

Date Received: November 2, 1998

Docket No.: TV-971477

Company: Amends WAC 480-12, Relating to Household Goods Movers

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BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

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In The Matter of)	Docket No. TV-971477
)	
HOUSEHOLD GOODS RULEMAKING)	COMMENTS OF
)	JAMES R. TUTTON, JR.
)	ON BEHALF OF THE WASHINGTON
)	MOVERS CONFERENCE

I graduated from Eastern Washington University in 1965 with a degree in business and industry. Through the ROTC program I entered the United States Army as a Transportation Officer, Second Lieutenant. I spent twenty-three years in the Army. During the last thirteen years of my Army career, I served in various positions with the Department of Defense household goods relocation programs. My final military assignment (1987-1989) was as Director, Joint Personal Property Shipping Office, Fort Lewis, Washington. I retired as a Lieutenant Colonel. Upon retirement, I accepted the position as Executive Director, Washington Movers Conference which I hold today. I also am the Vice President of the Washington Trucking Associations.

The Washington Movers Conference is a non-profit corporation organized under the laws of Washington comprised of 95 professional state certified household goods moving companies. Attached as Exhibit A is the Statement of

COMMENTS OF JAMES R. TUTTON, JR. - 1

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001448

1 Purpose adopted by the Washington Movers Conference. Attached as Exhibit B
2 is the Code of Ethics adopted by the Washington Movers Conference.

3 The Washington Movers Conference is one of six conferences which are
4 affiliated with the Washington Trucking Associations. Generally, the Washington
5 Movers Conference participates in the Washington Trucking Associations in
6 order to obtain economic benefits associated with membership services (e.g.,
7 health insurance, etc.) and both legislative and state agency oversight.

8 My comments are made on behalf of the Washington Movers Conference.

9 Contrary to the SEBIS, there is a real market value for household goods
10 moving permits under the existing system. Within the past three months, I am
11 aware of the open market sale of a household goods permit for \$40,000.00 (no
12 other assets were purchased).

13 The proposed regulations destroy not only the real economic value of a
14 permit but also the opportunity to receive notice and comment upon its issuance.

15 Serious concerns are presented by elimination of the opportunity to comment
16 prior to issuance of either a temporary or permanent permit. This means that
17 issues regarding the applicant's fitness, the effect of permit issuance on
18 maintenance of a stabilized moving services, sound economic conditions in the
19 moving industry and other statutorily mandated considerations are bypassed.
20 The proposed regulations eliminate any opportunity for evaluation of the fitness

1 of the applicant and the impacts of virtual unrestricted entry into the market upon
2 the consumer as well as the industry.

3 Under the proposed rules, movers who have not heretofore operated in
4 compliance with Commission rules will be rewarded by liberal issuance of
5 permits without consideration of other fitness or other statutorily mandated
6 considerations. Established law-abiding movers will be penalized in a number of
7 ways. Their existing permits will be devalued. Unlimited entry will flood the
8 market with movers and destabilize the industry. Predatory market activities will
9 prevail. Elimination of trained full-time workers and the increased use of
10 temporary or casual (untrained) workers will occur. Equipment will not be
11 replaced in a timely manner thus increasing safety hazards to workers, potential
12 damage to consumer's goods, and increasing risks to public safety on the
13 highways.

14 Another major concern is the likely elimination of employee benefits such
15 as medical plans, life insurance plans, pension plans, etc. The reason such
16 employee benefits are likely to vanish is due to the non-compensatory pricing
17 authorized by the extreme lower band rate proposed.

18 Predatory pricing practices authorized by the low end of the band are likely
19 to be used by large well financed moving companies to force small marginal
20 companies from the market. A large company, if it wished to do so, would price

1 its services at the lowest allowable rate in a given market area (even though it
2 would lose money at the low rate). The large company could afford losses over,
3 say, a three or six month period which a small company could not sustain. The
4 probable effect of the proposed regulations is contrary to the purposes of the
5 proposed rules as set forth in the WUTC CR-102 filing which are stated to allow
6 more carriers into the market, increase consumer choice, and allow pricing
7 flexibility.

8 More carriers will not be available to provide moving services to the public
9 for the reasons just stated. Only large companies who engage in predatory
10 pricing (at the low end of the band) will be able to “expand their operations” as
11 predicted. Such expansion will occur at the cost of small marginal carriers who
12 may well be forced out of business.

13 Predicted benefits to consumers are unknown other than the probability of
14 temporary lower pricing at the cost of elimination of small marginal competitors.
15 Consumer choice will not be increased. Any consumer protection benefit is
16 speculative.

17 The most dramatic change in the proposed regulations is the shift from
18 historic published tariffs for movers to a banded rate from 35% below the fixed
19 rate to 15% above the fixed rate. The drastic change is not warranted by changes
20 in the market, changes in industry cost structure, or changes in relevant law.

1 The proposed banded rates do not provide a stabilized rate structure for
2 the industry because the low end of the band is too low. It is too low to provide a
3 reasonable rate of return on equipment, facilities, and personnel costs. The fixed
4 rate which establishes band spread is unrealistic because it is based on 1993
5 economic data. There has been an inflation rate of 2% per year since 1993
6 affecting the cost structure of the moving industry which is not accounted for.

7 Attached are copies of correspondence and memos I received or prepared
8 for transmittal to Ms. Pat Dutton, WUTC staff (Exhibit C) which explain our
9 concerns with the proposed banded rates.

10 Staff recommends temporary use of the proposed banded rates until a fully
11 allocated cost study is conducted. Because of serious flaws in the proposal, I
12 recommend that the existing tariff for household movers be retained until the
13 needed study is completed. Washington Movers Conference will provide
14 financial assistance in obtaining the necessary study.

15 Another concern is presented by Staff's representation that adequate
16 enforcement of the proposed regulation is assured. Copies of my letter of inquiry
17 dated October 9, 1998 and Staff's response dated October 18, 1998 are attached
18 as Exhibit D. Note Staff's affirmative response to my question followed by: "The
19 Commission has sufficient staff . . . to enforce the laws and rules." The
20 Interpretative Statement Regarding Issuance of Temporary Permits for Household

1 Goods Carriers issued July 22, 1998 at page 3 plainly says that the Commission
2 lacks sufficient compliance capability "to independently investigate special
3 shipper, public and community needs, and whether local services are, in fact,
4 available." Copy attached as Exhibit E. Laws are only as effective as their
5 enforcement. In light of the lack of enforcement capability due to budget
6 constraints, Washington Movers Conference will support legislative
7 appropriation of funds to supplement regulatory fee income prescribed by RCW
8 81.80.321.

9 The proposed regulations for issuance of temporary permits provide for
10 automatic issuance upon an office review of the application. Opportunity for
11 notice prior to issuance is, contrary to present practice, denied. Opportunity for
12 the industry or the public to comment is deferred (contrary to present practice)
13 until after the temporary permit is issued. This change makes it impossible for
14 the Commission to fulfill its responsibilities to ensure that the applicant is fit and
15 that issuance of the permit is in the "public interest." Once a person obtains a
16 permit, it cannot be revoked, suspended, altered, or conditioned without notice
17 and opportunity for hearing to the permittee. The Commission is giving up its
18 right to refuse or condition permits as authorized by RCW 81.80.200 if information
19 is provided after permit issuance which might warrant revocation, suspension, or
20 imposition of conditions.

COMMENTS OF JAMES R. TUTTON, JR. - 6

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001453

1 The right to comment ex post facto on permit applications with a hearing
2 available provides little protection to the industry or the public. The proposed
3 changes in permit issuance do not further the Commission's mandate to protect
4 the public interest. While the proposed changes will open the gate to new
5 applicants, the Commission will never see information in a timely manner (prior
6 to permit issuance) relevant to fulfillment of its statutory duties.

7 The proposed use of binding estimates is objectionable for the reasons
8 stated in my prior comments to Staff dated August 4, 1998 at page 4. Copy
9 attached as Exhibit F.¹ The reasons why the use of binding estimates (even
10 optionally) is undesirable and unworkable are well put in the Mr. Smith, President,
11 Corporate Moving Systems letter to Staff dated April 9, 1998. Copy attached as
12 Exhibit G. Also please consider the comments of Mr. Creek, President, Crown
13 Moving Company to Staff dated February 23, 1998 which also addresses this
14 issue. Copy attached as Exhibit H.²

15 Exclusion from regulation of customer packed sealed self-storage
16 containers (commonly known as the Door-To-Door moving service) is both unfair
17 and unacceptable to the household goods moving industry. See: proposed WAC
18 480-15-020(14). It is unlawful for any person to operate a motor carrier on public
19 highways without compliance with all laws and regulations "of this chapter."

