

Service Date: May 8, 2020



STATE OF WASHINGTON

## UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop S.E. • Lacey, Washington 98503

P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY 1-800-833-6384 or 711

May 8, 2020

### **NOTICE THAT THE COMMISSION WILL NOT ENTER A DECLARATORY ORDER**

RE: *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

TO ALL PARTIES AND INTERESTED PERSONS:

On April 9, 2020, the Washington Movers Conference (WMC) filed with the Washington Utilities and Transportation Commission (Commission) a letter petitioning the Commission for a declaratory order (Petition) in Docket TV-200348. WMC requests that the Commission clarify whether Commission rules authorize regulated household goods carriers to contract with third parties to perform regulated services such as packing, loading, transporting, unloading, and unpacking household goods.

The Commission gave notice of WMC's Petition as required by RCW 34.05.240 and WAC 480-07-930, and invited interested persons to submit a statement of fact and law on the issues raised by the Petition. On April 16, 2020, Lile International Companies (Lile) filed comments. On April 29, 2020, WMC, Hansen Bros. Moving & Storage (Hansen Bros.), and the Commission's regulatory staff (Staff) individually filed comments. On April 30, 2020, Scopelitis Garvin Light Hanson & Feary (Scopelitis), Dolly, Inc. (Dolly), Washington Refuse & Recycling Association (WRRA), and the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) individually filed comments.

#### **Applicable Law**

RCW 34.05.240 and WAC 480-07-930 require the Commission, within 30 days of receiving WMC's Petition, to take one of the following actions: (1) enter a declaratory order, (2) notify

Respect. Professionalism. Integrity. Accountability.

WMC that no order will be entered, (3) set a date by which the Commission will enter an order, or (4) set a date and time for a hearing.

The Commission may enter a declaratory order if the petitioner sets forth facts and reasons showing:

- (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.
- (e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.

The Commission requires that any petition for declaratory order “must conform in style and substance to the requirements for other forms of adjudicative pleading as specified in Part III, subpart A of” Chapter 480-07 WAC.<sup>1</sup> All petitions submitted to the Commission must be in writing, must clearly and concisely set forth the grounds for the petition and the relief requested, and must state facts that constitute the basis of the petition and the requested relief, including relevant dates.<sup>2</sup> The Commission construes pleadings liberally with a view to effect just results, but will not disregard errors or defects that affect the substantial rights of the parties.

### **Petition and Comments**

WMC states that its interest in its Petition is to ensure that the Commission ensures “a level playing field for all” intrastate household goods moving companies. Accordingly, it requests that the Commission determine whether a household goods moving company may contract with a third party “for the services of a work crew(s) to pack/unpack” household goods, “for the services of a work crew(s) to load/unload” household goods in to and out of a household goods moving company’s commercial vehicle, and “for the services of a commercial truck driver with a commercial truck and work crew to pick-up/deliver” household goods on behalf of the household goods moving company.

For all three questions that WMC poses, it states:

“If such is allowable, this would be a way for properly regulated intrastate moving & storage companies to absolve themselves from paying Unemployment Benefit Premiums and Workers Compensation Premiums to the Employment Security

---

<sup>1</sup> WAC 480-07-930(1)(a).

<sup>2</sup> WAC 480-07-370(3)(b).

Department and the Department of Labor and Industries because they would have no employees. Not a good plan!”

On April 29, 2020, WMC submitted comments in support of its own Petition. WMC’s comments further clarify that the Petition is in response to the operations of an unnamed “new App Based Moving company via the internet operating without the required UTC Intrastate HHG Operating Authority plus the business’s ‘business model’ appears to use contracted labor for packing, loading, unloading, and the services of a contracted driver with truck based upon the customer’s needs.” WMC states in its comments that the Commission’s Consumer Protection Division indicated that the app-based moving company had a common carrier permit and did not need a household goods permit.

In its comments filed on April 16, 2020, Lile expresses its concern that, as a household goods company regulated by the Commission, it will be unable to compete with companies that can contract with third-parties to provide household goods moving services because these companies will not be obligated to provide the same benefits that Lile provides to its employees.

In its comments filed on April 29, 2020, Hansen Bros. expresses similar concerns, particularly in light of the COVID-19 pandemic, and also argues that allowing any company to contract with third parties for household goods moving services undermines the Commission’s regulation of safety and service standards because a contracted third party would have no obligation to consumer or public safety.

