

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

JFS TRANSPORT, INC. d/b/a
COAST MOVERS

Respondent.

DOCKET TV-180315

ORDER 03

DENYING REQUEST TO MODIFY
SETTLEMENT AGREEMENT

BACKGROUND

- 1 **PROCEDURAL HISTORY.** On June 20, 2018, the Washington Utilities and Transportation Commission (Commission) issued Order 01, Complaint for Penalties; Notice of Brief Adjudicative Proceeding (Order 01 or Complaint) in Docket TV-180315. The Commission initiated this proceeding as the result of a Commission staff (Staff) investigation of JFS Transport, Inc., d/b/a Coast Movers (JFS Transport or Company). The Complaint alleged seven causes of action that included 241 violations of Washington Administrative Code (WAC) chapter 480-15 and Tariff 15-C, and requested that the Commission impose monetary penalties on the Company for violations of Commission rules and state laws and order the Company to refund excess charges to customers who had been overcharged. Order 01 required the Company to appear before the Commission at a brief adjudicative proceeding.
- 2 On August 10, 2018, Staff filed a letter with the Commission indicating that Staff and JFS Transport (collectively, the Parties) had reached a settlement in principle. The Parties requested the Commission temporarily suspend the procedural schedule and allow the Parties to file a final settlement proposal and supporting narrative, or a status report, by August 31, 2018. At the Parties' request, this date was later extended to September 14, 2018.

- 3 On September 14, 2018, Staff filed on behalf of the Parties a Joint Settlement Agreement (Settlement Agreement) and Appendices. On September 21, 2018, Staff, through its attorney and on behalf of the Parties, filed a Supporting Narrative in support of the Settlement Agreement.
- 4 On September 24, 2018, the Commission issued Order 02, Initial Order Approving Settlement Agreement. As part of the Settlement Agreement, the Parties agreed that the Company would refund customers and pay a total penalty of \$15,000 with a \$10,000 portion of that amount suspended subject to conditions for a period of two years and then waived thereafter. The Parties also agreed the Company would pay the remaining \$5,000 portion of the penalty according to the terms of a payment plan.
- 5 On July 31, 2019, the Company contacted the presiding officer via email and requested that the Commission modify the Settlement Agreement to remove the two-year suspension period, during which the Company may not incur any repeat violations of state law, Commission orders, rules, or Tariff 15-C.
- 6 The Commission construed the Company's request as a request to modify the Settlement Agreement, and on August 1, 2019, issued a Notice Requiring Staff to Respond to the Company's request.
- 7 On August 15, 2019, Staff filed a letter opposing the Company's request to modify the Settlement Agreement and asking the Commission to deny the Company's request.
- 8 Staff states in its letter that the Settlement Agreement represented a negotiated compromise of the parties' positions, and that granting the Company's request would undermine the agreement and remove one of Staff's "primary means of obtaining and ensuring compliance." Staff explains that the \$10,000 suspended penalty and the two-year period after which it is waived subject to condition provides "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" Lastly, Staff argues that the Company has failed to offer any supporting evidence, documentation, or analysis in support of its request.

DISCUSSION AND DECISION

- 9 We agree with Staff and deny the Company's request to modify the Settlement Agreement. The Commission has authority to rescind, alter, or amend any order at any

time after giving the parties an opportunity to be heard.¹ In this case, the Commission approved a Settlement Agreement between JFS Transport and Staff. We determined that the Settlement Agreement was lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available.

