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STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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November 16, 1998

Mr. Jack R. Davis
Law Offices of Davis & Baldwin
Suite 1902 - IBM Building
1200 5th Avenue
Seattle, WA 98101

Dear Mr. Davis:

As you requested in your letter of April 16, 1998, the following responses to the questions you posed in your letter have been included in Staff's response to comments received as a part of the rulemaking in Docket TV-971477, and have been included in the materials submitted to the Commission recommending final adoption of the proposed rules concerning household goods carriers.

1. In respect to the proposed rules regarding entry, are they intended to implement RCW 81.80.070?

A. Yes. These rules are intended to implement all provisions of Chapter 81.80 RCW, including RCW 81.80.070.

2. Does the Commission Staff propose to voluntarily apply the provisions of RCW 34.05.328 regarding significant legislative rules?

A. No. RCW 34.05.328(5)(i) lists the agencies to which the statute applies. The Washington Utilities and Transportation Commission (Commission) is not one of the agencies to which the rule applies. While RCW 34.05.328(ii) allows any agency to voluntarily make the section applicable to the agency, the Commission did not choose to make the statute applicable voluntarily. Finally, RCW 34.05.328(ii) allows the joint administrative rules review committee, within forty-five days of receiving notice of proposed rulemaking under RCW 34.05.320, to



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make the section applicable to the rule proposal. More than forty-five days have passed since the Commission gave notice of the proposed rule making on September 16, 1998; the joint administrative rules review committee has not chosen to make RCW 35.05.328 applicable to this rulemaking.

The Commission Staff has worked diligently to include all interested persons in the rulemaking. It has participated in drafting sessions with many different parties, and has held workshops with all interested parties to seek common understanding, to gather positions and propose rule language to meet those positions, and to work with all participants to accomplish the goals of Governor Locke's Executive Order 92.07, while improving regulation of the household goods moving industry. We have been supported by the participation of the Consumer Protection Division of the Office of the Attorney General, the Public Counsel Division of the Office of the Attorney General, the Washington Mover's Conference, the Independent Mover's Conference, and many individual movers, and consumers.

The Commission Staff has prepared a Small Business Economic Impact Statement (SBEIS) to measure the cost of compliance with the new rules, and has changed some of the rules to mitigate uneven cost impacts of the rules on small businesses. The Commission appreciates your input, and that of many other participants.

3. Are the specific objectives of these amendments to provide additional choices to the consumer?

A. One of the objectives of the rulemaking is to consider how to increase consumer choice. On November 4, 1997, the Commission filed a Preproposal Statement of Inquiry (CR-101) with the Code Reviser, giving notice of its intent to review all rules in chapter 480-12 WAC governing household goods carriers. The Commission also mailed a letter on the same day to all interested parties giving further notice of the Commission's intent to review rules governing household goods carriers. In the notice and letter, the Commission Staff stated its intent to review the existing rules pursuant to the directives of Governor Locke's Executive Order 92-07, and to consider rule changes that ease carrier entry and allow more flexible rates - both of which could result in greater consumer choice.

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4. What alternatives are available to achieve these goals?

A. A study of the alternatives available to achieve goals is required by RCW 34.05.328(1)(b). As noted in response to Question 2, that statute and its requirements are not applicable to this rulemaking.

Throughout the rulemaking, the Commission Staff and other participants discussed many alternative proposals. All alternatives brought to the table were discussed and analyzed. Creative thought and new alternatives were consistently sought in a safe, respectful environment. As an example, at least one party wanted written bids to be required in every move, not just when requested by a shipper, and wanted all bids to be binding. Another option considered was a requirement for a "back end" description of the receiving end of a move, and a requirement that movers provide such "back end" bids to each other. Other parties suggested elimination of rate regulation. Still others sought to maintain the status quo. All of these options, and many others were considered. At the time of filing the CR-102, most issues other than the upper and lower limits of a rate band (the rate band itself was not contested) and the availability of optional binding estimates had been agreed upon by most participants. The latest round of comments has shown some parties changing position on some of these issues, and seeking rules closer to the status quo. All of these alternatives have been considered in terms of what will best meet the goals of the Executive Order, and of the CR-101 statement of purpose.

