

1 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
2 **IN AND FOR THURSTON COUNTY**

3
4 **WASHINGTON MOVERS**)
5 **CONFERENCE, a domestic non-profit**)
6 **corporation; CENTRAL MOVING &**)
7 **STORAGE, L.L.C., organized under**)
8 **Washington law; MORRISON MOVING**)
9 **& STORAGE CO., INC., a domestic**)
10 **corporation,**)

11 **Petitioners,**)

12 **v.**)

13)
14 **WASHINGTON UTILITIES &**)
15 **TRANSPORTATION COMMISSION, an**)
16 **agency of the State of Washington,**)

17)
18 **Respondents.**)

No. 99 2 00038 0

**PETITION FOR JUDICIAL
REVIEW OF RULEMAKING**



19
20 **Come now petitioners, by and through their attorney, J.**

21 **Lawrence Coniff, who file this petition for judicial review pursuant to**
22 **the Administrative Procedure Act, Chapter 34.05 RCW, and in support**
23 **thereof state:**

24)
25)
26)
27)
)
IDENTIFICATION OF PARTIES

1. **Petitioner Washington Movers Conference (WMC) is a non-**
profit corporation organized under the laws of Washington. WMC is a
trade association made up of 95 privately owned and state permitted

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1 and regulated household goods moving companies. WMC's purpose is,
2 *inter alia*, to improve the quality of moving and storage services
3 available to the public and to promote public confidence in the quality
4 and integrity of the moving and storage industry in Washington.

5 To achieve this purpose, WMC addresses problems affecting the
6 industry including unfair, oppressive and illegal actions by state
7 officials and regulatory bodies. WMC represents the interests of its
8 members before the Washington Utilities & Transportation
9 Commission (WUTC) in matters affecting tariffs (authorized rates and
10 charges) and other matters of regulatory fairness. WMC has provided
11 financial assistance to WUTC by sponsorship of fully allocated cost
12 studies to develop reliable information for use in establishment of
13 tariffs. WMC exists to promote friendship and unity within the industry
14 and to provide the most efficient and reliable moving and storage
15 services possible to the public while upholding and advancing truth,
16 honesty, integrity, and fairness in all business transactions. WMC's
17 members pledge to strictly adhere to all State laws which govern the
18 moving and storage industry in the State of Washington.

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1 **WMC is committed to consumer protection from fraud, deceit,**
2 **misrepresentation, and unethical practices within the industry. To**
3 **that end, WMC will discipline or expel any member found to be**
4 **engaging in such practices, after extending the opportunity for a**
5 **hearing.**

6 **WMC's mailing address is 930 S. 336th Street, Suite B, Federal**
7 **Way, Washington 98003.**

8 **2. Central Moving & Storage, L.L.C., is privately owned**
9 **concern which holds a combined operating authority (permit) issued**
10 **by the State of Washington which authorizes it to transport household**
11 **goods in the state of Washington and provide local cartage moving**
12 **services in the cities of Bellingham and Mount Vernon, Washington.**
13 **The co-owners of Central Moving & Storage acquired their interests**
14 **from a long established moving company by purchase in 1971. The**
15 **purchase included an operating authority (permit) which authorized**
16 **moving household goods in Whatcom County (not including**
17 **Bellingham). Central purchased an operating authority for moving**
18 **household goods (local cartage authority) in Bellingham in 1997 for**

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1 **\$10,000.00. Central's combined permit has a present value of**
2 **\$30,000.00.**

3 **3. Morrison Moving & Storage Co., Inc. is a privately owned**
4 **domestic corporation which holds operating authorities (permits) to**
5 **transport household goods in the state of Washington and provide**
6 **local cartage in the cities of Spokane and Moses Lake, Washington.**
7 **The present owners of Morrison Moving & Storage acquired their**
8 **interests by purchase from the founders of the company in 1957 which**
9 **included a grandfathered permit. The founders of Morrison Moving &**
10 **Storage were in the business of providing household goods moving**
11 **services under the name Lyon Moving & Storage prior to regulation by**
12 **the State of Washington in 1911.**

13 **4. Petitioners' attorney is J. Lawrence Coniff whose mailing**
14 **address is 2120 State Avenue N.E., Suite 101, Olympia, Washington**
15 **98506.**

16 **5. The state agency, whose actions are the subject of this**
17 **petition for judicial review, is the Washington Utilities &**

1 **Transportation Commission (WUTC), 1300 S. Evergreen Park Drive**
2 **S.W., (P.O. Box 47250), Olympia, Washington 98504-7250.**

3 ***AGENCY ACTION AT ISSUE***

4 **6. Petitioners challenge WUTC's adoption of household goods**
5 **transportation rules as a new chapter 480-15 WAC and repeal of**
6 **Chapter 480-12 WAC (except WAC 480-12-100 and WAC 480-12-370) by**
7 **General Order R-454 on December 14, 1998 to become effective**
8 **January 15, 1999. A copy of General Order R-454 and Chapter 480-15**
9 **WAC is attached as Exhibit P-1.**

