

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,**    )

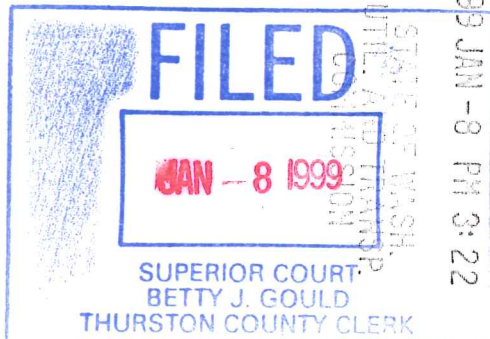
12 **v.**    )

13  
14 **WASHINGTON UTILITIES &**             )  
15 **TRANSPORTATION COMMISSION, an**     )  
16 **agency of the State of Washington,**    )  
17    )

18                                   **Respondents.**    )

No.                    99 2 00038 0

**MEMORANDUM IN  
SUPPORT OF MOTION  
FOR STAY**



19  
20                   **This memorandum addresses the criteria to be considered in**  
21 **relation to a stay of WUTC General Order No. 454 which repealed a**  
22 **detailed set of regulations applicable to the household goods moving**  
23 **industry. Prior regulations established the rates and charges (via**  
24 **tariff) which could be used by movers. Operating authorities (permits)**  
25 **were issued by WUTC under strict standards. Permits were**  
26 **territorially limited (cartage areas). Existing permits have substantial**  
27 **value which will be lost if the new regulations are put into effect.**

**MEMORANDUM IN SUPPORT OF  
MOTION TO STAY- 1**

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1 **There will be further losses suffered by petitioners (and other permit**  
2 **holders) if, as is expected, a large number of new entrants are issued**  
3 **permits under the lower standards of the new rules. The details of**  
4 **harm suffered by petitioners is spelled out in the declarations of**  
5 **James R. Tutton, Jr., Dan Hansen, and Jack Cronkhite.**

6 **Standards for issuance of a stay from the challenged WUTC**  
7 **action are set forth in RCW 34.05.550(2) and (3):**

8 **(2) After a petition for judicial review has been filed,**  
9 **a party may file a motion in the reviewing court seeking a**  
10 **stay or other temporary remedy.**

11 **(3) If judicial relief is sought for a stay or other**  
12 **temporary remedy from agency action based on public**  
13 **health, safety, or welfare grounds the court shall not grant**  
14 **such relief unless the court finds that:**

15 **(a) The applicant is likely to prevail when the court**  
16 **finally disposes of the matter;**

17 **(b) Without relief the applicant will suffer irreparable**  
18 **injury;**

19 **(c) The grant of relief to the applicant will not**  
20 **substantially harm other parties to the proceedings; and**

21 **(d) The threat to the public health, safety, or welfare**  
22 **is not sufficiently serious to justify the agency action in the**  
23 **circumstances.**

24  
**MEMORANDUM IN SUPPORT OF**  
**MOTION TO STAY- 2**

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1 **No mention is made by WUTC of public health or safety as a basis for**  
2 **their action in the rule purpose statement of General Order No. 454.**

3 **Neither is there any mention of public welfare unless a rule purpose of**  
4 **increased competition with consequent price reductions to the**  
5 **consumer is so interpreted (and this is flimsy).**

6 **The proper interpretation of RCW 34.05.550 standards for a stay**  
7 **are to be determined by reference to court rules. *Boeing Co. v.***  
8 ***Sierracin Corp.*, 43 Wn. App. 288, 291-92, 716 P.2d 956 (1986), reversed**  
9 **on other grounds, 108 Wn.2d 38, 738 P.2d 665 (1987) set out the**  
10 **criteria:**

