

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	DOCKET TV-200432
Complainant,	ORDER 03
v.	ORDER APPROVING SETTLEMENT; IMPOSING AND SUSPENDING PENALTIES
CLUTTER, INC.	
Respondent.	

BACKGROUND

- 1 On March 25, 2021, the Washington Utilities and Transportation Commission (Commission) issued a Complaint Seeking to Impose Penalties; Notice of Prehearing Conference set for Tuesday, May 4, 2021, at 9:30 a.m. The Complaint alleges that Clutter, Inc., (Clutter or Company): (1) violated Washington Administrative Code (WAC) 480-15-490 and Tariff 15-C, Item 230(6) a total of 93 times by charging customers less than the minimum tariffed rate and/or failing to disclose the minimum tariff rate charged on the bill of lading; (2) violated WAC 480-15-490 and Tariff 15-C, Item 230(7), a total of 33 times by failing to charge customers the required minimum hours for weekday moves, weekend moves, and moves conducted on state-recognized holidays; (3) violated WAC 480-15-710 and Tariff 15-C, Item 95, a total of 98 times by either failing to issue or failing to properly complete bills of lading; (4) violated WAC 480-15-630 and Tariff 15-C, Items 85 and/or 230, a total of 98 times by failing to properly complete written estimates; and (5) violated WAC 480-15-490 and Tariff 15-C, Item 102, a total of 68 times for failure to properly follow goods limitations for small goods transportation and storage moves.
- 2 Through the Complaint, Commission staff (Staff) requested the Commission assess penalties of (1) up to \$100 for each violation of WAC 480-15-490 and Tariff 15-C, Items 230(6), 230(7), and 102; and (2) up to \$500 for each violation of WAC 480-710 and Tariff 15-C, Item 95, and for each violation of WAC 480-15-630 and Tariff 15-C, Item 102, for a total penalty of up to \$117,400.
- 3 The Commission convened a virtual prehearing conference in this docket on May 4, 2021, before Administrative Law Judge Rayne Pearson.

- 4 On May 5, 2021, the Commission entered Order 02, Prehearing Conference Order; Notice of Hearing in this docket, which established a procedural schedule including an evidentiary hearing set for July 26, 2021.
- 5 On June 11, 2021, Staff filed a letter in this docket to inform the presiding officer that Staff and the Company (collectively, the Parties) reached a full settlement in principle, and to request that the Commission suspend the procedural schedule to allow the parties time to finalize their agreement.
- 6 On June 25, 2021, the Commission issued a Notice Suspending the Procedural Schedule and requiring the Parties to file a proposed revised procedural schedule by July 2, 2021.
- 7 On June 30, 2021, Staff filed a settlement agreement (Settlement) on behalf of the Parties. On July 7, 2021, the Commission issued a Notice Revising Procedural Schedule, which included a settlement hearing set for July 26, 2021.
- 8 On July 20, 2021, the Public Counsel Unit of the Attorney General's Office (Public Counsel) contacted the presiding officer to inform the Commission that Public Counsel would neither join nor oppose the Settlement, and that the parties agreed a hearing is not necessary to resolve this matter. Accordingly, the Commission canceled the hearing and notified the Parties that it would proceed on a paper record.
- 9 As part of the Settlement, the Company admits that it committed each of the violations alleged in the Complaint. The Parties agree that the Commission should assess a penalty of \$100,000 for the violations alleged in the Complaint, and that it should suspend a \$50,000 portion of the penalty for a period of two years, and then waive it, subject to the condition that Clutter refrains from committing material repeat violations of Commission rules cited in the Complaint. The Parties further agree that the Company should pay the \$50,000 portion of the penalty that is not suspended in 12 consecutive monthly installments of approximately \$4,167 each, the first of which will be due 30 days from the effective date of this Order.¹ Finally, the Company agrees to implement certain correction actions within 90 days of the effective date of this Order to ensure compliance going forward.
- 10 Chad Stokes, Cable Huston LLP, Portland, Oregon, represents Clutter. Daniel Teimouri and Joe Dallas, Assistant Attorneys General, represent Staff. Nina Suetake, Assistant Attorney General, represents the Public Counsel Unit of the Attorney General's Office (Public Counsel).

¹ The first 11 payments due will be \$4,166.66, and the last payment due will be \$4,166.74.

DISCUSSION AND DECISION

11 We 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

12 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

13 We approve the Settlement without condition. Clutter admits that its past conduct violated Commission rules and agrees to improve its business practices to ensure compliance going forward. Clutter’s willingness to accept responsibility and take steps to prevent repeat violations are factors that weigh heavily in favor of assessing a reduced penalty. Accordingly, we find that the \$100,000 penalty, a \$50,000 portion of which is suspended for two years subject to the condition the Company complies with Commission rules, is reasonable, both in terms of the significant penalty the Company must pay according to the terms of the installment plan agreed to by the Parties, and in terms of the equally substantial suspended amount it must pay if it fails to comply with this Order.

14 The terms of the Settlement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. The Settlement supports the Commission’s goal of obtaining compliance and permits the Company to pay a reduced penalty contingent on the Company refraining from committing repeat violations, which provides an incentive for ongoing compliance. Given these factors, we find the Settlement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

- 15 (1) The settlement agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.
- 16 (2) Clutter, Inc., is assessed a penalty of \$100,000 for 390 violations of WAC 480-15. A \$50,000 portion of the penalty is suspended for a period of two years from the effective date of this Order subject to the condition that Clutter, Inc., complies with the terms of this Order.
- 17 (3) Clutter, Inc., must pay the \$50,000 portion of the penalty that is not suspended according to the terms of the installment arrangement set out in the settlement agreement.
- 18 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective July 27, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
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 (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) 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 does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).

**Exhibit A
Settlement Agreement**