10 ***FACTS SUPPORTING CLAIM***

11 **7. Petitioner Washington Movers Conference (WMC) is a non-**
12 **profit trade association made up of privately owned movers of**
13 **household goods who hold operating authorities (permits) issued by**
14 **WUTC to transport household goods. WUTC, or its predecessor**
15 **agencies, have heavily regulated the household goods moving industry**
16 **(including rates and charges) since 1911. The other petitioners named**
17 **herein hold operating authorities (permits) which authorize them to**

1 move household goods in defined geographic areas including Mount
2 Vernon, Bellingham, Spokane, and Moses Lake, Washington.

3 Petitioners acquired their permits for valuable consideration and
4 have held them for many years. Petitioners have complied with WUTC
5 household goods regulations. Petitioners will suffer significant,
6 substantial damages and irreparable harm if the proposed rules
7 become effective.

8 8. Lowered entry standards under the proposed rules will
9 allow new applicants to operate under a temporary six month permit.
10 WAC 480-15-280. Criteria historically applied by existing regulations
11 for temporary permit issuance are repealed. Previously applicants for
12 temporary permits were required to show their fitness and that they
13 were meeting a demand for services needed by the public which could
14 not be met by existing permitted carriers. Lowered entry standards
15 will allow an unlimited number of movers to lawfully enter the market
16 without satisfying the burden of establishing their fitness and that the
17 proposed moving services are needed to meet a public need
18 unsatisfied by existing permit holders.

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1 **9. There are presently large numbers of illegal movers**
2 **operating without permits issued by WUTC and who are in violation of**
3 **WUTC regulations. WUTC failed to enforce statutes and regulations**
4 **applicable to unpermitted and illegal movers of household goods**
5 **despite repeated requests and complaints by WMC and its members.**
6 **Between forty and sixty unpermitted movers, in addition to other new**
7 **applicants, will obtain temporary and/or permanent permits under the**
8 **lowered standards adopted by the new rules.**

9 **There will be a 40% to 50% increase in the number of permitted**
10 **movers in household goods moving markets if the proposed rules**
11 **become effective. The increase in the number of movers will decrease**
12 **the volume of business which would otherwise be enjoyed by existing**
13 **permittees, including petitioners, and cause them injury and**
14 **irreparable harm.**

15 **10. Adoption by WUTC of WAC 480-15-280, WAC 480-15-310,**
16 **and WAC 480-15-320 establishes lower standards for issuance of**
17 **temporary permits contrary to law. Adoption by WUTC of WAC 480-15-**

1 **330, WAC 480-15-340, and WAC 480-15-350 lower standards for**
2 **issuance of permanent permits contrary to law.**

3 **11. Adoption by WUTC of lower standards for issuance of**
4 **permits coupled with territorial expansion of cartage areas and routes**
5 **to the entire state of Washington will allow a large number of new**
6 **entrants into territorially limited household goods moving markets.**
7 **Petitioners (as well as all other permit holders) will experience serious**
8 **economic losses as a result of these changes which will cause permit**
9 **devaluation. WUTC recognized that its permits have economic value**
10 **under its historic regulatory and licensing system and that the new**
11 **rules will reduce or destroy such values. No studies were done**
12 **regarding permit devaluation nor did WUTC consider the impacts of**
13 **lower entry standards upon existing permit holders.**

14 **12. Adoption of WAC 480-15-490 improperly establishes banded**
15 **rate tariffs which authorizes charges between 5% above and 45%**
16 **below a rate that would be just, fair, reasonable, and sufficient.**
17 **Adoption of banded rates is contrary to law and will cause cut-throat**
18 **competition within the household goods moving industry. Price**

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1 competition will occur at the lower end of the banded rates which will
2 drive many lawful permitted movers out of business with consequent
3 reduction in consumer choice. The banded rates will reduce or
4 eliminate profits for permitted movers. Investments in new
5 equipment, equipment and facility maintenance, and employees by
6 permitted movers will be reduced or will cease. Lack of profits and
7 losses will reduce the quality of moving services available to the
8 public.

9 13. Adoption of WAC 480-15-020(14) excludes transportation of
10 customer packed sealed storage containers from permit and
11 regulation as household goods movers contrary to law. Exclusion of a
12 category of the household goods moving business formerly enjoyed by
13 petitioners will cause substantial economic losses to petitioners.

14 14. Adoption by WUTC of WAC 480-15-030 purports to grant the
15 power for the agency to waive any of its rules (without standards)
16 contrary to law.