- 10 The parties made concessions relative to their respective litigation positions to arrive at the Settlement Agreement and agreed that it was in the interest of all parties and in the public interest. JFS Transport admitted that it violated state and federal laws and rules. The Company also agreed that the Commission should assess a penalty of \$15,000 for those violations and require the Company to issue refunds to the customers that it overcharged between February 1, 2017, and April 30, 2017. Finally, the Parties agreed to a compliance plan that was designed to ensure the Company's future compliance with the Commission's rules and regulations.
- 11 The Company's request would keep intact the majority of the Settlement Agreement. It would, however, remove the two-year period after which the \$10,000 suspended penalty would be waived as long as the Company does not incur any repeat violation of state law, Commission orders, rules, or Tariff 15-C, and does not fail to pay any monthly installment towards the \$5,000 unsuspended penalty amount. The Company's request would relieve them of the obligation to comply with these terms of the Settlement Agreement.
- 12 We agreed with the Parties that a total penalty of \$15,000 was appropriate in this case. We agreed with the Parties that a \$10,000 portion of that amount should be suspended for two years and then waived subject to conditions. We find that effectively reducing the \$15,000 penalty amount to \$5,000 is not justified in this case. The Company has not provided any evidence, compelling or otherwise, that would justify its proposed modification to the Settlement Agreement. Additionally, there is no agreement between the Parties to make any modification to the Settlement Agreement.
- 13 The suspended penalty amount serves as a strong incentive to ensure compliance with Commission orders and rules. The Commission seeks compliance from the companies that it regulates and, in cases like this, prioritizes mechanisms that encourage future compliance over the remittance of increased penalty amounts.

¹ RCW 80.04.210; WAC 480-07-875.

- 14 The suspension period is favorable to the Company. It affords some relief to the Company from the burden of the full \$15,000 penalty amount by suspending a \$10,000 portion. In return, it affords the Company *the opportunity* over the subsequent two years to demonstrate compliance with state law, Commission orders, rules, and Tariff 15-C in order to justify the Commission's decision to waive a large portion of the penalty.
- 15 Staff can investigate any company under Commission regulation at any time. The spontaneity and unpredictability of these investigations helps ensure compliance with Commission rules. JFS Transport benefits from the two-year suspension period by providing notice that Staff will conduct a compliance investigation of the Company within two years.
- 16 Accordingly, we conclude that waiving the suspension period is contrary to the public interest. However, the Company may pay the full \$15,000 penalty amount and thereby render moot the two-year suspension period. The remainder of the Settlement Agreement – reimbursements to customers, the payment plan, and the creation and use a Bill of Lading, Cube Sheet, Estimate, Complaint Form for customers, and an internal Moving Checklist for its employees – remains in effect. Staff would also be able to investigate the Company unpredictably at any time and, rather than recommend imposition of the suspended penalty, seek new penalties of up to \$1,000 per occurrence for any violations discovered.
- 17 Ultimately, the Company can choose to comply with state law, Commission orders and rules, and Tariff 15-C during the two-year suspension period, or it can choose to remit the suspended penalty amount. If the Company would rather not be subject to the two-year suspension period (and the condition that it comply with state law, Commission orders, rules, and Tariff 15-C), it is consistent with the Settlement Agreement for the Company to pay the \$15,000 total penalty amount (\$10,000 suspended penalty and \$5,000 unsuspended penalty) and for the two-year suspension period to be removed.
- 18 Accordingly, we deny the Company's request to modify the Settlement Agreement. By this Order, however, we clarify that it is consistent with the Settlement Agreement for the Company to pay the full \$15,000 penalty amount, thereby relieving the Company of the conditions of the two-year suspension period. No other part of the Settlement Agreement would be affected.

FINDINGS AND CONCLUSIONS

- 19 (1) The Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including household goods carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 20 (2) JFS Transport is a household goods carrier subject to Commission regulation.
- 21 (3) JFS Transport has failed to support its request to modify the Settlement Agreement, which would relieve it of any obligation to pay the \$10,000 suspended portion of the full \$15,000 penalty amount.
- 22 (4) The Commission should deny JFS Transport's request to modify the Settlement Agreement.
- 23 (5) If JFS Transport remits the full \$15,000 penalty amount (including the \$10,000 suspended penalty amount and the \$5,000 unsuspended penalty amount), the two-year suspension period is rendered moot.
- 24 (6) It is consistent with the Settlement Agreement in this case that the two-year suspension period be removed if JFS Transport remits the full \$15,000 penalty amount.
- 25 (7) Every other portion of the Settlement Agreement would remain in effect if JFS Transport remitted the full \$15,000 penalty.

ORDER

THE COMMISSION ORDERS:

- 26 (1) JFS Transport, Inc., d/b/a Coast Movers' request to modify the Settlement Agreement is DENIED.

- 27 (2) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective August 26, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*

ANDREW J. O'CONNELL
Administrative Law Judge