



TV-210812

TV-210535

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VIA ELECTRONIC FILING

Amanda Maxwell
Executive Director and Secretary
Washington Utilities & Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

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UTIL. AND TRANSP.
COMMISSION

Re: *Clutter Inc.'s Petition to Revise Tariff 15-C (TV-210535) and Washington Movers Conference's Petition to revise Tariff 15-C (TV-210812)*
Docket No. TV-210812 and TV-210535 (consolidated cases)

Comments of Clutter Inc.

Dear Executive Director and Secretary Maxwell:

Clutter Inc. ("Clutter") appreciates the opportunity to provide additional comments pursuant to the Washington Utilities and Transportation Commission's ("Commission") May 16, 2022, Notice of Opportunity to File Written Comments in the above referenced Dockets.

Clutter responds to the Commission's questions as follows:

1-8. Cost of Service Information

In general, questions 1-8 requests cost of service information from carriers to determine if the rates and charges in Tariff 15-C are fair, just and reasonable. Clutter will cooperate with Staff in developing a cost-of-service model, but views the information requested in questions 1-8 as competitively sensitive information.

Notwithstanding, the current operating environment is very challenging, and all carriers are facing worker shortages, supply chain issues, increased material costs, and increased fuel and labor costs. For example, fuel costs have increased by approximately 64 percent comparing 2022 to 2021.¹ Similarly, materials costs—including pallets, boxes, blankets, and other packing

¹ See https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_nus_m.htm

supplies—have increased by approximately 60 percent comparing that same time period. For example, pallets have increased in price from \$9.50 to \$15.50. And, as the Commission recognized in its Order 03 in this docket, there has been a 12.1 percent increase to the Consumer Price Index since the last revision to Tariff 15-C.

Once the rate bands have been adjusted for 2022 costs, Clutter recommends that the rate bands be adjusted annually for inflation.

9. How do you currently estimate travel time back to the yard after a job (i.e. Google Maps, GPS, etc.)?

Clutter uses Google Maps.

10. If you over or underestimate the travel time, do you perform a billing correction?

When billing for transportation, Tariff 15-C allows carriers to use actual time or a flat travel time. Clutter does not perform a billing correction for over or under estimating travel time.

Clutter also notes that billing for transportation time is permissive under Tariff 15-C, Item 230 (4) which provides:

When transporting a single shipment, the carrier **may** bill the customer either:

a. The time beginning when the moving vehicle leaves the carrier’s terminal or other location of the vehicle (whichever is closest) to the origin of the shipment, until the time the vehicle returns to the carrier’s terminal or is dispatched to another job.

b. Flat travel time for the time from the carrier’s terminal or other location of the vehicle (whichever is closest) to the origin of the shipment and the time from the shipment’s destination to the carrier’s terminal. (emphasis added).

Clutter interprets this provision as giving the carrier the choice to bill for transportation. Tariff 15-C, Item 230 (5) is worded differently, and provides:

5. When a single vehicle combines two or more shipments, the time charged to each customer **must** be the actual time spent conducting packing, loading, unloading and unpacking plus an equitable division of the total travel time. (emphasis added).

Use of the word “must” or “shall” is mandatory. The only way to reconcile section 4 and section 5 is to interpret section 5 which requires the “equitable division of total travel time” as applicable only if the carrier elects to bill for transportation as provided in section 4.

12. Tariff 15-C allows for overtime charges in Items 50 and 190, which apply to the same time periods as moves that would require a 4-hour minimum. Please explain why a 4-hour minimum is necessary when these overtime charges are also allowed for moves that occur before 8 AM or after 5 PM Monday through Friday or on weekends and holidays.

As Clutter interprets the overtime provisions in Tariff 15-C, a household goods carrier may charge overtime only for *loading and unloading services* during certain hours of the day, weekends and holidays. In other words, as written, it is unclear if the Tariff allows overtime charges to include time in transit. Further, Carriers may not charge overtime if the overtime was provided for the carrier's convenience or because of the carrier's schedule. And, overtime is only allowed at the request of the customer and at the option of the carrier. The four hour minimum and overtime provisions do not seem to be duplicative, but Clutter would be interested to review the comments of other stakeholders.

As provided in Clutter's prior comments, Clutter recommends that the four-hour minimum requirement be eliminated from Tariff 15-C because some jobs can be done more expeditiously.

Notwithstanding, Clutter requests that the Tariff allow a carrier to set a minimum time for a move so long as it is clearly stated in the estimate and bill of lading. For example, there may be moves that require a minimum hourly charge to make it economical for the carrier, which is why the 4-hour minimum move on weekends, after hours and holidays is likely in the Tariff. In other words, *a carrier should be allowed to set a specific hourly minimum for a move, but should not be required to*. Customers may shop around to find the most competitive carrier for a move.

Clutter recommends that Tariff 15-C, Item 230(7) be deleted in its entirety and that Tariff 15-C, Item 230(3) be revised as follows:

3. *The minimum hourly charge when using hourly rates is one hour. Carriers may use a different hourly minimum so long as the hourly minimum is in the estimate and bill of lading.*

13. During the May 5, 2022 workshop, Clutter stated that it was considering some revisions to the Clutter Petition. Staff requests that Clutter file any revisions to the Clutter Petition by May 27, 2022.

