

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

In the Matter of the Penalty Assessment	)	DOCKET TV-100322
Against	)	
	)	
GERALD JAHN d/b/a SPOKANE	)	ORDER 01
MOVERS	)	
	)	
In the Amount of \$7,900.	)	INITIAL ORDER APPROVING
	)	AND ADOPTING SETTLEMENT
.....	)	

1 **SYNOPSIS.** *This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of the order. If this Initial Order becomes final, the Settlement Agreement entered into between Gerald Jahn d/b/a Spokane Movers and the Commission Staff which resolves all issues in the penalty assessment will be approved and adopted.*

**MEMORANDUM**

2 **PROCEEDING.** Docket TV-100322 involves a penalty assessment issued by the Washington Utilities and Transportation Commission (Commission) against Gerald Jahn d/b/a Spokane Movers (Spokane Movers) for alleged violations of the Commission’s statutes and rules governing household goods movers. The total violations result in penalties of \$7,900.

3 **APPEARANCES.** Michael A. Fassio, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).<sup>1</sup> Gerald M. Jahn, represents Spokane Movers.

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

4 **PROCEDURAL HISTORY.** On May 6, 2010, the Commission issued a penalty assessment against Spokane Movers for alleged violations of the Commission's statutes and rules governing household goods carriers. The Commission assessed penalties in the amount of \$7,900 for 79 violations of the Commission's rules as follows:

- Four violations of WAC 480-15-630 for failure to supply an estimate to each customer prior to moving household goods.
- Sixty-seven violations of WAC 48-15-630 and Tariff 15-C, Item 85(2)(g) for failure to provide inventory cube sheets with estimates.
- Six violations of WAC 480-15-630 for failure to provide a supplemental estimate.
- Two violations of WAC 480-15-710 for failure to provide a bill of lading.

5 On May 14, 2010, Spokane Movers filed an application for mitigation of the penalties and requested a hearing. On May 18, 2010, Staff filed a response to the application for mitigation and stated that it did not oppose a hearing. The Commission issued a Notice of Brief Adjudication on May 28, 2010, setting this matter for hearing on June 23, 2010.

6 On June 16, 2010, Staff filed a letter on behalf of both parties requesting that the hearing be suspended because the parties had reached an agreement in principle and anticipated filing a settlement in the near future. The Commission issued a Notice Suspending Hearing on June 17, 2010, and established June 30, 2010, as the deadline for the parties to file a settlement. On June 23, 2010, the parties filed a Settlement Agreement (Settlement) and Narrative in Support thereof. The Settlement resolved all disputed issues in this case.

7 On July 8, 2010, the Commission issued a Bench Request requesting the parties to supplement the Narrative in Support of Settlement with the rationale for reaching the agreement and an explanation of how the agreement satisfies both parties' interests,

the public interest, and is consistent with law. On July 15, 2010, Staff timely filed a response to the Bench Request. On July 21, 2010, Spokane Movers filed a response to the Bench Request.<sup>2</sup>

8 **SETTLEMENT AGREEMENT AND RESPONSE TO BENCH REQUEST.** In this section, the parties' Settlement Agreement, which is attached to and made part of this Order by this reference, is summarized. If there is any inconsistency between this summary and the Settlement Agreement, the express terms of the Settlement Agreement control.

9 According to the Settlement, Spokane Movers admits the violations of the Commission's rules alleged in the penalty assessment. The parties agree that Spokane Movers is subject to a penalty of \$2,000 due on the first day of the first month after the Commission approves the Settlement. The remaining \$5,900 in penalties is suspended for a period of one year provided Spokane Movers substantially complies with the rules enumerated in the penalty assessment. One year after Commission approval of the Settlement, Staff will conduct a follow-up investigation of the business practices of Spokane Movers and will file in this docket a copy of the investigation report together with a recommendation regarding the suspended penalties. Spokane Movers will attend Commission-sponsored training for household goods movers and commits to compliance with all applicable Commission rules.

10 The parties agree that the Settlement represents a compromise position but that it is in their best interest to forego the expense, inconvenience, uncertainty, and delay inherent in litigating this matter. The parties concur that it is in the public interest to avoid further expenditure of public resources and litigation expense. The parties further agree that the public interest is served by the admission of the violations, the payment of a penalty, and the commitment to comply with the Commission's rules. Spokane Movers has demonstrated its commitment to compliance by attending Commission-sponsored training before the Settlement was approved and by providing Staff with copies of the forms it is currently using that comply with Commission requirements. The parties contend that it is also in the public interest that the

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<sup>2</sup> Although Spokane Movers' response was not timely filed, the Commission accepts the late-filed response because Staff did not object to the late-filing and its acceptance does not prejudice any party or the Commission.

