

11-16-98 OPEN MEETING ITEM 3B

Date Received: November 16, 1998

Docket No.: TV-971477

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

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November 16, 1998

Carol J. Washburn, Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7205

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98 NOV 16 AM 9:17
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

RE: Household Goods Rulemaking
Docket No. TV-971477

Dear Ms. Washburn:

Enclosed is the original and five copies of Washington Movers Conference's rebuttal to Staff's comments. Please see that copies are provided to the Chairperson and each member of the Commission as soon as possible because the hearing is scheduled to commence at 1:30 p.m. today.

Thank you for your assistance in this matter.

Sincerely,


J. Lawrence Coniff
Attorney at Law

JLC:ksb

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2
3
4 BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

5
6 In the Matter of) Docket No. TV-971477
7 HOUSEHOLD GOODS RULEMAKING)
8) REPLY TO STAFF'S RECOMMENDATION-
9) COMMENTS OF J. LAWRENCE CONIFF
10)

11
12 I. DEFER COMMISSION ACTION ON THIS RULEMAKING PROCEEDING

13 The Washington Movers Conference (herein WMC) received a
14 copy of Staff's expanded recommendations and comments at 9:30
15 a.m., Friday, November 13, 1998. The packet consisted of Staff's
16 recommendations (10 pages, single spaced), a revised copy of the
17 proposed rules (45 pages, single spaced), a summary of CR 102
18 comments (24 pages, reduced type, single spaced), and a
19 memorandum from a Staff Economist (13 pages, single spaced)
20 expanded from his original memorandum (3 pages, single spaced).

21 Our comments are based on time-compressed review of these
mostly new materials. In the interest of assuring that the
Commission has a full and complete record upon which to base
decisions regarding the proposed rulemaking, we suggest that
sufficient time elapse to allow all interested parties an

REPLY TO STAFF'S RECOMMENDATION-
COMMENTS OF J. LAWRENCE CONIFF - 1

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION
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1 opportunity to give due consideration and comment upon Staff's
2 belated presentation. Staff has not yet completely responded to
3 our comments as acknowledged at CR 102 Comments, page 3. The
4 glaring omission is Staff's failure to respond to WMC's questions
5 contained in our attorney's letter of April 16, 1998. (Exhibit
6 N, Tutton Comments). Answers should have provided for the
7 edification of all parties and the Commission by now.

8 Washington Movers Conference received seven drafts of the
9 proposed rules. Draft number 1 was provided on January 23, 1998;
10 Draft 2 on March 27, 1998; Draft 3 on May 8, 1998; Draft 3-B on
11 June 2, 1998; Draft 4-C on July 15, 1998; Draft with supplement
12 on August 12, 1998; and Final Draft (with additional changes) on
13 November 13, 1998. We made comments on each draft. With the
14 exception of grammar or syntax, our comments were ignored on each
15 draft. The Final Draft, as currently presented for Commission
16 action, does not address industry's concerns. The result is as
17 though we did not participate at every phase of development of
18 the proposed rules. Staff disagreed with our comments and
19 recommendations at every turn. We could not more strongly
20 disagree with Staff's statement (Recommendation, p. 2, 5th
21 para.):

The staff and these participants have developed the
proposed rules which accomplish the goals of the
proposed rulemaking.

Staff repeatedly relied upon assertions by representatives

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COMMENTS OF J. LAWRENCE CONIFF - 2

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1 of a self-styled group of illegal movers known as the Association
2 of Independent Movers.¹ Staff cannot disagree that this
3 Association is "a self-selected group of non-permitted firms
4 currently providing or interested in providing household goods
5 carriage."² A more accurate statement is that Staff relied on
6 input from a group of illegal movers and rejected the legal
7 regulated industry's input to draft the proposed rules.³ It is
8 scarcely reassuring to the industry to realize that the proposed
9 rules were in large approved by illegal movers. Not one part of
10 the proposed rules are the product of recommendations of the
11 Washington Movers Conference.

12 Staff's view of its task in drafting proposed rules is based
13 on its myopic view of the moving industry and consumer needs.
14 Its goal was to eliminate rules which it deemed "less relevant in
15 today's environment." Staff assumed that "current application of
16 the public convenience and necessity" standard may no longer be
17 appropriate under emerging market and legal conditions." (Pre-

18 ¹Staff fails to note the Association of Independent Movers
19 is not a legal entity. The Secretary of State's Office advised
20 that no such entity exists under the laws of this state. WMC is
21 a duly organized non-profit corporation with a history of
responsible actions intended to assure compliance with state law
as well as customer satisfaction. See: Tutton, Exhibit A and B.