5. Are the probable benefits of the proposed rules greater than the costs?

A. A study of whether the probable benefits of some proposed rules are greater than the costs is required by RCW 34.05.328(1)(c). As noted in response to Question 2, that statute and its requirements are not applicable to this rulemaking.

However, the Commission Staff believes that the probable benefits of the proposed rules will far outweigh its costs. The SBEIS describes many benefits which will accrue from the proposed rules to movers, small businesses who hire movers, and consumers. The rules are written to encourage more open entry, and to encourage movers to serve a broader spectrum of the moving public. The Staff believes the new rules will allow a broader percentage of the moving public to afford a mover

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who complies with the Commission's rules. By increasing the size of the "pie", all efficient movers will benefit.

The new rules will allow existing movers to serve much broader areas of the state, giving them the opportunity to serve new markets. In addition, the new rules emphasize technical assistance and training by the Commission Staff to bring currently uncertificated movers into compliance. These movers may be able to continue to serve niche markets at lower cost than the current tariff rates. This will benefit both these movers and consumers. By moving to a more flexible rate structure, and opening up the market to competition, the Commission moves toward the goals of its strategic plan of using market structures, where they will function, in place of government regulation. The innovations of a competitive market will benefit all moving consumers.

6. Are the proposed rules the least burdensome alternative to regulated industry?

A. A study of whether the proposed rules are the least burdensome alternative to regulated industry is required by RCW 34.05.328(1)(d). As noted in response to Question 2, that statute and its requirements are not applicable to this rulemaking.

The proposed rules will allow already certificated movers to continue to provide service; for those who do not have statewide authority, it will give them broader authority to operate. The new rules will include in rule an interpretation of what constitutes transportation of household goods currently applied by the Commission, based upon a ruling of its Permit Interpretation Committee. This ruling is consistent with the federal rulings that govern interstate movers. This will allow all carriers easy access to the rules governing who needs a household goods permit. The new rules will allow carriers more flexibility in rate setting, dispute resolution, and defining territory served, this will allow managers to use their best judgment in shaping a business plan to meet their goals. The well-managed household goods carriers will flourish under the proposed rules.

7. What documentation is available to support these determinations?

A. The entire record in TV-971477 is available for review in the Commission's

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Records Center. The record includes notices and records for all stakeholder meetings, comments from the public, discussion drafts of the rules and all other materials relied upon by the Staff in working to develop these rules with stakeholders.

8. Have you formed an implementation plan?

A. An implementation plan is required by RCW 34.05.328(3). As noted in response to Question 2, that statute and its requirements are not applicable to this rulemaking.

The Commission has a tariff proceeding under way to implement portions of the proposed rule. Other portions will be implemented in line with internal agency practices. For example, new forms are being designed to provide to carriers under the proposed rules, classes on safety and tariff training have or are being developed, and a compliance and enforcement plan is under development.

9. Has any study been made regarding consumer complaints relating to existing rules?

A. No formal study has been made. Staff has relied upon complaint files gathered from the Consumer Protection Division of the Attorney General's Office, information from the Commission's Consumer Affairs Division files, and the files and experience of Commission compliance personnel. Staff has also considered any available consumer complaint information available from other states. Experience with other industries has shaped some of the ideas of the consumer affairs experts on the Staff rule making team. Consumer advocates from the Consumer Affairs Division of the Office of the Attorney General and of the Public Counsel Section of the Office of the Attorney General have drawn upon their research and experience in shaping their input to the Commission. A record of comments, and information relied upon, is in the rule making file in this matter.

10. Have you made any compilation of consumer complaints?

A. The Commission Staff compiles complaint statistics for other industries, but not

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for the household goods moving industry. The Staff has not prepared a specific or special study for purposes of this rulemaking.

11. What choices are presently available to consumers in various markets in the State of Washington?

A. Consumers in Washington state have the following options for moving services for intrastate moves: certificated household goods movers, uncertificated household goods movers, hiring a pack and load company to pack and load the household goods, and driving it themselves, or hiring a driver, and finally doing it themselves by renting a U-haul type vehicle or borrowing a truck or van. However, if the consumers do not want to move themselves, but want to hire a "legal" mover, the options for price are limited, given the hourly tariff rate that applies to all certificated movers. Most consumers shop for options based upon price.

12. Are there any market areas that do not have choices?

A. Commission Staff does not believe there are any market areas without the choices discussed above in response to Question 11. However, as discussed above, the choices are limited due to the lack of price choice among the permitted movers.

13. What existing problems, if any, will be cured by easing entry requirements?

A. Given the current rules and how they have been applied by the Commission and used by members of the Movers Conference, it is very difficult to obtain a permit to operate legally as a household goods mover in the state, except by purchasing an existing carrier's permit. Since the 1940's, the number of permits currently operated in the state has dropped to nearly 100, and the population of the state has increased. Given the recent changes in regulation of the larger motor carrier industry, many consumers, persons seeking opportunities in this area, as well as legislators, question why the market is not more open. Also, as a result of the closed market, a great number of non-permitted carriers are operating. The Commission receives consumer complaints about these companies, for which the Commission cannot really assist the consumer, except to obtain cease and desist

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orders preventing the company from operating without a permit. Therefore, Staff believes easing entry will provide greater choice to consumers and allow both existing business and new entrants to expand their service options and develop new markets.

14. Who will benefit from reducing entry requirements?

A. Existing carriers, new entrants and consumers will all benefit from reducing entry requirements. Existing carriers will benefit by the ability to operate statewide - including within all cities in the state. Operating authority has traditionally been limited to certain territories within the state, or within the city limits of cities or metropolitan areas. Easing these limitations will allow existing carriers to more effectively compete with each other and new entrants. New entrants will benefit by allowing those who wish to legally operate an opportunity to do so without the stigma of illegal operation. Consumers who seek greater choices for moving services will benefit by having more moving companies operating under the supervision of the Commission, and the additional consumer protections available under the proposed rules.

15. Can existing problems, if any, be eliminated without reduced entry requirements?

A. No, the consumer and producer benefits of increased competition cannot really be achieved without relaxing existing entry standards.

16. How many qualified moving companies will be added by reduced entry requirements?

A. Since July 22, 1998, when the commission authorized an interpretive statement concerning issuance of temporary permits, six carriers (2 currently certificated) have requested new or expanded authority. While at least 25 applications have been sent out, the Staff does not know how many qualified moving companies will seek authority or be granted authority under the proposed rules.

17. In what areas will those companies be added?

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A. Staff expects additional qualified moving companies will seek authority to operate throughout the state and that their operations will be focused on different niches within the industry.

18. What impact will the addition of those companies have on any consumer problems presently existing?

A. Increasing the number of carriers operating within the state may produce different impacts on existing consumer problems. Allowing for a more competitive market may force companies to be more focused on the consumer, reducing the number of consumer problems. Increasing the number of carriers may also increase consumer problems which the Commission will address. However, the Commission Staff has worked proactively to develop strong consumer protection rules through discussions with stakeholders and reviewing the problems consumers face in other states. In addition, Staff has developed a consumer satisfaction survey that every mover operating under a temporary permit must provide to the consumer after each move is complete. Consumer satisfaction is one element the Commission will look to in determining whether to grant permanent authority under the proposed rules.

19. What impact will those additions have on existing small businesses?

A. The SBEIS indicates that the impact on existing small businesses who hire household goods carriers, perhaps to move employees, will be very positive. They should have greater choice in movers and in moving services. The cost to existing movers who are small businesses of complying with the new rules should be small, and have been mitigated in accordance with the SBEIS. Small moving businesses will have all of the advantages previously described for all existing movers: the new rules will allow existing movers to serve much broader territories in the state, giving them the opportunity to serve new markets. The new rules will allow carriers more flexibility in rate setting, dispute resolution, and defining territory served; this will allow managers to use their best judgment in shaping a business plan to meet their goals.