In its response filed on April 29, 2020, Staff requests that the Commission deny and dismiss WMC’s Petition. Staff argues that WMC’s Petition fails to meet the requirements of RCW 34.05.240(1) and Commission rules pertaining to petitions and pleadings. Staff also argues that the errors in WMC’s Petition affect the substantial rights of the parties and inappropriately shift the burden to Staff. Although the Commission liberally construes pleadings to effect just results, Staff believes the Petition’s lack of substance will affect the substantial rights of any respondent.

In its response filed on April 30, 2020, Public Counsel requests that the Commission initiate a process to create a policy statement or a rulemaking to address an “uncertainty among the industry regarding the ability to use third-party service providers and, if so, the conditions under which they can be used.”

In its comments filed on April 30, 2020, Scopelitis requests that the Commission reject WMC’s Petition and argues that federal preemption prevents the Commission from regulating intrastate household goods moving brokerage and, therefore, the Commission cannot prohibit the use of third-parties for household goods moving services.

In its response filed on April 30, 2020, Dolly expresses that it was difficult to respond to a Petition that lacks supporting facts and legal reasoning. Nevertheless, Dolly explains its position that household goods moving companies are, or should be, permitted by statute and rule to use third-party contractors, that employees and independent contractors are not legally distinguishable, and that the Commission permits use of independent contractors in the auto transportation industry. Dolly requests that the Commission initiate a rulemaking, permit the filing of responsive memoranda to WMC's petition, allow Dolly and other interested parties to participate in oral argument, or issue an order declaring that a household goods carrier can use independent contractors to perform household goods moving services.

In its comments filed on April 30, 2020, WRRRA expresses support for WMC's position. WRRRA argues that the solid waste industry is faced with similar issues and does not believe regulated companies should be allowed to contract regulated services to unregulated third parties.

### **Commission Determination**

We decline to enter the requested declaratory order. The Petition fails to make any showing that there is uncertainty or an actual controversy that would (1) be resolved by a declaratory order, and (2) not render such an order merely an advisory opinion. Rather, WMC merely poses three hypothetical questions regarding the use of third-party contractors by regulated household goods companies and sets forth no supporting facts as required by statute. WMC, therefore, fails to meet the requirements for declaratory orders under RCW 34.05.240.

WMC's comments on its own Petition highlight these deficiencies. WMC contends that there is an entity that WMC believes may be conducting household goods moving without the requisite permit, but WMC does not identify the company or any facts supporting WMC's suspicions. Without substance, both factually and legally, WMC's Petition fails to enable potential stakeholders to effectively respond to the Petition, and the Commission cannot apply specified circumstances of a rule, order, or statute enforceable by the Commission as required by statute and rule.

Even if WMC were to address the deficiencies in its Petition, a declaratory order would not be the appropriate means of addressing WMC's concerns. The Petition is effectively a request that the Commission enforce its existing rules by investigating and taking action against companies that are not in compliance. Staff has repeatedly undertaken such investigations, and the Commission has taken appropriate action in response, for example in Dockets TV-161308 and TV-171212.

Thus, WMC's Petition fails to satisfy the requirements for declaratory orders under RCW 34.05.240 and WAC 480-07-930, and the Commission, therefore, declines to enter a declaratory order in response.

Nevertheless, we agree with WMC, Public Counsel, and Dolly that the use of independent contractors in the household goods moving industry has been, and continues to be, an issue that requires further guidance from the Commission. Accordingly, we determine that the Commission should open an inquiry in a new docket to consider whether a rulemaking or policy statement is the appropriate method to clarify and resolve such issues. Based on the history of stakeholder requests and responses, we recognize that this undertaking will likely be contentious and time consuming. The Commission must also consider its current resource constraints due to competing priorities and operational uncertainties related to the COVID-19 pandemic. In light of these factors, the Commission anticipates it will open an inquiry as described above by December 31, 2020.

**THE COMMISSION GIVES NOTICE that it finds WMC's Petition does not satisfy the requirements for declaratory orders under RCW 34.05.240 and WAC 480-07-930. The Commission hereby notifies WMC and all other interested persons that it will not enter a declaratory order in response to WMC's Petition.**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner