

December 7, 1999

Mr. Paul Curl
Deputy Director, Regulatory Services
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504

Dear Mr. Curl:

Following is the position of the Washington Movers Conference (WMC) on each of the rules relating to Motor Carriers of Household Goods which are being reviewed under Docket No. TV-991559.

WAC 480-15-020 Definitions

It is the position of the WMC that the decision of the WUTC to exclude from regulation the *“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”* is based on misinterpretation, and is contrary to the intent of state law.

RCW 81.80 reflects the state legislature’s determination that the intrastate transportation of household goods should be regulated. There is essentially no dispute that some, if not most, of the

“customer packed and sealed self-storage type containers” which are transported to and from households by companies such as Public Storage, Inc., Door to Door, Inc., and Shurgard Storage To Go (SSTG) contain material that fits both the Washington State and federal definitions of household goods. The level of accessorial services provided and type of container notwithstanding, Washington statute does not distinguish between different categories or types of household goods transportation which would justify a different treatment of the aforementioned companies than any other mover. In fact, minus packing and loading of the containers, it is evident that these companies intend to provide, and are effectively providing, local moving services to Washington consumers, even offering the option of picking up loaded containers from a home and delivering them directly, without storage, to the shipper’s new home.¹ Whether a full service moving company handling customer packed and sealed cardboard boxes, or a Shurgard Storage To Go handling customer packed and sealed plywood containers, it is therefore essential to fair market competition that all companies providing the for-hire movement of household goods be regulated as household goods carriers.

As further guidance on this issue, WUTC staff has also stated their reliance² on an informal opinion written by a Federal Highway Administration (FHWA) attorney, Mr. Michael Falk.³ Falk makes two points in his January 1998 letter, both of which we contend are incorrect.

¹ Exhibit 1 - Moving Link pamphlet

² Exhibit 2 - WUTC staff recommendation

³ Exhibit 3 - Falk letter

First, basing his logic on a description of services provided him in a single letter from a Shurgard attorney, Falk concludes that “*Based on the above facts...I concur that...SSTG is not providing for-hire transportation because its operations are private carriage, ...and are incidental to a primary business other than transportation.*” Evidently, his broad conclusion is based on only the limited, and carefully worded, letter requesting assistance with which the SSTG attorney had provided him. In fact, in their January 19, 1999 ruling, the Oregon Department of Transportation (ODOT)⁴ found, as has the Texas Department of Transportation (TXDOT)⁵, and California Public Utilities Commission (CPUC), quite the opposite, stating that “*It is concluded that SSTG’s primary business is both transportation and storage, not just storage. SSTG appears to admit such in its Applicant’s Closing Brief, when it states that the transportation it seeks to provide ‘is an inseparable part of its business and that ‘the trucking operations of SSTG are essential to the company’s provision of its self-storage service.’*” Oregon’s subsequent conclusion that “*SSTG’s proposed service constituted for-hire transportation of household goods subject to regulation...(requiring) household goods operating authority*” came after many hearings, proposed orders, and filed briefs, unfortunately none of which was then available to benefit FHWA attorney Falk in forming his January 1998 opinion. Further, as American Moving and Storage Association (AMSA) President, Mr. Joe Harrison, points out in his letter to the CPUC, “*if the movements involve the intrastate transportation of household goods, the states may regulate it even if it is private.*”⁶

⁴ Exhibit 4 - ODOT Ruling

⁵ Exhibit 5 - New Texas Household Goods Rules and Regulations

⁶ Exhibit 6 - AMSA President Harrison letter to CPUC

Mr. Falk's second point on which he supports his opinion that SSTG is not engaged in the transportation of household goods is based on the application of the federal definition of household goods. He states: "*I also agree that regardless of whether SSTG is considered to be a for-hire carrier, it is not providing transportation of household goods under Federal law. Since SSTG 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 CFR part 375).*"