20. Are the existing tariff rates compensatory to carriers paying prevailing wage

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levels, including applicable employee benefits and withholding, such as workmens compensation, FICA, overtime, paid vacations, sick leave, and compliance with the ADA?

A. Prevailing wage is a term of art which refers to the wages to be paid to the employees of certain companies as set by the industrial statistician. See RCW 39.12.015. The state of Washington employee who hires household goods carriers to move state employees contracts with movers at rates up to 40% lower than tariff rates. If these moves for the government are viewed as "prevailing wage" moves, then some might argue that current tariffs discounted 40% would provide prevailing wage levels. But this concept more likely does not apply at all to household goods carriers in the state of Washington. Household goods carriers are not within the scope of chapter 39.12 RCW. See AGO 1983 No. 13.

The current tariff rates were based on a theory of regulation that allowed for a regulated oligopoly in the household goods moving industry, and based rates upon the average fully-allocated costs of a group of companies. The interim band of rates under the proposed rules will not be based upon this theory. The Washington Mover's Conference has provided some averaged cost data to the Commission during this rulemaking, but has not provided the unaveraged, individual company costs that support the average numbers. Thus, the Commission does not have any individual company data to use to judge current costs.

Under the theory of rate setting included in the proposed rules, the Commission will have to study the household goods moving industry to determine when the industry has opened up. At that point, the Commission can determine how to use data about the more competitive industry to set maximum and minimum rate levels. A fully allocated or any other cost study during the pendency of this rule making could not have provided the necessary data. Our economists have advised us that the structure of the household goods moving industry is not one that will support predatory pricing. See Staff Memorandum regarding the Economics of Banded Rates, Attachment 2 to Staff's November 16, 1998, Open Meeting Memorandum.

21. How will the Commission protect against predatory pricing under a minimum/maximum tariff arrangement?

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A. Although a band will allow some flexibility in pricing, it will not allow total marketplace freedom. While predatory pricing could occur in the household goods moving industry in Washington State under certain circumstances, Staff does not believe predatory pricing is likely to occur due to the proposed price floor and other reasons. See Attachment 2 to Staff's Open Meeting Memorandum. However, the Commission will, on its own motion, or upon the complaint of an individual carrier, investigate and penalize the anti-competitive practices of any carrier pursuant to RCW 81.04.110.

22. What is the existing WUTC budget for enforcement of consumer complaints?

A. The 1997 to 1999 Biennial Budget authorizes approximately \$1.3 million to the Consumer Affairs Division of the Commission for all activities and operations. The budget does not suballocate an amount for enforcement.

23. What impact will these proposed rules have on the WUTC budget for consumer protection?

A. Staff does not expect the proposed rules will have a significant impact on the Commission's budget for consumer protection. Much of the work in addressing consumer complaints involving movements of household goods is currently conducted by Commission's compliance or enforcement staff.

24. During the twelve months of 1997 and the first three months of 1998, how many consumer complaints did the WUTC investigate involving household goods movements?

A. Based upon monthly investigation report summaries sent to the Washington Mover's Conference, the Commission investigated approximately 35 consumer complaints involving movements of household goods during the twelve months of 1997 and the first three months of 1998.

25. What were the nature of such complaints?

A. The complaints involved issues of estimating (underestimating, overestimating,

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and supplemental estimates), damage claims, loss of goods, delivery, safety and rates.

26. How many of such complaints resulted in a warning or penalty to the moving company?

A. Six of the complaints resulted in the Commission issuing a warning letter or penalty to the moving company.

27. Please identify the companies and nature of the warning or penalty.

A. In January 1997, the Commission issued a warning letter to United Moving & Storage, Inc., for a complaint involving an overcharge. In April 1997, the Commission issued a warning letter to Washington Moving & Storage for a complaint involving an underestimate. In October 1997, the Commission issued a warning letter to Corporate Moving Systems for two separate complaints relating to estimates. In January 1998, the Commission issued a warning letter to Cascade Moving for a consumer complaint involving underestimating ; and a \$1000 penalty to Bluebird Transfer for several consumer complaints relating to underestimating. In April 1998, the Commission issued a \$1000 penalty to Youngmen West, a commercial freight permit holder, for illegal operations.

28. How will the Commission Staff determine appropriate "minimum rates"?

A. The Staff has determined the appropriate band of rates around the current tariff rates by setting a low band at 35% below current rates and a high band at 15% above current rates. Staff determined the appropriate lower band by considering transportation agreements between regulated movers and the Department of General Administration. Based on those agreements, Staff determined that taking into account the variation of discounts and the size of cost factors, a lower band of 35% was appropriate. Staff determined the lower band based upon the 25% average discount of incumbent movers and added 10% to provide new entrants with lower cost structures the opportunity to provide different service options. See Attachment 2 to the Staff's November 16, 1998, Open Meeting Memorandum.

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29. Will the measurement of appropriate minimum rates be based on the lowest cost carrier service included?

- A) Wage levels
- B) DSHS premium
- C) FICA
- D) Vacation pay
- E) Sick leave
- F) Safety training
- G) Safety appliance, such as back support

A. No. Current rates were based on an averaged fully allocated cost study. Staff does not believe fully allocated costs establish the appropriate basis to establish rates during a time of change in the industry. See Attachment 2 to Staff's November 16, 1998, Open Meeting Memorandum.

30. What impact will the minimum rate structure have on existing small business?

A. It will allow small businesses, as with all carriers, to offer prices that reflect their costs within the banded rates and expand, or review, the services they provide in order to become more efficient. However, if their costs are below the lower band they will not be able to pass on the benefits to their customers because they cannot charge less than the bottom or lower band.

31. How will the WUTC Staff enforce the maximum/minimum tariff provisions?

A. The Commission will, as a part of its compliance and enforcement program, provide training to carriers on the use of tariff rates, including the band. Staff will focus its efforts, in part, on monitoring the rates carriers charge. In addition, as stated above, the Commission is authorized under RCW 81.04.110, to investigate, on its own motion, allegations and evidence of unfair or anti-competitive activity between carriers.

32. How will the Commission Staff enforce the binding estimate or not to exceed estimate provision?

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A. The binding estimate provision in the proposed rules is an option for each carrier. A carrier may choose not to provide binding estimates. Staff will review carrier practices through terminal audits and as a result of consumer or industry complaints. Any rule violations will be dealt with as set forth in proposed WAC 480-15-150.

33. How will the Commission Staff evaluate the impact of the proposed regulations?

- A) Before implementation
- B) After implementation

A. Throughout the rulemaking process, Staff has discussed with stakeholders the possible impacts of the proposed rules. In addition, to determine the impact on small business, Staff contracted with an economist to prepare an SBEIS. After implementation, Staff plans to periodically monitor the level of competition to determine when it is appropriate to initiate a cost study. In addition, Staff will monitor the effects of opening entry across the state through terminal audits and communication with the industry. Staff will evaluate the impact of other changes through responses to the consumer satisfaction survey and feedback from the industry.

34. Has the Commission Staff made any study to obtain any statistics from consumers in respect to their satisfaction under existing rules and/or under the proposed revisions?

A. No. However, the proposed rules, when implemented, will require applicants for permanent authority to first obtain temporary authority. While operating under a temporary permit, carriers must provide their customers with a satisfaction survey, stamped and addressed to the Commission. The Commission plans to review the responses as a way to evaluate an applicant's service, as well as consumer satisfaction with the effect of the proposed rules.

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Thank you for your interest and participation in this rulemaking. The participation of stakeholder has improved the proposed rules enormously.

Sincerely,

A handwritten signature in cursive script that reads "Pat Dutton". The signature is written in black ink and is positioned above the printed name and title.

Pat Dutton
Assistant Director, Operations

cc: Jim Tutton