Agenda Date: June 27, 2024
Item Number: B3

**Dockets: TV- 210535 and TV-210812**

Company Name: Washington Movers Conference

Staff: Mike Young, Regulatory Services
Johnathon Church, Regulatory Services

**Recommendation:**

Issue an order that:

A. Permanently implements the 20 percent temporary rate band increase established in Docket TV 210535, Order 6, and Docket TV-210812, Order 04, and

B. Creates a compliance item directing Commission staff to each April 1 increase the upper rate band by the inflationary rate from the previous calendar year.

**Background**

On July 2, 2021, Clutter, Inc., (Clutter or Company) filed a petition with the Washington Utilities and Transportation Commission (Commission) to revise Tariff 15-C and for temporary exemption from certain provisions of Chapter 480-15 Washington Administrative Code (WAC) and Tariff 15-C in Docket TV-210535. On August 30, 2021, Clutter filed an amended petition additionally requesting an exemption from certain provisions of Tariff 15-C and WAC 480-15 (Amended Petition).

On October 14, 2021, the Commission issued Order 01, Granting Exemptions from Tariff 15-C and Commission Rules (Order 01). Order 01 granted Clutter an exemption from WAC 480-15 and Tariff 15-C, effective until May 1, 2022, and required Commission staff (Staff) to begin conducting a review of Tariff 15-C.

On February 22, 2022, Staff issued a Notice of Consolidation of Dockets TV-210535 and TV-210812, and Notice Opportunity to File Comments due by March 25, 2022, exploring possible revisions or amendments to Tariff 15-C.

On April 15, 2022, Staff issued a Notice of Workshop scheduled for May 5, 2022, to discuss possible revisions and amendments to Tariff 15-C.

On April 20, 2022, Clutter filed a motion to extend the exemption granted in Order 01, and on April 28, 2022, the Commission entered Order 02, Granting Extension of Order 01 Exemption from Tariff 15-C and Commission Rules (Order 02), which granted an extension of the exemptions granted in Order 01 until the earlier of: (1) December 31, 2022, (2) the date the Commission ends the investigation into Tariff 15-C, or (3) the effective date of new rules or amendments to Tariff 15-C.

On May 26, 2022, the Commission issued Order 03 in these consolidated Dockets, which denied WMC's request to remove the maximum rate band for six months and authorized Rate Increase Supplement No. 2022-1 (Tariff Supplement). In Order 03, the Commission found that neither WMC's October 11, 2021, Petition nor its Amended Petition provided sufficiently detailed information related to company costs, nor did it identify any elements to be studied during the six-month period or provide any framework for evaluating the study period.

On November 29, 2022, the Company filed a motion requesting further extension of the exemption until March 31, 2023, or until Staff completes its review of Tariff 15-C, whichever occurs sooner (Motion).

On March 10, 2023, Clutter filed a motion requesting further extension of the exemptions granted to the company until June 30, 2023, or until Staff completes its review of Tariff 15-C, whichever occurs sooner.2 The Commission granted Clutter's motion on March 27, 2023, in Order 05.

On June 20, 2023, the Commission convened a second workshop to discuss Staff's proposed revisions to Tariff 15-C. At the workshop, HHG carriers and WMC proposed a 25-30 percent increase to the maximum tariff rate band.

On June 29, 2023, the Commission issued Order 06/04 in the combined dockets incorporating proposed tariff changes, and implementing rates on a temporary basis, to expire December 31, 2023, and directing staff to open a rulemaking to examine whether the maximum rate band should be eliminated also to conclude on December 31, 20223.

On December 28, 2023, the Commission issued Order 07/05 in the combined dockets granting an additional extension of the 20 percent increase to the maximum rate band until June 30, 2024, and extending out the deadline for the rulemaking.

## <u>Discussion</u>

In Order 06/04 the Commission required Staff to initiate a rulemaking to focus narrowly on the issue of whether the Household Goods (HHG) industry is fully competitive and may benefit from an alternative form of economic regulation, such as removing the maximum rate band in tariff 15-C.[1] Staff interpreted this to mean first determining whether the HHG industry is fully competitive, and second identifying alternatives to the existing form of economic regulation.

Industry Competition

The Commission currently regulates approximately 270 HHG carriers in the state.[2] Staff utilized the Herfindahl-Hirschman index (HHI) of the 2022 Intrastate revenue, as reported in the Annual Reports, to determine that the HHG industry is indeed a competitive market. The HHI of the

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[1] TV-210355 Order 06 and TV-210812 Order 04.
[2] Based on the number of HHG companies required to file annual reports.

regulated HHG industry during the 2022 calendar year came to 144, strongly indicating an unconcentrated market. Additionally, the 2022 annual reports show that the largest HHG carrier had only 6 percent of the market share and that nearly 30 percent were reporting intrastate revenues above the average. Please see Attachment 1 for more details on Staff's competitive analysis.

Alternative Regulation

Staff did not interpret the Commission's order to mean the Commission did not want to economically regulate HHG carriers, and Staff's understanding is that economic deregulation would have to come from the legislature. However, there may be an alternative to the current method of calculating the rate band used to determine allowable rates. Staff also considered workload impacts as a secondary consideration as the regulatory effort incurred by the companies translates to costs borne by the ratepayers. The requirement that rates be fair and reasonable is still required by statute. Staff identified several factors that make rate setting for this industry challenging. Rate setting principles applied by the Commission utilize a test year of "normal" costs. Determining these costs has historically been difficult due to the sheer number of companies and the variation in size of company, local economic demographics such as labor and fuel costs, and size of market (e.g., Puget Sound area compared to rural parts of Eastern Washington). Gathering data from companies has been challenging—in the previous rate case in 2018 Staff gathered data from approximately 23 companies; in the current filing only 8 companies provided data.

The current method of regulation, utilizing a maximum and minimum rate band, has been satisfactory for the Commission and the companies. Retaining this method will still provide rates that are fair, just, reasonable, and sufficient, but the current method is labor intensive for both Staff and the companies and is slow to react to significant changes in economic conditions. As a result, HHG companies, through the Washington Movers Conference, proposed eliminating the upper rate band, which is the reason for initiating a rulemaking.

Staff reviewed this proposal. Removing the upper limit to rates would allow companies to charge rates that more closely reflect the costs they incur to provide service and would allow them to react more quickly to sudden changes in economic conditions. However, there is no assurance that companies will not attempt to over-earn while they can, although competition in larger markets could serve to dampen this effect. The main attraction to removing the upper band is the discretion it allows individual companies to set rates based on that company's needs. It also eliminates any recurring process by the Commission to calculate rates, (unless a company files new tariff sheets or a rate case, see below) which reduces costs to the companies and the Commission, that cost reduction being passed on to customers.

In addition, the Commission Order mentions filing individual tariffs if the upper rate band is removed.[3] If the maximum rate band is removed, companies will be required to file individual

[3] *In the Matter of the Petition of Clutter, Inc.*, Docket Nos. TV-210525 & TV-210812, Order 06/04, 6 ¶ 24 (Jun. 29, 2023).

tariffs.[4] However, as there are over 200 companies under regulation, a like number of tariffs would have to be processed, maintained, and periodically reviewed when changes are proposed. No other industry regulated by the Commission has anywhere near that number of tariffs, and additional Commission staff would be required just to process that number of filings and to maintain the significant number of tariffs. The rate setting process would be enhanced in that each company would be required to support their proposed rates by supplying cost data, but the audit effort required would be significant, and could not be reasonably accomplished at existing Commission staffing levels.

Staff considered four alternatives in addition to the current rate methodology: automatic annual adjustment to the maximum band; periodic adjustment to the maximum band; rate plan approach; multiple maximum rate bands.

**Automatic Annual Adjustment to Maximum Rate Band**
In this docket, Staff recommended an annual adjustment to the maximum rate band in the amount of the annual increase in the inflation rate[5] to be implemented automatically by Staff every spring, once the data becomes available. Utilizing the CPI for Seattle provides a consistent measure that includes costs such as fuel and supplies consumed in providing HHG services. The amount of effort would consist of determining the increase over the past year and increasing the maximum rates in Tariff 15-C by that percentage. No effort would be required on the part of the companies. Staff believes it can propose rate increases to Tariff 15-C which would be heard at a convenient open meeting and approved by Commission order.

Using the Seattle CPI (which includes all of Puget Sound and parts of the Olympic Peninsula) would ensure that companies operating in the higher cost area of Seattle would be able to charge sufficient rates. There could be a business advantage to companies in Eastern Washington where fuel and labor costs have traditionally been lower, and these companies may be able to earn a higher margin. However, the markets are much smaller as well and Staff believes that competition within the industry negates (or largely reduces) this effect. Using a different CPI such as the western US would not account for high costs in the Seattle area and would put companies operating in that area at a distinct disadvantage.

**Periodic Adjustment to the Maximum Rate Band**
Similar to the annual adjustment, this method would use some index or forecast model to increase the maximum rate band such that it would provide sufficient rates for a period of 3-5 years. Staff would recommend using the same CPI index plus a forecast based on the previous three- or five-year trend. This mimics the current Commission rate setting methodology that relies on test year costs to determine future costs and thus rates. Rate setting is not a guarantee of cost recovery, but a right to earn a sufficient return. A true-up mechanism could be incorporated so that if projected rate increases fell below actual inflation rates, the next rate increase would be higher than the inflation rate to off-set the effects. This would smooth the impact to the companies over time but could lead to rate spikes and dips from the perspective of the customer.

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[4] See RCW 81.80.220; RCW 381.80.150.
[5] Based on the Consumer Price Index (CPI) for Seattle as reported by the U.S. Bureau of Labor Statistics.

However, this effect would only be encountered by customers utilizing HHG services multiple times in a given period. The time between adjustments would be set in Commission order, and could vary depending on circumstances, but Staff envisions a more consistent adjustment period.

The workload impact would be a front-loaded effort to determine the rate increase offset by two or four years of no activity until the next adjustment. Companies could accept Staff's calculation or propose their own alternative for consideration. Again, Staff envisions a proposed change to Tariff 15-C to be heard at an open meeting and approved by Commission order.

**Rate Plan Approach**

The Commission has utilized rate plans in other industries in which different rates are set for each subsequent year. The maximum rate band would be determined by some method, which could be traditional cost review, or inflationary adjustment. Staff envisions an actual rate for subsequent years to be established in the tariff and approved by Commission order so that the rates automatically go into effect at the appropriate time. This approach provides more certainty and allows companies to implement efficiencies including cost cutting or deferment, and capital planning. There is a risk with this approach that future rates would not be adequate in the case of unforeseen economic circumstances, but there is also the risk that rates might allow for over-earning. The periodicity may offset these effects.

The workload under this approach would be slightly more significant as it would require rates based on cost data, and solid methodology for forecasting future rates. Obtaining cost data for the industry has been difficult to accomplish in the past. Many companies are reluctant to share financial information which could be used by others to gain competitive advantage. Even under the Commission's confidentiality rules, financial data is not guaranteed to be totally confidential. With such a large number of regulated companies, collecting statistically significant data is time consuming and burdensome to both the companies and Staff. However, the larger workload in the first year would be offset by little or no workload in subsequent years of the rate plan. This method could also be brought as a tariff revision to an open meeting and approved by Commission order.

**Multiple Maximum Rate bands**

Perhaps the most unorthodox approach, this alternative would establish Multiple Maximum rates in the tariff. A company would be required to submit cost data demonstrating its need to "advance" to the next highest rate band. The rate bands would be constructed to account for differences in markets, variations in labor, fuel, and supply costs, and could even be as simple as geographic differentiation. Initially, cost data would have to be provided by at least one company to establish a given band. This cost data would be processed similarly to a general rate case, requiring an audit to justify costs, review expenses for prudency, and to review allocations of shared costs. Each company wishing to utilize the new rate band would also have to submit cost data, or a "mini rate case" to justify using the higher rates. The advantages of this approach are to keep rates at a sufficient level while also encouraging efficiencies, as companies could weigh the benefits of higher rates, the burden of the mini rate case, and cutting costs to operate within existing bands. These efficiencies would benefit customers who are also subject to the variations of the different markets. In other words, customers in a high-cost area would be presumed to have sufficient resources to pay higher rates as compared to customers in lower-cost areas.

