

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of the
WASHINGTON MOVERS CONFERENCE
for a Declaratory Order Clarifying Whether
Commission Household Goods Rules Authorize
Permitted Carriers to use Third-Party
Contractors to Perform Regulated Services

DOCKET TV-200348

COMMISSION STAFF'S
RESPONSE TO WASHINGTON
MOVERS CONFERENCE'S
PETITION FOR A
DECLARATORY ORDER

I. INTRODUCTION

I Pursuant to WAC 480-07-930(3), Staff of the Washington Utilities and Transportation Commission (Commission) hereby responds to the Washington Movers Conference's (WMC) Petition for a Declaratory Order under RCW 34.05.240 concerning the use of third party contractors by regulated household goods moving (HHG) companies. Staff respectfully requests that the Commission deny and dismiss WMC's Petition and decline to enter a declaratory order, pursuant to RCW 34.05.240(5) and WAC 480-07-930(5) because: (1) WMC's Petition fails to make the requisite showing under RCW 34.05.240(1) to obtain a declaratory order from the Commission; and (2) WMC's Petition materially fails to comply with the Commission's rules for the submission of petitions in a way that affects the substantial rights of the parties, and unfairly and incorrectly attempts to shift WMC's burden to Staff.

II. BACKGROUND

2 On April 9, 2020, WMC submitted a letter styled as a Petition for Declaratory Order (Petition) “[i]n accordance with RCW 34.05.240,” to determine if it is allowable for a regulated and permitted HHG company to “legally contract out their moving services to a third party such as –

- a. Contracting with a third party for the services of a work crew(s) to pack/unpack their customers HHG?
- b. Contracting with a third party for the services of a work crew(s) to load/unload their customers HHG to the permitted moving company’s commercial truck for pick-up/delivery?
- c. Contracting with a third party for the services of a commercial truck driver with a commercial truck and work crew to pick-up/deliver the HHG for the permitted moving & storage company’s customers?”¹

3 Pursuant to RCW 34.05.240, those who petition an agency for a declaratory order bear the burden of setting “forth facts and reasons on which the petitioner relies” to show: (a) That uncertainty necessitating resolution exists; (b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; (c) That the uncertainty adversely affects the petitioner; (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and (e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.”²

4 Declaratory orders carry “the same status as any other order entered in an agency adjudicative proceeding.”³ Each declaratory order “shall contain the names of all parties to

¹ Petition at p. 1.

² RCW 34.05.240(1).

³ RCW 34.05.240(8).

the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.”⁴

5 Agencies may also adopt rules that provide for the form, contents, and filing of petitions for a declaratory order, the procedural rights of petitioners, and the disposition of petitions.⁵ Commission rules state that all “[p]etitions for declaratory orders under RCW 34.05.240 must conform in style and substance to the requirements for other forms of adjudicative pleading as specified in Part III, subpart A of this chapter.”⁶

6 WAC 480-07-370(3) requires that petitions submitted to the Commission contain specific information. Namely, all petitions must “clearly and concisely set forth the grounds for the petition, the relief requested, and the commission’s jurisdiction to grant the requested relief,” and must also state “[f]acts that constitute the basis of the petition and requested relief” and “[c]itations to statutes or commission rules that provide the commission with jurisdiction and authority to grant the requested relief.”⁷ WAC 480-07-395 sets forth the material to be included by petitioners in the body of the pleading including, but not limited to, “[a]ll rules or statutes that the pleading puts in issue,”⁸ and “[a] statement of facts on which the party relies in a form comparable to complaints in civil actions before the superior courts of this state.”⁹

7 Pursuant to RCW 34.05.240(5) and WAC 480-07-930(5), within 30 days after receipt of a petition for a declaratory order, the Commission will:

(a) Enter a declaratory order; (b) Notify the petitioner that the commission will not enter a declaratory order under RCW 34.05.240 and state the reasons for that decision; (c) Set a specified time, no later than ninety days

⁴ *Id.*

⁵ RCW 34.05.240(2).

⁶ WAC 480-07-930(1)(a).

⁷ WAC 480-07-370(3)(b).

⁸ WAC 480-07-395(1)(c)(ii)(B).

⁹ WAC 480-07-395(1)(c)(ii)(C).

after the day the petition was filed, by which the commission will enter a declaratory order; or (d) Set a reasonable time and place for a hearing.