17 ***REASONS FOR GRANTING RELIEF***

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1 **15. Adoption of General Order 454 is in violation of**
2 **Washington's Constitution and is in excess of WUTC's statutory**
3 **authority. General Order 454 was not adopted in compliance with**
4 **statutory rulemaking procedures. General Order 454 is arbitrary and**
5 **capricious in violation of RCW 34.05.570(1).**

6 **Adoption of these rules violates RCW 34.05.320 because of:**
7 **(a) untimely filing of agency comments regarding these rules, (b)**
8 **inadequate explanation of these rules including their purpose and**
9 **anticipated effects, and (c) WUTC's failure to state whether RCW**
10 **34.05.328 (applicable to significant legislative rules) applied to**
11 **adoption of General Order 454.**

12 **16. Adoption of these rules violated RCW 34.05.325 by WUTC's**
13 **failure to: (a) make a good faith effort to ensure that the information**
14 **provided to the public on the proposed rules accurately reflected the**
15 **rules to be considered; (b) failure to provide a meaningful opportunity**
16 **for oral comment to be received in a rulemaking hearing; and (c)**
17 **inadequately preparing a concise explanatory statement of the rules**
18 **which identified the reasons for adoption and which summarized all**
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1 **comments and provided responses to each of them by category or**
2 **subject matter indicating how the final rule reflected WUTC**
3 **consideration of the comments.**

4 **17. Adoption of the challenged rules was based on an**
5 **inadequate and incomplete rulemaking file as required by RCW**
6 **34.05.370.**

7 **18. General Order No. R-454 failed to provide a complete and**
8 **accurate concise statement of the purpose of the rules, required**
9 **findings, and an accurate statement of statutory authority authorizing**
10 **the rules in violation of RCW 34.05.360.**

11 **19. The foregoing actions have resulted in substantial injuries**
12 **and irreparable harm to petitioners as set forth in the attached**
13 **declarations of James R. Tutton, Jr., Dan Hansen, and Jack Cronkhite.**

14 ***REQUESTED RELIEF***

15 **20. Petitioners request the Court to grant relief as follows:**

16 **(a) Because the new rules are a new chapter which**
17 **completely replace historic and detailed regulations applicable to the**
18 **household goods moving industry, Chapter 480-15 WAC (repealing**

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1 **Chapter 480-12 WAC) contained in General Order No. 454 should be**
2 **declared invalid and enjoined as beyond the statutory authority of**
3 **WUTC;**

4 **(b) Because the new rules are a new chapter which**
5 **completely replace historic and detailed regulations applicable to the**
6 **household goods moving industry, Chapter 480-15 WAC (repealing**
7 **Chapter 480-12 WAC) contained in General Order No. 454 should be**
8 **declared invalid and enjoined as in violation of Washington's**
9 **Constitution;**

10 **(c) Because the new rules are a new chapter which**
11 **completely replace historic and detailed regulations applicable to the**
12 **household goods moving industry, Chapter 480-15 WAC (repealing**
13 **Chapter 480-12 WAC) contained in General Order No. 454 should be**
14 **declared invalid and enjoined as arbitrary and capricious;**

15 **(d) Because the new rules are a new chapter which**
16 **completely replace historic and detailed regulations applicable to the**
17 **household goods moving industry, Chapter 480-15 WAC (repealing**
18 **Chapter 480-12 WAC) contained in General Order No. 454 should be**

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1 **declared invalid and enjoined as adopted not in compliance with**
2 **rulemaking procedures;**

3 **(e) Alternatively, petitioners request that the following**
4 **rules be declared invalid and enjoined for the same reasons set forth**
5 **in sections (b) through (d):**

6 **(i) WAC 480-15-020(14) [customer packed**
7 **household goods exclusion]**

8 **(ii) WAC 480-15-030 [waiver of rules]**

9 **(iii) WAC 480-15-280, 300, 310, 320 [temporary**
10 **permits]**

11 **(iv) WAC 480-15-330, 340, 350 [permanent permits]**

12 **(v) WAC 480-15-430, 440, 450, 460 [permit**
13 **cancellation]**

14 **and that WAC 480-15-490 (banded rates—tariff) be remanded to the**
15 **agency for further proceedings based on adequate studies, data and**
16 **information;**

17 **(f) For a stay of General Order No. 454 pending final**
18 **disposition in this Court in accordance with RCW 34.05.550;**

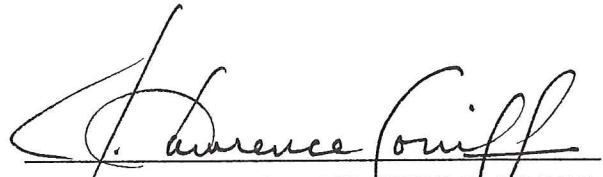
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1 (g) For an award of attorney fees and costs in accordance
2 with RCW 4.84.350; and,

3 (h) For such other and further relief as seems just and
4 equitable under the circumstances.

5 Dated this 8th day of January, 1999.

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10 
11 J. Lawrence Coniff, WSBA #1989
 Attorney for Petitioners