¹I ask that you read my comments in Exhibit F as a supplement to these comments.

1 RCW 81.80.050. It cannot be disputed that a Door-To-Door operation uses motor
2 vehicles on the public highways for the transportation of household goods. The
3 self-packed goods are household goods. They are transported to either short
4 term or permanent storage for a fee. The effect of the proposed exclusion is to
5 deregulate this segment of the household goods moving market. The
6 Commission should refuse to give a carrier an unfair advantage over a
7 competitor. Exclusion of Door-To-Door operations from the regulatory
8 requirements of Chapter 81.80 RCW and Commission regulations would place the
9 regulated moving industry at a disadvantage in terms of this market segment.
10 Attached as Exhibit I is a copy of a recent decision of the Oregon Department of
11 Transportation which requires a Door-To-Door operation to obtain a household
12 goods moving permit before entering the market. I suggested an acceptable
13 definition of "household goods" to Staff on January 13, 1998 without any
14 response from Staff. Copy attached as Exhibit J.³

15 Since the rulemaking process began in November, 1997, Washington
16 Movers Conference has been frustrated by Staff's failure to meaningfully respond
17 to our concerns. This is evidenced by my memo dated February 2, 1998 to
18 members. Copy attached as Exhibit K. My letter dated April 2, 1998 is an
19 example of unanswered questions. Copy attached as Exhibit L.

² Additional concerns regarding the proposed rules raised in Exhibits G and H should be

1 **Note that specific objection is made to the proposal to allow “waiver” of**
2 **the rules without any standards or guidelines. The Commission has broad**
3 **authority in its rulemaking function but it may not selectively enforce laws or**

reviewed.

³ Please review my comments in Exhibit J.

COMMENTS OF JAMES R. TUTTON, JR. - 9

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001456

1 regulations applicable to all (apparently based on its notions of equity). A state
2 agency does not possess common law equity powers. Staff's response is not
3 factually correct and does not squarely meet our comments. Copy attached as
4 Exhibit M.

5 Staff has not responded to our attorney's questions regarding this
6 rulemaking proceeding in Mr. Davis letter of April 16, 1998. Copy attached as
7 Exhibit N. Answers to these questions are critical to any analysis of whether the
8 proposed rulemaking is lawful and in the public interest.

9 I was asked by Staff to draft regulation language regarding compliance. I
10 did so and transmitted my suggestions by letter dated June 30, 1998. Copy
11 attached as Exhibit O. Staff changed my suggested language but the concepts
12 were retained in the proposal, Part 1-3 Compliance With This Chapter. We have
13 no quarrel with the language of Part 1-3 except for the previously noted lack of
14 compliance capability which renders Part 1-3 meaningless (as Staff is aware).

15 A summary of my concerns was sent to Chairwoman Levinson on October
16 29, 1998. Copy attached as Exhibit P. This letter is a current summary of our
17 frustration with Staff in this rulemaking proceeding.

18 I urge the Commission to defer consideration of the proposed household
19 goods moving rules until a fully allocated rate study is available to support a
20 tariff. The existing tariff should remain in effect during the interim. The

1 additional time could be used to good effect to answer the many comments,
2 concerns, and objections which have been heretofore ignored.

3 I also urge the Commission to defer establishment of new (lower) entry
4 standards into the moving industry until the rulemaking process is completed. A
5 return to the status quo ante can be accomplished by withdrawal of the
6 Interpretative Statement issued by the Commission on July 22, 1998. (Exhibit E.)

7 Dated this 2nd day of November, 1998.

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9
10
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JAMES R. TUTTON, JR.

MEMORANDUM

August 6, 1998

TO: Pat Dutton, Assistant Director, Operations

FROM: Gene Eckhardt, Assistant Director, Water and Transportation
Tom MacLean, Commission Staff Economist

SUBJ: Customer Choice and the Benefits of Banded Rates

After discussions with the Washington Mover's Conference and the Association of Independent Movers, and analyzing transportation agreements between regulated movers and the Department of General Administration, the Commission staff believes that the appropriate variations to the current tariff rates and charges should be 15 percent above and 35 percent below the current rates. These variations would remain in place until such time as the staff can complete a review of this industry's actual rates and charges. Following is an example of rates using a \$1000 move and the current \$85.05 rate for a truck and two men:

LOWER LIMIT (MINUS 35%)	BASE	UPPER LIMIT (PLUS 15%)
\$650 Move	\$1000 Move	\$1,150 Move
\$55.28 Rate (Truck +2 Men)	\$85.05 Rate (Truck +2 Men)	\$97.81 Rate (Truck +2 Men)

Discussion:

The proposed rule changes for household goods movers would directly increase consumer choice, relax the rules for new entry, and allow upper and lower bands around the current tariff rates.

