



TV-210535

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June 12, 2023

**SENT VIA WEB PORTAL**

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

Re: *Inquiry to determine the appropriateness of updates to Tariff 15-C,  
Dockets TV-210535 and TV-210812 (consolidated)*

Dear Director Maxwell:

The Public Counsel Unit of the Washington State Attorney General's Office (Public Counsel) respectfully submits these comments in response to the Washington Utilities and Transportation Commission's (Commission) May 12, 2023, Notice of Opportunity to Submit Written Comments (Notice) in consolidated Dockets TV-210535 and TV-210812. The Commission opened these dockets in response to separate petitions from Clutter, Inc. (Clutter) and the Washington Movers Conference (WMC) requesting revisions to Tariff 15-C. Public Counsel appreciates the opportunity to comment in these dockets and offers responses to Commission Staff's proposed changes to Tariff 15-C.

Public Counsel has participated in these dockets, including the May 5, 2022 workshop, and previously submitted substantive written comments on March 24, 2022. Public Counsel generally supports Commission Staff's proposed revisions to Tariff 15-C, though we have some concerns and additional questions. Below we address the revisions that we have earlier commented on and highlight any remaining concerns.

**Storage in Transit – Item 10, Item 100**

Tariff 15-C currently defines storage-in-transit as “Temporary warehouse storage (80 days or less) of a shipment pending further transportation.”<sup>1</sup> Clutter recommended that the Commission change the definition of storage-in-transit from temporary warehouse storage for 90 days to 30

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<sup>1</sup> Tariff 15-C, Item 10 – Definitions, at 1<sup>st</sup> Revised Page No. 6\*.

ATTORNEY GENERAL OF WASHINGTON

To: Amanda Maxwell, Executive Director and Secretary  
Re: Dockets TV-210535 and TV-210812 (*consolidated*)  
June 12, 2023  
Page 2 of 7

days.<sup>2</sup> The draft tariff language maintains the 90-day storage in transit definition.<sup>3</sup>

Public Counsel recommended the Commission keep the current, 90-day definition of storage-in-transit for all household goods movers including Clutter, Inc. Public Counsel was concerned that, while the Commission retains jurisdiction and extends its protection over household goods and services while the goods are in “storage-in-transit,” the Commission loses its jurisdiction once the goods are converted into permanent storage. Retaining the longer, 90-day definition ensures customers who may need additional time to determine a permanent location for their household goods are protected by Commission rules and oversight. Ninety days also provides sufficient time for customers to move their goods if they do not agree to the terms offered by the warehouse for permanent storage when the storage-in-transit converts to permanent storage. Additionally, as noted by the Washington Movers Conference (WMC), the 90-day term is available for the convenience of the consumer, and customers may remove their goods from storage-in-transit at any time within the 90 days. Public Counsel therefore supports the draft tariff’s treatment of storage-in-transit.

**Contract for Small Goods Transportation and Storage Services – Item 102(5), Item 95**  
Tariff 15-C, Item 102(5)(c) states, in relevant part:

A contract for Small Goods Transportation and Storage must include, at a minimum, the following:

...

(ii) the name, telephone number, e-mail address, if available, and mailing address of the customer;

...

(xii) a binding price for return of the household goods to the customer within three business days of the customer’s request for return.<sup>4</sup>

In addition, Item 102(6) (“Carrier Liability”) states that “[t]he carrier’s liability for the household goods does not cease until the household goods are returned to the customer.”

Item 95 includes substantially the same provisions as Item 102(5) but states, in part:

The bill of lading must include . . . :

(g) A separate section of the form that includes a declaration of the length of time and location at which the customer wishes property to be stored. For example:

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<sup>2</sup> WMD Petition, *Inquiry regarding Updates to Tariff 15-C*, Dockets TV-210535 and TV-210812 (*consol.*) (filed Oct. 11, 2021).

<sup>3</sup> See Draft Tariff 15-C, Item 10 – Definitions, at 2<sup>nd</sup> Revised Page No. 6 (issued May 12, 2023).

<sup>4</sup> Tariff 15-C, Item 102(5)(c), at Original Page No. 29-A.