III. DISCUSSION

8 Staff respectfully requests that the Commission deny and dismiss WMC's Petition and decline to enter a declaratory order, pursuant to RCW 34.05.240(5) and WAC 480-07-930(5), because (1) WMC's Petition fails to make the requisite showing under RCW 34.05.240(1) to obtain a declaratory order from the Commission; and (2) WMC's Petition materially fails to comply with the Commission's rules for the submission of petitions in a way that affects the substantial rights of the parties, and unfairly and incorrectly attempts to shift WMC's burden to Staff.

9 WMC's Petition wholly fails to make the showing under RCW 34.05.240(1) required to obtain a declaratory order from the Commission. RCW 34.05.240(1) places the burden on *petitioners* to show, through the demonstration of facts and reasoning, the existence of five conjunctive factors:

(a) That uncertainty necessitating resolution exists; (b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; (c) That the uncertainty adversely affects the petitioner; (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and (e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.

10 WMC's one-page Petition fails to plead, much less show through demonstrable facts and legal analysis, the existence of these required statutory factors.¹⁰ WMC's Petition lists three general and hypothetical questions about the ability of a regulated and permitted HHG company to "legally contract out their moving services to a third party." The Petition goes

¹⁰ See Petition at p. 1.

on to: (1) state, in a conclusory fashion, that HHG companies' contracting with third parties presents concerns about those companies' payment of unemployment and workers compensation premiums;¹¹ and (2) state that "[i]t is the WMC's concern since the UTC regulates intrastate HHG moving companies, that they must ensure a level playing field for all."¹² That is the entirety of the Petition. By any measure, WMC's Petition fails to satisfy its burden of showing, through facts and reasons, the existence of each of the five factors required for the Commission to grant a petition for declaratory order under RCW 34.05.240(1).¹³ The Commission should therefore deny and dismiss WMC's Petition and decline to enter a declaratory order, pursuant to RCW 34.05.240(5) and WAC 480-07-930(5).

11 Additionally, WMC's Petition fails to comply with the Commission's rules for the submission of petitions in a way that affects the substantial rights of the parties, and unfairly and incorrectly attempts to shift WMC's burden to Staff. RCW 34.05.240(1)(e) requires that petitions comply with "any additional requirements established by the agency." To that end, Commission rules require that "[a] petition must . . . clearly and concisely set forth the grounds for the petition" and "must state . . . [f]acts that constitute the basis of the petition and requested relief, including relevant dates."¹⁴ Furthermore, WAC 480-07-395 sets forth the Commission's general requirements for pleadings. Setting aside formatting and other ministerial concerns, this rule also requires the body of the petition to contain "[a]ll rules or statutes that the pleading puts in issue" as well as "[a] statement of facts on which the party

¹¹ *Id.*

¹² *Id.*

¹³ While the Petition should be summarily rejected pursuant to RCW 34.05.240(5) and WAC 480-07-930(5) alone, the Petition would fare no better under a motion to dismiss, as WMC's Petition fails to state a claim upon which the Commission could grant relief. WAC 480-07-380(1)(a).

¹⁴ WAC 480-07-370(3).

relies in a form comparable to complaints in civil actions before the superior courts of this state.”¹⁵ Nowhere does the Petition reference rules or statutes implicated by HHG companies’ use of third party contractors. Furthermore, the Petition provides exactly zero facts on which WMC relies to support its Petition. Outside of the general questions posed by WMC’s Petition, the remainder of the pleading contains only two unsupported conclusions. Although Commission rules provide for the liberal construction of pleadings, the same rule states that the Commission will not ignore defects in pleadings that affect the substantial rights of parties. Staff cannot properly and substantively respond to the issues raised in the Petition, as it is entitled to under WAC 480-07-930(3), due to WMC’s failure to comply with Commission rules on the required substance of petitions and pleadings. In short, WMC, through its deficient Petition, unfairly and inappropriately attempts to shift the burden to Staff. The Commission should therefore deny and dismiss WMC’s Petition and decline to enter a declaratory order, pursuant to RCW 34.05.240(5) and WAC 480-07-930(5).¹⁶

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¹⁵ WAC 480-07-395(1)(c)(ii)(B)-(C).

¹⁶ In the event that WMC is able to cure the deficiencies of the Petition in a future filing, Staff hereby reserves the right to respond substantively to the issues raised either in the Petition or such future filing.

IV. CONCLUSION

12 For the reasons stated above, Staff respectfully requests that the Commission deny WMC's Petition and decline to enter a declaratory order, pursuant to RCW 34.05.240(5) and WAC 480-07-930(5).

DATED this 29th day of April, 2020.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

/s/ Daniel J. Teimouri, WSBA No. 47965
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128, Olympia, WA 98504-0128
(360) 664-1189
daniel.teimouri@utc.wa.gov