²Small Business Impact Statement, p. 3, second para.

³The Commission's current lack of enforcement capability is
documented by the fact that there is, apparently, a large group
of illegal non-permitted movers who, with impunity violate
currently applicable laws and regulations. This issue is
discussed in detail a few pages hence.

1 proposal Statement of Inquiry, filed November 4, 1997, WSR 97-22-
2 082).

3 This rulemaking proceeding is severely distorted by Staff's
4 beliefs which amend statutory standards applicable to Commission
5 rulemaking. Consider the impact of Staff's proposed rulemaking
6 upon the industry in light of the legislative declaration of
7 policy applicable to movers of household goods set out in RCW
81.80.020:

8 The business of operating as a motor carrier of freight
9 for compensation along the highways of this state is
10 declared to be a business affected with a public
11 interest. The rapid increase of motor carrier freight
12 traffic and the fact that under the existing law many
13 motor trucks are not effectively regulated have
14 increased the dangers and hazards on public highways
15 and make it imperative that more complete regulation
16 should be employed to the end that the highways may be
17 rendered safer for the use of the general public; that
18 the wear of such highways may be reduced; that
19 congestion on highways may be minimized; that the
20 shippers of the state may be provided with a stabilized
21 service and rate structure; that sound economic
conditions in such transportation and among such
carriers may be fostered in the public interest; that
adequate, economical, and efficient service by motor
carriers, and reasonable charges therefor, without
unjust discrimination, undue preferences or advantages,
or unfair or destructive competitive practices may be
promoted; that the common carriage of commodities by
motor carrier may be preserved in the public interest;
that the relations between, and transportation by and
regulation of, motor carriers and other carriers may be
improved and coordinated so that the highways of the
state of Washington may be properly developed and
preserved, and the public may be assured adequate,
complete, dependable and stable transportation service
in all its phases.

REPLY TO STAFF'S RECOMMENDATION-
COMMENTS OF J. LAWRENCE CONIFF - 4

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1 Rather than follow legislatively mandated policies
2 applicable to the household goods moving industry, Staff
3 "believes the proposed rules (sic) will provide consumers with
4 more choice and new entrants an opportunity to provide service in
5 this market." CR 102 Comments, page 9. This belief is based in
6 part on the Commission's strategic plan. Copy attached as
7 Exhibit Q. Staff says that it seeks to "promote the regulatory
8 strategies set forth in the Commission's strategic plan." Staff
9 Recommendation, page 3. Unfortunately, the strategic plan does
10 not take into account differences in statutory directives,
11 delegated authorities and goals between the telecommunications
12 and energy industries and the household goods moving industry.
13 Statutory authority and goals applicable to the household goods
14 moving industry are set out in RCW 81.80.020. The strategic plan
15 (Exhibit Q), on the other hand, stresses protection of consumer
16 interest and development of competitive markets. Enhancement of
17 consumer choice as well as balancing customer and shareholder
18 interests for markets not yet "fully competitive" are stated
19 goals.

20 What has quietly happened is that statutorily based policies
21 applicable to the household goods moving industry are being
revised to reflect Staff's notions of consumer protection and of
what a fully competitive household goods movers market ought to
be. All this is contained in the proposed rulemaking with no
change in longstanding laws and with no input from the

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1 historically regulated and lawfully operated members of the
2 moving industry.

3 Washington Movers Conference earnestly requests that the
4 Commission defer action on the proposed rulemaking. There is a
5 need to Staff to respond to unanswered questions. There is a
6 need for the Commission to reflect upon the need for such a
7 drastic change in regulatory approach to the household goods
8 moving industry which, in reality, amounts to substantial
9 deregulation. Legislative approval for such a violent change in
10 regulatory approach ought to be at least considered. There is
11 also a need for the Commission to have before it a fully
12 allocated cost study of the industry in order to have a solid
13 basis for consideration of such significant changes.

14 There is no emergency. There is no need to rush to judgment
15 on issues which are of vital importance to the industry. We
16 recommend that this docket remain open for further Commission
17 consideration at such time as the noted concerns are fully
18 addressed.

