice other than to pursue such a penalty and revocation of its permit.

#### IV. CONCLUSION

31 Staff has documented its findings, provided extensive exhibits, and testified at hearing that Best Moving and Delivery LLC committed all of the violations alleged in the Commission's Complaint in this docket. Staff has also documented significant past technical assistance and evidence of the Company's consistent noncompliance with the Commission's rules and regulations dating back to 2009. Best Moving has continued to violate rules and the Commission should find in favor of Staff's recommendations on all counts and impose a significant penalty, including revocation of the Company's permit.

DATED this 16<sup>th</sup> of March 2015.

Respectfully submitted,



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Counsel for Washington Utilities and  
Transportation Commission Staff

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<sup>33</sup> Compare Order 01, Docket TV-072258 and Order 01, Docket TV-121771 (approving changes to Tariff 15 for household goods movers). Mr. Ratko also testified at the evidentiary hearing that another moving company had over 200 customer complaints and suggested Staff should pursue that company instead of Best Moving. For the sake of both the Commission and other interested parties, Staff wants to clarify that Mr. Ratko's estimate/statement is not accurate.