11 **RAP 8.3 allows us to stay an injunction if the movant**  
12 **can demonstrate that debatable issues are presented on**  
13 **appeal and that the stay is necessary to preserve the fruits**  
14 **of the appeal for the movant considering the equities of the**  
15 **situation. *Purser v. Rahm*, 104 Wn.2d 159, 702 P.2d 1196**  
16 **(1985); *Kennett v. Levine*, 49 Wn.2d 605, 304 P.2d 682**  
17 **(1956). In actual application of this theory, courts apply a**  
18 **sliding scale such that the greater the inequity, the less**  
19 **important the inquiry into the merits of the appeal. Indeed**  
20 **if the harm is so great that the fruits of a successful appeal**  
21 **would be totally destroyed pending the resolution, relief**  
22 **should be granted, unless the appeal is totally devoid of**  
23 **merit. See: *Shamley v. Olympia*, 47 Wn.2d 124, 286 P.2d**  
24 **702 (1955). Consideration of the equities of the situation**

**MEMORANDUM IN SUPPORT OF  
MOTION TO STAY- 4**

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1           **may also require conditioning the stay on the posting of a**  
2           **bond or the provision for some other form of security.**

3  
4           **Unscrambling the eggs if substantial deregulation of the**  
5 **household goods moving industry is not stayed will be nearly**  
6 **impossible. Permit holders will suffer immediate losses by entry of a**  
7 **large number of unscreened and unnecessary movers. Price stability**  
8 **will be replaced by price competition based on banded rates which**  
9 **authorize pricing below that necessary to achieve a fair, just, and**  
10 **reasonable rate of return. Limited territorial market areas and routes**  
11 **authorized by existing permits are not imposed upon new entrants.**  
12 **Exclusion of customer packed containers of household goods will**  
13 **further reduce the market for petitioners. Only a stay until these**  
14 **proceedings are completed will avoid such consequences.**

15           **There are a number of debatable issues presented by this appeal**  
16 **which include the following:**

17           **1. Do the new banded rates (which authorize prices 45% below**  
18 **fair and reasonable rates) violate RCW 81.80.150?**

**MEMORANDUM IN SUPPORT OF  
MOTION TO STAY- 5**

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1           **2. Does the establishment of the new banded rates, which**  
2 **authorize prices 45% below a reasonable compensation for the service**  
3 **rendered, violate RCW 81.28.230?**

4           **3. Does the establishment of the new banded rates violate**  
5 **RCW 81.04.250 which requires establishment of fair and reasonable**  
6 **rates and consideration of the public need for moving services at the**  
7 **lowest charge consistent with provision, maintenance, renewal of**  
8 **equipment, facilities and service, and reasonable profit to the**  
9 **permitted mover?**

10          **4. Were banded rates based upon reliable data and a**  
11 **consideration of proper factors under the APA?**

12          **5. Does WUTC, as a creature of statute, possess the power to**  
13 **waive its rules upon request?**

14          **6. Does WUTC possess authority to lower standards for**  
15 **issuance of temporary permits by elimination of consideration of a**  
16 **need for new services which cannot be met by existing permit holders**  
17 **in violation of RCW 81.80.020 and RCW 81.80.170?**

**MEMORANDUM IN SUPPORT OF  
MOTION TO STAY- 6**

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1           **7. Does WUTC possess authority to eliminate its obligation to**  
2 **make a finding, after notice and hearing, that issuance of a temporary**  
3 **permit is consistent with the public interest as required by RCW**  
4 **81.80.170?**

5           **8. Do the new rules for issuance of a permanent permit**  
6 **establish a process which will require WUTC to make findings, after**  
7 **notice and hearing, that the applicant is fit and able to perform moving**  
8 **services and that the proposed services will be required by present or**  
9 **future public convenience and necessity as specified by RCW**  
10 **81.80.070?**

11           **9. Do the new banded rates violate Article 12, Section 15,**  
12 **Constitution of Washington, by authorizing non-uniform rates and**  
13 **charges?**

14           **10. Do the new banded rates violate Article 12, Section 18,**  
15 **Constitution of Washington by being unreasonable and discriminatory?**

16           **11. Does the exclusion of movement of household goods in**  
17 **customer-sealed containers violate Article 12, Section 13, Constitution**

**MEMORANDUM IN SUPPORT OF  
MOTION TO STAY- 7**

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1 of Washington or RCW 81.80.010(12); RCW 81.80.020; RCW 81.80.050;  
2 RCW 81.04.010; and RCW 81.04.160?