The workload for this approach would be somewhat higher than any of the other approaches as there would be a need to determine costs at different levels depending on economic factors. However, it could be as simple as determining a base cost and separating the rate bands based on population, economic, or other demographic factors; inflation rates in Seattle would be different by a measurable degree from the rates of inflation in Yakima or Vancouver. Again, this would be proposed as a tariff change that could be approved by Commission order. The period for adjustment could be consistent or variable and outlined in the order.

## Recommendation

Staff found that the HHG industry in Washington is competitive under the current regulatory scheme. Using a rate band allows for temporary rate increases within the band maximum without the requirement to file any action with the Commission. Competition combined with a maximum rate encourages efficiency, which benefits consumers.

The current temporary 20 percent increase to the maximum rate band was put into place at a time when inflation rates had risen significantly, and the economic situation was fluctuating. The percentage was based on cumulative inflation since the last general rate review conducted by Commission Staff. Since the temporary increase was enacted, inflation rates have subsided somewhat, but costs are still increasing overall-especially with minimum wage laws and fuel cost increases. Removing the temporary increase would effectively put companies back to 2018 rates and could even result in some companies ceasing operations due to insufficient revenues. Therefore, Staff recommends that at the very least the Commission make the temporary rate increase a permanent change to Tariff 15-C.

Staff's consideration of the four alternatives resulted in favoring the Automatic Annual Adjustment. This approach does not require any effort on the part of the companies, relies on information easily obtained from a trusted source, and accounts for changes in economic conditions thus minimizing the need for rate reviews. Staff recommends this approach utilizing the actual annual inflation rate of the previous calendar year. Inflation over the past 10 years has ranged from 1.5 percent to as much as 8 percent. Recent inflation rates hover closer to 3 percent. Implementing this alternative would guarantee companies some increase to cover unexpected cost increases and would be reactionary enough to accommodate outsized inflation increases when they do occur. Although inflation is rarely negative, this formulaic approach would easily accommodate such a situation. This alternative could easily be accommodated within current resources and would take advantage of existing Commission processes. It would also provide some measure of predictability for both companies and customers.

If an index methodology is unacceptable, then Staff would propose the Rate Plan approach in which rates are determined ahead of time for a specific period. This approach requires more effort on behalf of companies but enables stability for customers and allows companies to plan ahead knowing the regulatory environment that will be in effect. The requirements for this option would amount to existing requirements of the industry to provide relevant cost data, and for Staff to conduct a rate review. The advantage is that these reviews would be done at a measured rate, allowing companies to prepare ahead of time and Staff to plan accordingly. The disadvantage of this method is that it is not significantly different from past practices, which have been labor intensive at times.

The other methods involve some sort of individual tariff or rate filing which would increase the amount of effort required of companies, and also exceed the current Commission resource levels. Many Staff hours, and likely additional staff, would be required to process filings, conduct reviews, determine outcomes, and maintain documentation. The volume of documentation would also require some changes to the Commission's data management systems.

Finally, simply removing the upper rate band would require changes to current Commission rules which would have to be tailored specifically to the methodology implemented, making future revisions resource and process intensive. There are also questions about the effectiveness of consumer protection without some sort of limit.

An additional consideration is the industry's request to increase the minimum rate band. What the minimum rate should be has not been determined, and like the maximum rate, would be based on empirical evidence which has not been provided or reviewed. Therefore, Staff believes the best course of action is to maintain the existing minimum as it would be beneficial to customers if service can be provided at the level. In fact, this was the gist of the petition filed by Clutter, Inc., which initiated this discussion.

In conclusion, Staff does not believe that utilizing any of these methods precludes tariff revisions as currently prescribed in Commission rules. There will always be unforeseen circumstances, but the intent here is to provide some certainty for a given period for both customers and companies. The least-cost method would be the annual increment, which the Commission has utilized in economic regulation of other transportation industries. This method also provides stability, flexibility, and predictability to customers and companies, with minimal impact on Commission resources and processes.