Under the new rules we expect that the industry will grow, and that services will become niched appropriately to meet the differentiated needs of the customers. Some potential customers may want a more economical service, while others may want more choices in service intensity or time of service. We cannot state precisely who the new entrants will be and how they will affect the market, but we expect a much wider variety of services and prices to be offered to the public.

Allowing bands around the current tariff rates will benefit the industry in a number of ways. It will allow full-service movers to raise their rates to cover increased expenses or improve services. The band would also allow a mover to charge lower rates, passing cost savings achieved to the customer or to reflect lesser service levels, if they decide that is appropriate for their firm.

Exhibit A

001445

MEMORANDUM

August 6, 1998

Page 2

Rates for this industry have, in the past, been set at a single average number. Some of the carriers in the past test groups audited for rate setting had higher costs than the average, and some had lower costs than the average. The last rate case for household goods movers was in 1994; all costs have not stayed constant since then. The band suggested would also allow market forces to affect the rate-setting decisions of individual firms.

Costs that firms face can vary greatly. The operating expense categories include: wages, warehouse and office space, trucks, insurance, fuel, repairs, supplies, advertising and fees, and taxes. While most firms will incur costs in all of these categories, there will be a spread in the actual level of costs among the firms. The bands will allow a variety of prices to reflect these variations in costs and services.

The bands allow for some flexibility in pricing, but do not allow total marketplace freedom. One concern is that of "predatory pricing," where a firm could drop its price below costs in order to drive out competitors. Once the competitors are eliminated, then the firm raises its prices significantly, and the consumers are worse off in the long run. The bands will allow movers to offer lower prices, but the price floor will prevent predatory practices.

Some parties believe that allowing price flexibility will force incumbent movers to lower their prices. This may be true if new entrants compete directly against the incumbents, and the new entrants can operate more efficiently. However, if the incumbents are already operating efficiently in their market, then new entrants will focus on niches that are presently not being served.

Overall, we expect the economic "pie" to grow significantly. New entrants may bring efficiencies to the current market, and presently unserved markets will grow as the new entrants become established and consumers like their services.

Therefore, the Commission staff recommends the Commission approve an upper band of 15 percent above current tariff rates and charges and a lower band of 35 percent below current tariff rates and charges during the interim period between adoption of the new rules and a complete review of the rates and charges in the current tariff.

Upper Band: The last rate increase, for hourly rates, used 1993 household goods mover data. Since then, the Implicit Price Deflator for the Gross Domestic Product has increased about 10 percent, from 102.64 to 112.4. Staff believes an additional five percent in the band (for the total 15% recommended) would give movers some additional flexibility in pricing and service options, while still protecting consumers from a monopolistic price in areas where new firms may be slow to enter. Staff believes that as new movers enter the market to ensure consumer choice in service options and price levels, the Commission could raise the upper band.

001446

MEMORANDUM

August 6, 1998

Page 3

Lower Band: To better understand movers' pricing decisions, staff analyzed "Transportation Agreements" between regulated movers and the Department of General Administration:

Commodity: Household Goods -- Domestic Door to Door Motor Van Service
 Scope: Shipments moving in intrastate traffic in Washington State
 Period: Generally one year
 Discount: So-called "Bottom line Discount" off the rates in the tariff

Percentage Discount	No. Of Haulers
10%	1
15%	2
20%	8
25%	29
30%	23
40%	1

The average = 25%

Staff believes movers should have the opportunity to offer these same price and service options to the general public. New entrants will likely provide lower service levels and have lower cost functions. From the Department of General Administration's numbers we determined that 25% is the average bid discount. Staff has seen some cost estimates which indicate variations of 10-20% for specific costs (e.g., labor and equipment). Taking both the variations and size of cost factors into account, we suggest a lower band of 35% (25 average discount of incumbent movers plus 10% average variation in lower cost movers. Therefore, staff recommends a 35% lower band: 25% predominant discount of incumbent movers plus 10% average variation in lower-cost haulers.

001447