ATTORNEY GENERAL OF WASHINGTON

To: Amanda Maxwell, Executive Director and Secretary  
Re: Dockets TV-210535 and TV-210812 (*consolidated*)  
June 12, 2023  
Page 3 of 7

- (i) Storage-in-transit (storage for 90 days or less).
  - (ii) Permanent storage (storage for more than 90 days).
  - (iii) Storage in the carrier's vehicle.
- (h) A separate section of the form that indicates whether the associated estimate is binding or nonbinding.<sup>5</sup>

The section on carrier liability for Item 95 holds that “[t]he carrier is liable for physical loss of, or damage to, any article . . . held in Storage-in-Transit.”<sup>6</sup>

Public Counsel does not believe that the existing bill of lading should replace the contract for small goods transportation and storage services on a permanent basis. We noted that, although they contain substantially similar information, Item 102(5) includes a number of important consumer protection provisions that are excluded by Item 95.<sup>7</sup> Item 102(5) requires “a binding price for the return of the household goods to the customer within three business days of the customer’s request for return”<sup>8</sup> and binds the carrier to a stated price for this service and protects the customer from last minute price changes. By contrast, Item 95 does not require the carrier to return the customer’s goods by any specific time and holds the carrier liable only for items held in storage-in-transit.<sup>9</sup>

The Washington Movers Conference and other moving companies argue that the existing bill of lading should not replace the contract for small goods transportation and storage services on a permanent basis. They point out that the contract of small goods is simple since it covers transportation from origin to a storage facility, while the bill of lading is inclusive for all services between residence and destination including, but not limited to packing, unpacking, storage 3<sup>rd</sup> party services.<sup>10</sup> If using the same bill of lading would entail additional items being added to Item 95 to cover small goods transportation and storage, it might make it more confusing for the consumer.<sup>11</sup>

The draft tariff does not get rid of Item 102(5) and the language is essentially the same as the previous version with the exception of a couple minor changes. Item 102(5)(c)(ii) replaces the word “available” with “any” in reference to the name, telephone number, and e-mail address that must be included in a contract for Small Goods Transportation and Storage.<sup>12</sup> This helps the consumer, as moving companies are required to include the customer’s name, telephone number, and e-mail address if it exists rather than only when it is made available to them. Accordingly,

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<sup>5</sup> Tariff 15-C, Item 95, at Original Page No. 20.

<sup>6</sup> Tariff 15-C, Item 95(2)(A), at 1<sup>st</sup> Revised Page No. 21\*.

<sup>7</sup> Comments of Public Counsel at 3, *Inquiry regarding Updates to Tariff 15-C*, Dockets TV-210535 and TV-210812 (*consol.*) (filed Mar. 24, 2022).

<sup>8</sup> Tariff 15-C, Item 102(5), at Original Page No. 29-A.

<sup>9</sup> Tariff 15-C, Item 95.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Draft Tariff 15-C, Item 102(5)(c)(ii), at 1<sup>st</sup> Revised Page No. 29-B.

## ATTORNEY GENERAL OF WASHINGTON

To: Amanda Maxwell, Executive Director and Secretary  
Re: Dockets TV-210535 and TV-210812 (*consolidated*)  
June 12, 2023  
Page 4 of 7

Public Counsel supports the Commission's adoption of this provision.

The draft tariff also modifies Item 102(5)(c)(xii). While the previous version stated that a contract for Small Goods Transportation and Storage must include "a binding price for return of the household goods to the customer within *three* business days of the customer's request for return,"<sup>13</sup> the draft tariff increases this period to five business days.<sup>14</sup> Although this modification does not specifically conflict with Public Counsel's concerns, it is not favorable to the customer since it increases the period of time that they are required to be without their items. However, the draft tariff still maintains that the carrier's liability for household goods under a contract for small goods transportation and storage does not cease until the goods are returned to the customer.<sup>15</sup> Item 102(5) of the draft tariff preserves the protective provisions that Public Counsel is concerned would be eliminated if replaced by Item 95. Accordingly, Public Counsel supports the proposed revisions to Item 102(5).

### **Item 230(5) and (6): Recording Time for Billing**

The existing version of Tariff 15-C requires household goods movers to bill customers in 15-minute increments.<sup>16</sup> In our previously filed comments, Public Counsel expressed support for adding an option for moving companies to bill by the minute or in 15-minute increments. We noted that the change could benefit customers who might "only need quick access to their items" and would not force carriers to modify their business practices or billing systems.<sup>17</sup>

The proposed revisions to Tariff 15-C allow for carriers to choose to record time in either 15-minute increments or in one-minute increments.<sup>18</sup> If a carrier wishes to record time in one-minute increments, they must submit the Alternate Time Recording Form, which would be effective five days after the Commission has received the form.<sup>19</sup> The draft tariff revisions also allow for carriers to return to using the standard 15-minute increment for billing upon submission of the Alternate Time Recording Form, again being effective five days after the Commission's receipt.<sup>20</sup> Public Counsel believes that this a reasonable revision, which allows companies the flexibility to choose which billing increment best suits their business operations. Thus, Public Counsel supports the Commission's adoption of this provision.

### **Item 230(1)-(4): Minimum Charges for Hourly Rates**

Current tariff language requires a minimum charge of one hour for moves requested on Monday

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<sup>13</sup> Tariff 15-C, Item 102(5)(c)(xii), at Original Page No. 29-A (emphasis added).

<sup>14</sup> Draft Tariff 15-C, Item 102(5)(c)(xii), at 1<sup>st</sup> Revised Page No. 29-B.

<sup>15</sup> Draft Tariff 15-C, Item 102(6), at 1<sup>st</sup> Revised Page No. 29-B: "a. The carrier's liability for household goods does not cease until the household goods are returned to the customer. b. The amount of liability is determined consistent with Item 85 and Item 90."

<sup>16</sup> Tariff 15-C, Item 230(2), at 2<sup>nd</sup> Revised Page No. 50\*.

<sup>17</sup> Comments of Public Counsel, at 4, Dockets TV-210535 and TV-210812 (*consol.*) (filed Mar. 24, 2022).

<sup>18</sup> Draft Tariff 15-C, Item 230(5) and (6), at 3<sup>rd</sup> Revised Page No. 50\*.

<sup>19</sup> Draft Tariff 15-C, Item 230(6), at 3<sup>rd</sup> Revised Page No. 50\*.

<sup>20</sup> Draft Tariff 15-C, Item 230(6), at 3<sup>rd</sup> Revised Page No. 50\*.

## ATTORNEY GENERAL OF WASHINGTON

To: Amanda Maxwell, Executive Director and Secretary  
Re: Dockets TV-210535 and TV-210812 (*consolidated*)  
June 12, 2023  
Page 5 of 7

through Friday between 8:00am and 5:00pm and a minimum charge of four hours for any moves before 8:00am, after 5:00pm, on a Saturday, Sunday, or a state-recognized holiday.<sup>21</sup> In our earlier comments, Public Counsel stated that it is unfair to charge a four-hour minimum to consumers whose moves may not take that long or for consumers who must schedule their move outside of Monday through Friday between 8:00am and 5:00pm.<sup>22</sup> Clutter had earlier argued that the four-hour minimum prevented the Company from taking on smaller jobs on weekends or holidays without overcharging customers.<sup>23</sup> Other moving companies and the Washington Movers Conference argued that moves performed on weekends and before 8:00am or after 5:00pm are done at the consumer's request.<sup>24</sup> In addition, some moving companies argue that there are additional labor and other costs to operating outside of regular business hours that justify the longer minimum charge.<sup>25</sup>

The proposed revisions to Tariff 15-C set a standard minimum charge of one hour for moves from Monday through Friday between 8:00am and 5:00pm and a standard minimum charge of four hours for moves on Saturday, Sunday, a state-recognized holiday or any moves before 8:00am or after 5:00pm Monday through Friday.<sup>26</sup> However, the proposed revisions also allow for a carrier to select an alternative minimum charge to apply to all customers, up to the standard minimum hour charges for the specified times.<sup>27</sup>

Public Counsel understands that household goods movers have certain operating costs associated with regular business hours versus weekend or off-hours services. However, if a household goods carrier chooses to offer a shorter minimum hourly charge because it works for their business operations and customer base, Public Counsel believes it is reasonable to allow carriers to make that choice and may benefit customers, particularly those with smaller sized moving needs. Public Counsel supports the proposed revisions to Item 230(1)–(4).

### **Maximum Tariff Rates**

In its initial petition, WMC requested the Commission to remove the maximum rate band from Tariff 15-C.<sup>28</sup> On May 27, 2022, the Commission approved a Tariff Supplement to increase maximum rates and charges of Tariff 15-C by 12.1 percent, which remains in effect until cancelled by Commission Order in Dockets TV-210535 and TV-210812.<sup>29</sup> The draft tariff

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<sup>21</sup> Tariff 15-C, Item 230(7)(a)(ii).

<sup>22</sup> Comments of Public Counsel, at 4, Dockets TV-210535 and TV-210812 (*consol.*) (Mar. 24, 2022).

<sup>23</sup> Clutter Amended Petition for Exemption, ¶ 23, Docket TV-210535 (filed Aug. 30, 2021).

<sup>24</sup> TV-210535 and TV-210812 Summary of Comments, at 7–8 (issued May 3, 2022).

<sup>25</sup> TV-210535 and TV-210812 Summary of Comments, at 7–8.

<sup>26</sup> Draft Tariff 15-C, Item 230(1)-(3), at 3<sup>rd</sup> Revised Page No. 50\*.

<sup>27</sup> Draft Tariff 15-C, Item 230(4), at 3<sup>rd</sup> Revised Page No. 50\*.

<sup>28</sup> Comments of Clutter, Inc., at 2, *Inquiry regarding Updates to Tariff 15-C*, Dockets TV-210535 and TV-210812 (*consol.*) (filed Mar. 24, 2022).