3 12. Did WUTC violate procedural requirements for adoption of  
4 the challenged rules by: inadequate notice, failure to timely include all  
5 responses to comments in the record, failure to consider and respond  
6 to all comments and failure to conduct studies or acquire reliable  
7 supporting data?

8 13. Does WUTC's failure to enforce its regulations to illegal  
9 unpermitted movers violate RCW 81.04.460 or RCW 81.04.500?

10 14. Does WUTC's failure to consider permit devaluation due to  
11 implementation of lowered standards for market entry violate RCW  
12 81.80.020 or its APA duty to consider all relevant data?

13 The foregoing list of issues is not necessarily all-inclusive but it  
14 shows that there are serious debatable issues raised by WMC in this  
15 appeal.

**MEMORANDUM IN SUPPORT OF  
MOTION TO STAY- 8**

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1           **The existence of debatable issues coupled with the necessity to**  
2 **preserve the fruits of the appeal during the pendency of this**  
3 **proceeding mandate issuance of a stay.**

4           **Alternatively (assuming that the standards of RCW 34.05.550(3)**  
5 **are deemed applicable) the evidence submitted on harm establishes**  
6 **irreparable injury and that the grant of a stay will not *substantially***  
7 **harm WUTC or pose a threat to the public health, safety, or welfare.**

8           **Irreparable harm is not a factor for the Court to consider when**  
9 **issuing a stay.<sup>1</sup> All criteria are satisfied. A stay should be issued.**

10           **WUTC's goal was to "eliminate rules it deemed less relevant in**  
11 **today's environment" and it assumed that "current application of the**  
12 **public convenience and necessity standard may no longer be**  
13 **appropriate under emerging market and legal conditions." (WUTC Pre-**  
14 **proposal Statement of Inquiry, WSR 97-22-082.) "Today's environment"**

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<sup>1</sup> **WUTC may argue that RCW 81.04.180 requires a showing of irreparable injury before a stay may be issued. The APA applies to WUTC and its provisions, including RCW 34.05.550, supercede prior conflicting statutes. See: *Herrett Trucking Co., Inc. v. Washington Public Service Comm.*, 58 Wn.2d 542, 544-45, 364 P.2d 505 (1961).**

**MEMORANDUM IN SUPPORT OF  
MOTION TO STAY- 9**

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1 **was never defined nor were “emerging market and legal conditions”**  
2 **identified. The rulemaking proceeding was distorted by undisclosed**  
3 **beliefs and opinions. The resultant rules are in conflict with a number**  
4 **of statutes and the Constitution of Washington. The legislative**  
5 **declaration of policy of RCW 81.80.020 applicable to movers of**  
6 **household goods says that WUTC goals should be to provide a**  
7 **stabilized rate and service structure, promote sound economic**  
8 **conditions in the industry, provide adequate, economical and efficient**  
9 **service, prevent unjust discrimination and destructive competitive**  
10 **practices in order that the common carriage of household goods may**  
11 **be preserved in the public interest. RCW 81.80.020 also directs WUTC**  
12 **to assure that the public will receive dependable and stable**  
13 **transportation services in all its phases.**

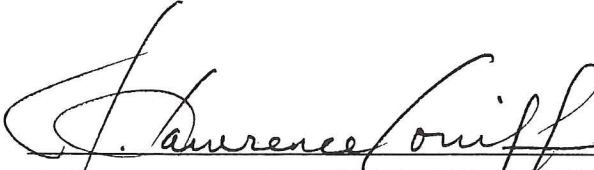
14 **Instead of following these goals, WUTC sought to provide**  
15 **consumers with more choice and expand the opportunity for new**  
16 **entrants into the market. Consumer interests and development of**  
17 **competitive markets are the goals rather than historic legal policies**

**MEMORANDUM IN SUPPORT OF  
MOTION TO STAY- 10**

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1 and requirements. The drastic changes sought by WUTC are, at the  
2 minimum, legislative issues not within an agency's prerogative.

3 Dated this 8<sup>th</sup> day of January, 1999.

4  
5  
6  
7 

8 **J. Lawrence Coniff, WSBA #1989**  
9 **Attorney for Petitioners**

**MEMORANDUM IN SUPPORT OF  
MOTION TO STAY- 11**

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