Apparently, Falk did not have the advantage of possessing a current federal definition of household goods under 49 CFR part 375, which in 1995 was changed to eliminate all reference to "*specialized handling and equipment*" in defining household goods (In fact, you will see the even newer federal definition of household goods, changed again in November 1999 with the passage of the "Federal Motor Carrier Act of 1999").⁷ Also contrary to the Falk conclusion, in response to a letter from AMSA President Harrison, Surface Transportation Board's Chief of Rates and Informal Cases, Mr. Lawrence Herzig, regarding a similar operation being conducted by nationwide common carriers ABF, Inc. and Consolidated Freightways, Inc., concludes that "*if CF MovesU.com is transporting items which are covered by this definition, it would be my informal opinion that the service would constitute household goods transportation.*"⁸ The post 1995 federal definition clearly makes no distinction in the types of services involved in transporting household goods. It is logical then to conclude that had Falk based his finding on the current definition, it is improbable that his

⁷ Exhibit 7 - Federal definitions of household goods

⁸ Exhibit 8 - Harrison letter and Herzig response

conclusion would have been the same.

WUTC staff used similar rationale in their determination, stating: *“Our rules define transporters of household goods as carriers who provide specialized services and use specialized equipment. The scenarios described to us by Shurgard Storage representatives did not include either provision or specialized service nor the use of specialized equipment. Therefore, the operations in Washington are not classified as transportation of household goods.”*⁹

We believe this line of reasoning is also in error, evidently having been construed from a section of the previous Washington definition (WAC 480-12-400) employed from 1969 to 1995, referring to the since deregulated commercial moves of *“...articles, including objects of art, displays and exhibits, which because of their unusual nature or value require specialized handling and equipment...”* In addition to the fact that the only reference to *“specialized services and specialized equipment”* in Washington’s definition is in respect to deregulated office and commercial moves, most household moves do not include articles of unusual nature or value which require specialized handling or equipment. WUTC staff apparently used this very specific description of the now deregulated commercial handling of high value articles to mean that the absence or inclusion of accessorial services in general should define whether a shipment of household goods should be regulated as such.

We believe the Falk finding was incorrect, and that WUTC staff relied on it for guidance. Further,

⁹ Exhibit 9 - Pat Dutton letter to Joe Harrison, AMSA President

we believe that WUTC staff misinterpreted Washington statute and the Washington State definition of household goods in the previous rulemaking. Finally, we believe that the conclusion reached by the WUTC in the previous rulemaking, that the provision of accessorial services and type of container used are primary to defining shipments of household goods, is incorrect and should be revised.

WAC 480-15-030 Waiver of rules.

Any waiver of rules not fixed by statute must be applicable to all household goods carriers performing the same service, not merely the household goods carrier requesting the waiver.

Further, public notice and opportunity for comment should be provided before approval of any waiver of rules.

WAC 480-15-260 Are there exceptions to the application process?

An additional component should be added to allow for joint petition for a waiver of the temporary application process and granting of permanent authority in the case of a sale, or transfer of control of a sole proprietorship, partnership, or corporation to a minority shareholder or shareholders, or to an uninterested sole proprietorship, partnership, or corporation which meets the designated requirements.

In the case of a sale or transfer of this type, the provisions for public notice and opportunity for comment should apply before approval of the application for permanent authority.

WAC 480-15-280 When must I apply for temporary authority?

Language should be added which includes a physical review of vehicle safety before temporary authority is issued.

Further language should require that before the issuance of temporary authority, a positive determination must confirm that appropriate accounts have been established with the departments of revenue, labor and industries, and employment security.

We believe that these additions are reasonable and necessary to fulfill the intent of the specifications of RCW 81.80.170, which state: *“The Commission may issue temporary permits...but only after it finds that the issuance of such temporary permits is consistent with the public interest.”*

WAC 480-15-330 When must I apply for permanent authority?

Language should be added which includes the requirement of a safety and economic compliance audit prior to approval of a permanent authority.

