

December 1, 1999

direct dial:
(206) 389-6142

22948-0001

Carole J. Washburn
Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive, SW
P.O. Box 47250
Olympia, Washington 98504-7250

Re: **Review of Household Goods Transportation Rules:
Docket No. TV-991559**

Dear Ms. Washburn:

Public Storage Pickup & Delivery, L.P. (PSPUD) submits the following comments in support of the Washington Utilities and Transportation Commission's (Commission's) current definition of "household goods" set forth in WAC 480-15-020(14). PSPUD has no comments on the other rules subject to inquiry in this docket.

Summary of Comments

1. PSPUD provides a unique type of transportation attendant to its self-storage business. PSPUD's service (and that of its competitors, Shurgard Storage to Go, Inc. and Door to Door, Inc.) fills a niche not otherwise provided by regulated carriers or other storage providers.
2. The service PSPUD provides—transportation attendant to self-storage without accessorial services—has never been regulated in Washington. The WUTC should require significantly changed circumstances or compelling reasons to depart from current

regulatory regime.

3. Transportation attendant to self-storage without accessorial services should not, and need not, be regulated. The current definition of household goods is clear and easily understood and does not result unreasonable, unremunerative, discriminatory or unfair practices. Rather than stifling competition, the exemption from regulation has lead to robust competition that is evolving and benefiting consumers.

Comments

1. A Unique Type of Self-storage Service

PSPUD is owned, in part, by Public Storage, Inc. (PS). PS provides household goods storage services to customers in approximately 38 states and Canada. PS is one of the pioneers of the self-service storage industry, having identified and served a market demand for convenient, affordable storage.

Customers deposit their household goods in PS facilities seven days a week, at times convenient to them during expanded business hours, and at a price that is low compared to the cost of full-service storage offered by the regulated moving and storage industry. No inventory of items stored is required, nor does PS assess the condition of a customer's goods before they are stored. The infrequent claims that goods were lost or damaged while stored at a PS facility are resolved pursuant to the terms of the customer's rental agreement and any relevant state law. Self-service storage businesses compete aggressively; rates are driven by market forces. Further, a significant capital investment is required to enter the business, because real estate must be acquired or leased, developed and insured. The combination of a highly competitive market coupled with high start-up costs discourages poorly capitalized "fly-by-night" operators from entering the business.

In 1996, PSPUD commenced operations to provide its "Pickup and Delivery" service attendant to self-storage. In essence, this service responds to customer demand for easing the customer's transportation burden by bringing the storage unit (the container) to the customer's home or business. As is the case with traditional self-service storage transactions, the customer loads his or her goods into the container and locks it. The sole difference in this service is that the packed, locked container is then transported by PSPUD back to the storage facility, for a set fee. The benefits to the customer are obvious: the customer is spared (1) the expense of renting a vehicle to transport the goods to the self-service storage facility, and (2) the labor required to unload his or her

goods from the vehicle and reload them in the storage unit. This service allows PS to improve service to existing customers, and to reach new customers who are reluctant to transport their goods themselves.

PSPUD's household goods transportation services are an ancillary part of a storage transaction. Accordingly, PSPUD's service is distinguishable from, and significantly more limited than, other moving and storage services currently operating in Washington. First, PSPUD transports household goods (in its own containers) only to and from its storage facility and its customers; goods are not transported from home to home. Second, goods are packed and loaded by the customer; in a typical moving transaction, movers or packers are paid hourly to pack and/or load goods. PSPUD does not inventory, inspect, or in any other way handle the customer's household goods. Third, PSPUD charges only a predetermined, flat rate, eliminating the opportunity for "bait-and-switch" pricing tactics that are the focus of much of the Commission's existing regulation. Finally, the price of the service is currently \$49.00 each way (for a single container)—a small fraction of the typical moving expense. Customers using a container transportation service (rather than an expensive moving company) do so to save money, with the understanding that they will have to properly pack and load their own goods, as they do when they choose to rent a truck and haul goods to a traditional storage facility.

PSPUD now offers this service in 11 states. In all states, PSPUD offers its service for no more than the same basic rate and according to similar contract conditions. In Washington State, Shurgard Storage-to-Go, Inc. and Door to Door Storage, Inc., offer similar services. Accordingly, consumers also benefit from lively competition between providers of this low-cost container storage service.

2. PSPUD-Type Operations Have Been Unregulated In Washington State

To date, the Commission has never regulated the transportation attendant to self-storage (without accessorial services) provided by PSPUD and its competitors in Washington. When the issue first arose in 1995, the Commission's Transportation Permit Interpretation Committee found: "If the carrier merely provides transportation of storage containers and does not provide specialized handling nor use special equipment normally employed in moving household goods, the Commission would consider the transportation to be that of general commodities." *See* Letter from the Commission Secretary to Mr. David W. Wiley, dated September 18, 1995. Based on this threshold opinion, PSPUD began its service to customers in Washington State without the need of a certificate of public convenience and necessity and a tariff.

As result of Governor Locke’s Executive Order 97-02, the Commission initiated a review of its household goods rules in October, 1997 in Docket No. TV-971477. PSPUD became actively involved in the rulemaking in early 1998 when an early draft proposed rule appeared to create ambiguity about the continuing unregulated status of PSPUD’s operations. Along with its competitors, PSPUD participated in the stakeholder meetings that the Staff convened and facilitated for eight months.