<sup>29</sup> *In re: Inquiry regarding Updates to Tariff 15-C*, Dockets TV-210535 and TV-210812 (*consol.*), Order 01/03, ¶ 22 (May 27, 2022).

## ATTORNEY GENERAL OF WASHINGTON

To: Amanda Maxwell, Executive Director and Secretary  
Re: Dockets TV-210535 and TV-210812 (*consolidated*)  
June 12, 2023  
Page 6 of 7

incorporates the supplemental 12.1 percent increase into Tariff 15-C permanently.<sup>30</sup> Staff additionally stated that it will propose an annual maximum rate adjustment based on the Seattle Consumer Price Index (CPI).<sup>31</sup> Public Counsel does not oppose the proposed treatment of the existing 12.1 percent rate increase so long as the annual rate adjustment will also reduce the maximum rates if the Seattle CPI falls.

### **Minimum Tariff Rates**

Clutter, Inc. proposed that the minimum hourly rate band be set to \$0.00 based on its own business practices where the transportation of household goods is a secondary service to its primary storage business.<sup>32</sup> WMC stated that the minimum rates should not be modified and that the minimum rate band is “reasonable to maintain sufficient structure to allow household goods carriers to understand their costs and the need to charge appropriately for their business needs.”<sup>33</sup> The draft tariff maintains the minimum rates at their current levels.

Public Counsel supports the draft tariff’s treatment of minimum rates. To the extent Clutter’s storage-focused business model may have different cost considerations, the parameters of a single company should not be used to set minimum rates for the entire industry. A minimum rate floor protects consumers and carrier employees from companies seeking to compete by cutting costs and potentially reducing services or operating unsafely to do so.

### **Use of Force Majeure**

The draft tariff includes the following, new definition for Force Majeure:

Force Majeure: Means natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidemics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.<sup>34</sup>

Public Counsel does not have any concerns with this proposed definition but notes that the new terminology was only included in Item 15 as a condition under which a carrier may refuse to provide service. Public Counsel recommends that “force majeure” replace the language related to “hostile or warlike action” and “acts of god” currently used in a number of locations throughout the tariff. “Hostile or warlike actions” is defined in both the current and draft Tariff 15-C as

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<sup>30</sup> Notice of Opportunity to Comment, at 2, *In re: Inquiry regarding Updates to Tariff 15-C*, Dockets TV-210535 and TV-210812 (*consol.*) (issued May 12, 2023).

<sup>31</sup> *Id.*

<sup>32</sup> See Comments of Clutter, Inc., at 4, Dockets TV-210535 and TV-210812 (*consol.*) (filed Mar. 24, 2022).

<sup>33</sup> WMC Comments, at 5, *Inquiry regarding Updates to Tariff 15-C*, Dockets TV-210535 and TV-210812 (*consol.*) (filed Mar. 24, 2022).

<sup>34</sup> Draft Tariff 15-C, Item 10 – Definitions, at 3<sup>rd</sup> Revised Page No. 5.

ATTORNEY GENERAL OF WASHINGTON

To: Amanda Maxwell, Executive Director and Secretary  
Re: Dockets TV-210535 and TV-210812 (*consolidated*)  
June 12, 2023  
Page 7 of 7

Hostile or warlike action or use of any weapon of war (in time of peace or war), terrorism, insurrection, rebellion, revolution, civil war, usurped power, and action taken in hindering, combating, or defending against such occurrences: a) by any government or sovereign power, or by authority maintaining or using military forces; b) by military forces; or, c) by an agent of such government, power, authority, or forces.<sup>35</sup>

The current definition of “hostile or warlike actions” is superseded by the force majeure terminology and the use of different language is potentially confusing. The existing phrase “Acts of God” is ambiguous, outdated, and confusing, and the tariff does not include a definition of the phrase.

Public Counsel therefore recommends that “hostile or warlike action” and “Acts of God” be replaced with the proposed definition of force majeure in the following locations.

- Item 90(4)(g) and (j) Carrier liability for household goods and customer valuation options
- Item 95(1)(B)(g) and (j) Bills of Lading, Contract Terms and Conditions of Uniform Household Goods Bill of Lading
- Item 102(1)(B)(g) and (j) Small Goods Transportation and Storage, Contract Terms and Conditions of Uniform Household Goods Small Goods Transportation and Storage

If you have any questions about this filing, please contact Stephanie Chase at (206) 521-3212 or via e-mail at [Stephanie.Chase@ATG.WA.GOV](mailto:Stephanie.Chase@ATG.WA.GOV) or Nina Suetake at the contact information, below.

Sincerely,



/s/  
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NMS/SC  
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cc: Service List (via E-mail)

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<sup>35</sup> See e.g., Draft Tariff 15-C, Item 90(4)(g), at 1<sup>st</sup> Revised Page No. 16.