First, it is essential to public safety that vehicles operated by household goods carriers are confirmed to be in safe operating condition and that the drivers of vehicles requiring a Commercial Driver’s License (CDL) are in compliance with physical health and federal drug testing laws.

Second, an economic audit of a carrier will ensure a fair, competitive environment by confirming that new entrants into the market understand and are compliant with all tariff rules and regulations.

WAC 480-15-490 Tariff and rates, general.

It is the position of the WMC that, while we have accepted the concept of a banded rate system, we believe that the -35% discount allowed by the previous rulemaking is too deep. For the following reasons, we propose instead a maximum discount of no more than -15%.

The primary argument of WUTC staff in justifying the -35% rate “floor” is the fact that in 1997 the average discount offered to the Department of General Administration for state moves was 25%. Adding 10% on top of that in anticipation of the “*lower costs movers*” speculated to enter the industry supplied the -35% which was subsequently adopted. The fact is, the average 25% discount applied to only 133 residential relocations in 1997. Based on a conservative estimate of the number of relocations performed per year by Washington’s moving industry, these state moves represent only a tiny fraction, 1/3 of 1%, of the moves performed in Washington during an average year.¹⁰ Additionally, and significantly, advertising and cost of sales expenses can be subtracted from the cost of performing these infrequent moves. Moreover, most companies performing them have stated that these occasional moves are non-profit “filler” moves which sometimes will help keep a crew busy and working while waiting for a “revenue” move. Based on this information alone, we believe the -35% rate “floor” is arbitrary and lacking of sufficient justification.

Furthermore, as opposed to WUTC staff, we believe that in some smaller Washington communities, “predatory” pricing is a genuine concern which could quickly cause what has been a stable and competitive environment to become anti-competitive, defeating one of the WUTC staff’s stated goals

¹⁰ Exhibit 10 - WMC’s Tutton letter to Ms. Pat Dutton

of offering the consumer more choice. While we agree that scenario is less likely to occur in the Greater Puget Sound area, if as few as one moving company is driven out of the market in smaller communities such as Yakima, the market could quickly change to the detriment of the consumer.

WUTC staff also has stated that, “*based on its history of regulating (the moving industry)...a wide range of variable costs*” exists within the moving industry.¹¹ However, the latest figures available for even consideration of this argument are from a 1993 cost study. WUTC staff validated those figures, which justified an 8-10% rate increase for a significant number of tariff items. And, based on the results of an informal sample cost study in 1998, we believe that a fully allocated cost study, if performed today, would justify similar, if not larger, increases to the current rates, further countering the stated justification of a -35% rate “floor”.¹²

Finally, as would WUTC staff, the WMC is willing to forego the expense and labor of executing a fully allocated cost study. However, only if the banded rate on which the new environment is based is conservative in nature, rather than speculative, and takes into account a balance of the continuing health of Washington’s professional moving industry with the addition of a more competitive environment in which new entrants will undoubtedly force a greater efficiency on incumbents to the benefit of consumers. We believe that a rate band of -15%/+15% is sufficiently wide enough to accomplish that goal.

¹¹ WUTC General Order No. R-454, p. 9, Dec. 14, 1998

¹² Exhibit 11 - 1998 WMC Cost Survey

WAC 480-15-740 What information must I include on a bill of lading?

The requirement that the start time, stop time, and any interruptions be notated for each person, by name, involved in or on a shipment rated under hourly rates is cumbersome and impractical.

WAC 480-15-650 Form of estimates.

Estimates for moves on which no services are provided should not be required to be held for any period of time. There has not been any previous requirement of this type, and it would impose a significant, and unuseful exercise on carriers in anticipation of a problem which currently does not exist.

WAC 480-15-560 Equipment safety requirements.

The definition of “commercial motor vehicle” as specified in this rule is satisfactory to the WMC.

WAC 480-15-570 Driver safety requirements.

The definition of “commercial motor vehicle” as specified in this rule is satisfactory to the WMC.

Respectfully Submitted,

Jay Lawley
Managing Director