At the end of this process, Staff proposed the following definition of “household goods” for WAC 480-15-020:

[W]hen the term is used in connection with transportation, means personal effects and property used or to be used in a residence when it is part of the equipment or supply of such residence, and is transported between residences or between a residence and a storage facility, with the intent of later transport to a residence. This term excludes transportation of customer packed and sealed self-storage type containers when no accessorial services are provided by a motor carrier in connection with the transportation of the container. (emphasis added)

On December 15, 1998, the Commission adopted this definition that maintained the unregulated status for such transportation service. The Commission found that proposed rule conforms to Governor Locke’s Executive Order No. 97-02,¹ comports with federal law,² adequately protects the public, increases consumer choice, and promotes

¹

Governor Locke’s Executive Order No. 97-02 listed seven criteria for reviewing the regulations: need, effectiveness and efficiency, clarity, intent and statutory authority, coordination, cost, and fairness. None of these criteria were satisfied by increasing regulation over a currently unregulated business: transportation services incidental to the self-storage business. Rather, all of these criteria were most satisfied by codifying the threshold opinion by the Commission’s Transportation Permit Interpretation Committee that such services are not subject to Commission regulation.

²

The definition of “household goods” (as promulgated by the Commission) comports with federal law, including the ICC Termination Act and its implementing regulations. In response to a request by attorneys for Shurgard Storage-to-Go, Inc., an attorney for the Motor Carrier Law Division of U.S. Department of Transportation Federal Highway Administration (FHWA) opined:

I also agree that regardless of whether [Shurgard] is considered to be a

competition in the industry. *See* General Order No. R-454 (December 14, 1998).

3. Transportation Attendant To Self-Storage Should Not, And Need Not, Be Regulated.

The Federal Aviation Authorization Act of 1994 and ICC Termination Act of 1995 propelled significant deregulation of the motor carrier industry (with the notable exception of state regulation of household goods transportation). Like Washington, several states have revisited, and reduced, the scope and method of regulation of household goods moving and storage companies. Against this backdrop and given that transportation attendant to self-storage has never been regulated in Washington, this Commission should not choose to increase regulation over a previously unregulated industry without compelling reasons or changed circumstances.

After a year long rulemaking process in Docket TV-971477, the Commission Staff found no compelling reasons to regulate transportation of containerized household goods in Washington State. Nor did the Commission. Furthermore, the underlying facts that support distinguishing self-storage container transportation from moving and storage

for-hire carrier, it is not providing transportation of household goods under Federal law. In determining whether a motor carrier was transporting household goods for the purpose of applying household goods-specific regulatory requirements, the Interstate Commerce Commission focused on the type of service provided rather than the identity of the commodities transported. Since [Shurgard] is not providing the specialized services which household goods carriers typically provide, it would not be considered subject to the FHWA's regulations governing household goods transportation (49 C.F.R. part 375), the dispute resolution requirements of 49 U.S.C. § 14708, or the tariff requirements of 49 U.S.C. § 13702. Because [Shurgard] is not providing transportation of household goods within the definition of the ICC Termination Act, states cannot regulate its rates, routes and services under § 14501(2)(2) exception to Federal preemption.

Letter from Michael J. Falk, Attorney for the FHWA to William A. Mullins, Esq., dated January 20, 1998 (case citations omitted).

transportation remain unchanged: PSPUD offers no packing, wrapping, special handling, or other “accessorial services,” and never handles the household goods in any way.

Answers to the questions in the present rulemaking reveal no compelling reasons or changed circumstances:

a. Is the rule providing the result that was originally designed to achieve in a reasonable manner?

Yes. Companies that provide transportation of customer-packed self-storage containers as part of a self-storage business are not regulated. Companies that provide transportation of household goods and related services are regulated.

b. Is the rule written and organized in a clear and concise manner so that it can be readily understood by those to whom it applies?

Yes. Both the companies (such as PSPUD and its competitors) that transport containers that fall within the regulatory exclusion and the companies that do not understand what the rule excludes and does not exclude.

c. Does the rule result in the equitable treatment of those required to comply?

Yes. The rules apply to companies that transport household goods; they do not apply to companies that do not transport household goods. If companies that are currently regulated desire to start providing services similar to PSPUD and its competitors, they may do so at any time. There exist no regulatory barriers to entry to that market. Rather, the growing competition between PSPUD, Shurgard Storage-to-Go and Door-to-Door will ensure that that rates will remain competitive and service will remain excellent. Unlike the regulated moving industry, there is no authorized rate of return figured into rates.

d. Does the rule result in unreasonable, unremunerative, discriminatory, or unfair practices?

No. PSPUD knows of no “unreasonable, unremunerative, discriminatory, or unfair practices” in its unregulated transportation of containers attendant to self-storage. PSPUD’s rates are reasonable, uniform across customer class and

types, and based on the cost of providing the service relating to the self storage. PSPUD will provide service to any customer that signs a service agreement in the areas in which PSPUD facilities are located. PSPUD has received no complaints of unfair practices from its customers in Washington State during the past year.

e. Does the rule stifle competition?

No. Far from stifling competition, the current regulatory regime actually encourages competition in the self-storage business. Three companies are actively competing for customers and have added numerous new facilities in the last year. The competition exerts a downward pressure on prices, increases the importance of excellent service, and promotes innovation and convenience to the customer. As noted above, there are no regulatory barriers to entering this service market, so more competitors will enter the market if the current market participants fail to provide reasonable rates, excellent service, and customer convenience.

Conclusion

For the reasons listed above, the Commission should not revise the current definition of “household goods” set forth in WAC 480-15-020(14).

PSPUD appreciates the opportunity to comment on this inquiry. Please direct all further correspondence regarding this docket to the undersigned at 701 Fifth Avenue, Suite 6100, Seattle, WA 98104; phone (206) 389-6142; fax (206) 447-0849.

Very truly yours,

HELLER EHRMAN WHITE & MCAULIFFE

Todd G. Glass

cc: Public Storage Pickup & Delivery, L.P.

bcc: Chris McKay, Shurgard Storage-to-Go, Inc.
Dave Wiley, Door-to-Door Storage, Inc.

()
09:12