Settlement does not limit the Commission's ability to enforce any subsequent violations of the rules at issue in this matter or rules and statutes unrelated to this docket.

- 11 In response to the Commission's Bench Request, Staff states that it is satisfied that Spokane Movers promptly took steps to correct the conditions that led to noncompliance with the Commission's rules including ordering and using new, compliant bills of lading, estimate, and cube sheet forms. Staff is also satisfied that that the violations related to the failure to provide cube sheets appears to have been corrected. In addition, there is no evidence that the conduct leading to the violations was malicious or intended to harm the public. Spokane Movers committed to attending training and actually sent three employees to household goods movers' training on June 16, 2010.
- 12 Staff further stated that suspending a portion of the penalties for one year provides an additional incentive for compliance with Commission rules. Moreover, the follow-up investigation will enable the Commission to monitor continued compliance with applicable rules within a reasonable period of time and seek enforcement action, if necessary.
- 13 In response to the Commission's Bench Request, Spokane Movers asserts that the Settlement satisfies the Commission's interest because it gets \$2,000<sup>3</sup> and relieves the Commission from any responsibility for miscommunication regarding the cube sheet violations.<sup>4</sup> Spokane Movers reiterated that the Settlement saves the time, expense, inconvenience, uncertainty, and delay of litigation.
- 14 **DISCUSSION AND DECISION.** WAC 480-07-750(1) states, in pertinent part, that "[T]he 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

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<sup>3</sup> Any funds collected by the Commission in the form of penalty assessment payments do not become the property of the Commission; these funds are deposited in the Public Service Revolving Fund, which the Commission cannot use unless the funds are appropriated by the state Legislature for the Commission's use.

<sup>4</sup> Motor carriers, including household goods movers, bear the responsibility of complying with all applicable rules and statutes.

the public interest in light of all the information available to the commission.” The Commission considers settlements under a three-part inquiry which asks whether:

- any part of the settlement is contrary to law;
- any aspect of the proposal offends public policy; and
- the evidence supports the proposed elements of the settlement as a reasonable resolution of the issues at hand.<sup>5</sup>

15 After conducting this three-part inquiry, the Commission must reach one of three possible results:

- approve the proposed settlement without conditions;
- approve the proposed settlement subject to condition(s); or
- reject the proposed settlement.

16 In general, and as discussed below, the settlement terms and conditions proposed by the parties, as supplemented by the responses to the Bench Request, are consistent with law and policy and reasonably resolve the issues in this proceeding. The Commission is satisfied that Spokane Movers’ acknowledgement of the violations coupled with the payment of a reduced penalty as well as measures to correct the conditions that gave rise to the violations demonstrate that the Settlement is consistent with the public interest. Spokane Movers promptly took action to correct the conditions that gave rise to the penalty assessment including ordering and using compliant bills of lading, estimate, and cube sheet forms. Moreover, Spokane Movers actually sent three employees to Commission-sponsored training for household goods movers.

17 In addition to Spokane Movers’ commitment to comply with Commission rules, suspending a portion of the penalty for one year provides an additional incentive for compliance. Staff’s follow-up investigation will enable the Commission to monitor continued compliance with Commission rules.

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<sup>5</sup> *Washington Utilities and Transportation Commission v. PacifiCorp d/b/a Pacific Power & Light Company*, Docket UT-080220, Order 05 entered October 8, 2008.

18 For all the foregoing reasons, the Settlement should be approved and adopted, without further conditions, as the full resolution of the issues in this proceeding.

**ORDER**

THE COMMISSION ORDERS THAT:

- 19 (1) The Settlement Agreement filed by both parties to this proceeding on June 23, 2010, and attached to and incorporated into this Order by prior reference is approved and adopted.
- 20 (2) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, any filing that complies with the requirements of this Order.
- 21 (3) Spokane Movers is required, by the first day of the first month after issuance of this Order, to pay \$2,000 in mitigated penalties. The remainder of the penalty, \$5,900, is suspended for one year on condition that Spokane Movers substantially complies with Commission laws and rules set forth in the Penalty Assessment.
- 22 (3) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective July 23, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK  
Administrative Law Judge

## NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition To Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition To Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, 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. You will be notified if this order becomes final.

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

Attn: David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250

[Service Date July 23, 2010]

# Attachment

## Settlement Agreement