At the May 5, 2022 workshop, the stakeholders provided comments confirming that traditional point-to-point moves with temporary storage are separate and distinct services from transportation that is ancillary to storage service. Some stakeholders commented that the Small Goods Transportation and Storage tariff provisions have been working well. Clutter observes that there is no regulatory purpose served by limiting the category of Transportation and Storage to "small" goods based on arbitrary size and weight limits. From both a functional and a regulatory perspective, it does not matter whether the goods to be stored are 100 pounds, or 600 pounds, or whether the move involves 20, 35, or 50 items. What matters is whether the primary purpose of the services to be provided are a household goods move or storage, the latter of which

is unregulated by the Commission. Clutter submits this revised proposal for amending Tariff 15-C, Item 102 to more clearly distinguish between Transportation and Storage from traditional point-to-point household goods moves.

Clutter recommends that any move that includes storage for 30 or more days would qualify as "Transportation and Storage" regardless of the size, weight and quantity of the goods shipped. However, to address the concerns raised at the conference, if at the time of the move the customer identifies both a point of delivery that is different from the point of origin and a delivery date that is not more than 90 after onboarding, then the move would be regulated as Storage-In-Transit.² In other words, if a traditional household goods move requires a storage component with a specific location different from the onboarding site and specific delivery date, it would not be considered a Transportation and Storage move.

Regulating moves that primarily involve storage in this manner would also more closely align with federal law. The Primary Business Test was developed as a way to determine the difference between a for hire motor carrier which was subject to regulation by the Interstate Commerce Commission (ICC) and a private carrier, exempt from regulation from the ICC. As relevant here, a private carrier is exempt from regulation by the Secretary of Transportation if the transportation it conducts is incidental and within the scope of a non-transportation primary business—in this case storage. The Primary Business Test has been codified in 49 USC §13505. Transportation furthering a primary business:

(a) IN GENERAL. Neither the Secretary nor the Board has jurisdiction under this part over the transportation of property by motor vehicle when—

(1) the property is transported by a person engaged in a business other than transportation; and

(2) the transportation is within the scope of and furthers a primary business (other than transportation) of the person.

Clutter provides the following suggested revisions to Tariff 15, Item 102:

ITEM 102 – ~~SMALL~~ GOODS TRANSPORTATION AND STORAGE “~~Small~~ Goods Transportation and Storage” is the transportation of household goods by a carrier from a customer’s residence to a warehouse, storage unit, or other storage facility owned or rented by the carrier with the intent to later transport the goods back to the customer’s

² The “Storage-in-Transit” provision in Tariff 15-C would also need to be amended. Storage in Transit could be defined as follows: “Temporary storage of less than 30 days of Household Goods that is incidental to the Transportation of such Household Goods from one point to another by a single Carrier. Notwithstanding the forgoing, Storage-in-Transit shall also include the temporary storage of Household Goods for up to 90 days if, at the time of the move, the Customer identifies to the Carrier a specific date for delivery and a delivery address that is different from the address of origin.”

residence or other location. ~~For purposes of this Item 102, Due to the limited size and volume of the household goods to be included in Small Goods Transportation and Storage,~~ the household goods of one customer may be stored in the same warehouse, storage unit, or other storage facility as another customer's household goods. As multiple customers' goods may be held in the same location, no customer may have physical access to the goods while in storage.

1. Application of Tariff

a. Carriers engaged in ~~Small~~ Goods Transportation and Storage must comply with all provisions of this Tariff unless otherwise noted.

~~2. Limitations a. Small Goods Transportation and Storage is limited to a shipment of twenty five household goods articles or a maximum of 500 pounds from each customer per week. b. For purposes of Small Goods Transportation and Storage, a household goods article is defined as a box containing household goods that can reasonably be carried by one person or an unboxed household good that can reasonably be carried by one person.~~

3. Return of Household Goods

a. A carrier must, upon request by the customer and upon receipt of final payment, retrieve the household goods and return the household goods to the customer within ~~five~~ three business days or as soon as reasonably possible under the circumstances. Carriers shall also indicate whether they will allow customer to avoid a final delivery charge by picking up items from the warehouse, subject to a handling fee.

b. When household goods cannot be returned to the customer through no fault of the carrier, the carrier must retain possession of the household goods until the circumstances resulting in the failed return are remedied. The customer may be liable for any additional charges resulting from the failed return.

Finally, as reflected in the suggested change to Item 102(3) above, there is one provision in the "small" goods transportation and storage contract that Clutter seeks to amend. Requiring an indefinite binding price for the return of an item is not reasonable, nor is it always reasonable to expect the immediate return of an item. Clutter recommends that carriers be able to increase prices after reasonable notice to the customer. That way, a customer could elect to remove the goods from storage before the price increase. Clutter recommends that the "small" goods transportation and storage contract be amended as follows:

xii. a ~~binding~~ price for return of the household goods to the customer within ~~five~~ three business days of the customer's request for return or as soon as reasonably possible under the circumstances. The price for return of the household goods shall be binding unless the carrier notifies the Customer at least 30 days in advance of a price change;

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Clutter also recommends adding a box on the “small goods” transportation and storage contract informing customer whether it is possible to avoid a final delivery charge by picking up items from the warehouse, subject to a handling fee.

Clutter continues to recommend that one form contract be used for both traditional household goods moves and “small” goods and transportation moves. The standard bill of lading and the Small Goods Transportation and Storage contract are similar--with only a few differences. Upon request, Clutter will provide a draft consolidated agreement for Stakeholder review.

Clutter looks forward to working with Staff and other stakeholders in these dockets and appreciates the opportunity to provide these comments.

Thank you for your assistance.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Chad M. Stokes', with a stylized flourish extending to the right.

Chad M. Stokes
Attorneys for Clutter

CMS:bh

cc: Clutter Inc. (*via e-mail only*)
Service List (*via e-mail only*)