



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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Via Electronic Mail Only

August 15, 2019

Andrew J. O'Connell, Administrative Law Judge
Washington Utilities and Transportation Commission
621 Woodland Square Loop S.E.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: *WUTC v. JFS Transport, Inc. d/b/a Coast Movers – Staff Response to Company Request to Modify the Settlement Agreement in Order 02*
Docket TV-180315

Dear Judge O'Connell:

For the reasons set forth below, Consumer Protection staff (Staff) of the Washington Utilities and Transportation Commission (Commission) respectfully requests that the Commission deny JFS Transport, Inc. d/b/a Coast Movers' (JFS Transport or Company) request to modify the settlement agreement approved by Order 02 in Docket TV-180315.

On June 20, 2018, the Commission issued Order 01, Complaint for Penalties; Notice of Brief Adjudicative Proceeding (Complaint) in Docket TV-180315, alleging seven causes of action totaling 241 violations of Washington Administrative Code (WAC) chapter 480-15 by the Company, as well as violations of Tariff 15-C. The Complaint sought to impose penalties on the Company for these violations of Commission rules and statutes. The Complaint also ordered the Company to appear before the Commission at a brief adjudicative proceeding on July 24, 2018, at 9:30 a.m. The brief adjudicative proceeding was later rescheduled for August 20, 2018, at 1:30 p.m. based on the Company's unopposed request for a continuance.

On August 10, 2018, counsel for Staff filed a letter on behalf of the parties in this docket indicating that the parties had reached a settlement in principle. The parties requested temporary suspension of the procedural schedule and proposed filing a final settlement proposal and supporting joint narrative by August 31, 2018. At the request of the parties, this date was later extended to September 14, 2018. On September 14, 2018, counsel for Staff filed a joint settlement agreement and appendices (Settlement Agreement) on behalf of the parties. On

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September 21, 2018, counsel for Staff filed a supporting joint narrative in support of the Settlement Agreement (Narrative).

On September 24, 2018, the Commission approved the Settlement Agreement and the accompanying Narrative in Order 02 in Docket TV-180315.

As of August 15, 2019, the Company has paid \$2,750 of the \$5,000 unsuspended penalty, and has a remaining balance of \$2,250.

On July 31, 2019, the Company contacted Administrative Law Judge Andrew J. O'Connell via email and made the following request (Request):

This is an email to request for our 2 year probation to be terminated after payment of full balance is made.

We have a balance of about \$2500 due.

Here at JFS Transport Inc we understand there is a 2 year probation.

And we have since made sure ALL paperwork is filled out by our team and the customer (Bill Of Lading, Estimate, Cube Sheet, Etc).

The Request did not attach any evidence, documentation, or include any additional argument in support of modifying the Settlement Agreement.

On August 1, 2019, the Commission issued a notice requiring Staff respond to the Company's Request, through a letter to the Commission, by August 15, 2019 (Notice). This letter represents Staff's response pursuant to the Notice.

Applicable Law

The Commission has authority to alter or amend its prior orders.¹ Concerning settlements, WAC 480-07-730 sets forth the Commission's definition of a "full" settlement as "an agreement among two or more parties to a commission adjudication . . . that would resolve all disputed issues in an adjudication."² WAC 480-07-740 provides that, when seeking Commission approval of a settlement, the settling parties "must include supporting documentation sufficient to demonstrate that the settlement is consistent with law and the public interest."³ This supporting documentation "must include or reference sufficient evidence to support commission approval and adoption of the settlement agreement . . ."⁴ WAC 480-07-750 states that the Commission will decide whether to consider a settlement, and that the Commission "generally

¹ See RCW 80.04.210; WAC 480-07-875.

² WAC 480-07-730(1).

³ WAC 480-07-740(3).

⁴ WAC 480-07-740(3)(a).

will consider a settlement that complies with the requirements of WAC 480-07-740.”⁵ The Commission will approve or reject a settlement depending on whether the settlement “is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.”⁶

Staff's Response to the Company's Request

Staff respectfully requests that the Commission deny JFS Transport's Request. The Settlement Agreement represented a negotiated compromise of the parties' positions, that each individual party believed to be in their best interest (e.g., to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome).⁷ In order to reach the “full resolution of all matters in dispute” that the Settlement Agreement represented, the parties bargained for certain terms, including the following:

- That JFS Transport committed the 241 violations of WAC chapter 480-15 and Tariff 15-C as alleged in the Complaint.⁸
- That JFS Transport would refund \$3,324.50 to customers, representing the amount the Company overcharged its customers between February 1, 2017, and April 30, 2017.⁹
- That \$15,000 represented an appropriate total penalty amount, with a \$10,000 portion of that amount suspended for a period of two years, subject to the condition that (1) the Company not incur any repeat violation of state law, Commission orders, rules, or Tariff 15-C for a period of two years following the issuance of Order 02; and (2) the Company not fail to pay any monthly installments toward the \$5,000 portion of the total penalty amount that was not suspended and therefore due to be paid to the Commission as contemplated by the Settlement Agreement.¹⁰
- That Staff would conduct a review of the Company within two years of the effective date of Order 02, and provide its recommendation as to whether the Commission should waive or impose the suspended penalty amount of \$10,000.¹¹

⁵ WAC 480-07-750(1).

⁶ WAC 480-07-750(2).

⁷ See Narrative ¶ 10; see also, Order 02 ¶ (“The parties made concessions relative to their respective litigation positions to arrive at a settlement that is in the interest of all parties and in the public interest.”).

⁸ Settlement Agreement ¶ 8.

⁹ *Id.* ¶ 9.

¹⁰ *Id.* ¶ 10.

¹¹ *Id.* ¶ 12.

- That JFS Transport would create and use, for all intrastate moves, a Bill of Lading, Cube Sheet, Estimate, an internal Moving Checklist for employees, and have available an appropriate Complaint Form.¹²

From Staff's perspective, each of the above-referenced provisions were vital and necessary to Staff's decision to enter the Settlement Agreement; Staff would not have agreed to enter such an agreement without the inclusion of the above provisions. The Company's request to unilaterally modify the Settlement Agreement to remove the two-year period during which the \$10,000 suspended penalty applies is against the public interest as it would deprive the Commission of an imperative enforcement tool that represented decisive consideration for Staff's agreement to settle this dispute. The Company agreed that the \$15,000 total penalty amount—including both the suspended and unsuspended portions—was a fair and appropriate compromise within the context the Settlement Agreement's other provisions. Granting the Company's Request would represent a unilateral contract modification and windfall for the Company, unsupported by mutual consideration and without Staff's agreement.¹³ Staff routinely utilizes suspended penalties as one of its primary means of obtaining and ensuring compliance and, for that reason, does not agree with the Company's Request to remove the suspended penalty.

Furthermore, the primary goal of enforcement efforts by Staff is to achieve compliance.¹⁴ The \$10,000 suspended penalty and the associated two-year "probation" period provide an important incentive for the Company to refrain from additional and/or repeat violations, and to ensure that the Company follows through with the other negotiated terms of the Settlement Agreement (e.g., participation in the two-year follow-up review, use of proper documentation for intrastate moves, etc.).¹⁵ Importantly, the \$10,000 suspended penalty would only kick in if the Company committed an additional and/or repeat violation. In Order 02, the Commission found that the \$10,000 suspended penalty, associated two-year time period, and payment plan provisions were appropriate and reasonable.¹⁶ After considering each of the negotiated terms of the Settlement Agreement, the Commission concluded that "evidence supports the proposed elements of the Settlement Agreement as reasonable resolutions of the issues at hand" and that the "Settlement Agreement is consistent with the public interest and should be approved as filed."¹⁷

¹² *Id.* ¶ 14.

¹³ The Company's only argument in support of the Request is that, so far, the Company has complied with the requirement that the Company use proper documentation for intrastate moves. Staff notes, however, that this is only one of the Company's obligations flowing from the Settlement Agreement, many of which remain incomplete. The Company should not be permitted to modify the Settlement Agreement using its own basic and currently incomplete compliance with that very agreement as support.

¹⁴ See Narrative ¶ 12.

¹⁵ See Order 02 ¶ ("[T]he Parties have agreed to a compliance plan that will help ensure the Company's future compliance with the Commission's rules and regulations.").

¹⁶ Order 02 ¶ 28.

¹⁷ *Id.* ¶ 29.

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By contrast, the Company has offered none of the required supporting evidence, documentation, or analysis in support of its requested modification.

For the reasons listed above, Staff respectfully requests that the Commission deny JFS Transport's Request to modify the settlement agreement approved by Order 02 in Docket TV-180315.

Sincerely,

Bridgit Feeser
Assistant Director, Consumer Protection