19 II. MAJOR AREAS OF CONCERN

20 A. EASE OF ENTRY.

21 The requirement that the Commission hold a hearing, make
findings, and enter an order on every protested application for
a permit is eliminated. (See: proposed WAC 480-15-280 and 480-
15-300). The Washington Movers Conference opposes this concept
because, while entry is eased, there are no mandatory standards

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1 applicable to issuance of permits. This is so because a hearing
2 with public input is discretionary. Staff, with no opportunity
3 for public input at any stage of the permit issuance process,
4 cannot determine the fitness of the applicant, possible need for
5 special training, or whether special conditions of any sort ought
6 to be imposed on the permit. The proposal calls only for an
7 office review of application forms. Staff cannot fulfill the
8 responsibilities set out in its own draft of WAC 480-15-280 under
9 these circumstances much less the requirements of RCW 81.80.170.
10 Staff's supposed reliance on information provided by "the public"
11 is disingenuous, to say the least. The public is excluded from
12 the process for temporary permit issuance and a hearing is
13 optional (at Staff's discretion). Staff makes the required
14 determinations based on the application or information provided
15 by the applicant. For example, a determination of a special
16 condition to a permit would be made solely upon information
17 provided by the applicant based on office review.

18 Ease of entry rule proposals conflict with RCW 81.80.170:

19 The commission may issue temporary permits to temporary
20 "common carriers" or "contract carriers" for a period
21 not to exceed one hundred eight days, but only after it
finds that the issuance of such temporary permits is
consistent with the public interest. It may prescribe
such special rules and regulations and impose such
special terms and conditions with reference thereto as
in its judgment are reasonable and necessary in
carrying out the provisions of this chapter.

This statute requires the Commission to "find that issuance
of the permit is in the public interest." Id. No explanation is

1 provided as to how the Commission may make any decision regarding
2 the public interest or the need for special terms and conditions
3 on a permit based solely on information provided by an applicant
4 with no opportunity for public input. Moreover, RCW 81.80.170
5 requires the Commission to impose special terms and conditions as
6 it finds to be reasonable in carrying out the policies of RCW
7 81.80.020. The statutory policies in RCW 81.80.020 cannot be
8 rationally analyzed based solely upon applicant provided
9 information without public input under the proposed regulation.

10 Dilution of the statutory requirements is illustrated by the
11 grant of a temporary household goods moving permit to Employee's
12 Enterprises, Inc., d/b/a Sprint Moving & Storage on October 26,
13 1998.

14 The Sprint permit is conditioned on payment of an
15 outstanding penalty assessment. This condition necessarily
16 implies prior repeated violations by Sprint which, apparently,
17 were considered insignificant contrary to current rules. The
18 Interpretative Statement (which established guidelines for a test
19 of the proposed ease of entry rules) provides that a waiver of
20 existing temporary permit rules would occur prior to adoption of
21 the proposed rules. Exhibit E, Tutton Comments. Sprint's
temporary permit was issued 22 days prior to this adoption
hearing to consider these proposed rules.

The Sprint permit was issued in violation of current duly

1 adopted Commission rules.⁴ We are unable to understand how the
2 Commission can "evaluate the effectiveness of these conditions in
3 its consideration of proposed rule revisions." (Exhibit E, p. 7,
4 para. 4). Sprint's application was pending since April 14, 1998,
5 yet only 22 days have elapsed since its issuance on October 16,
6 1998. What bearing does Sprint's 22 days performance under its
7 newly minted temporary permit have on this rulemaking proceeding?
Perhaps Staff should be asked to address this question.

8 B. BANDED RATES.

9 The Commission has authority to establish minimum and
10 maximum tariff rates. RCW 81.80.130. Our first objection to the
11 banded rates proposed by Staff is that inadequate and unrep-
12 resentative data are used to establish the rates. We further
13 believe that the range of banded rates should be set only after
a fully allocated cost study is completed.

14 The expanded Eckhardt memorandum is, at bottom, based on
15 transportation agreements between movers and the Department of
16 General Administration, State of Washington. (data presented at
17 Eckhardt memo, p. 12).⁵

18
19 ⁴The Interpretative Statement does not rest on a sound legal
20 foundation. It bypasses the APA rulemaking procedures and
purports to grant waiver authority to the agency which it does
not possess by statutory grant.

21 ⁵The mover offering the 40% discount withdrew his offer
according to Ms. Deborah Chakos, G.A. That datum should
therefore be deleted and Staff's analysis accordingly corrected.

1 The data shows discounts agreed to by moving companies to
2 perform state moves. The discounts are specifically authorized
3 by statute. RCW 81.28.080. We are, therefore, dealing with a
4 special sub-set of moves at discounts authorized by statute. The
5 rationale for the discount rate is the savings realized by a
6 mover by not incurring sales and advertising expenses in
7 obtaining a state move. Industry-wide sales and advertising
8 costs exceed 25% according to Mr. Tutton. S&A costs do not apply
9 to state moves. The data is therefore not comparable. The data
10 also represents less than 1/3 of 1% of the total moves performed
11 annually by the industry and is not sufficient to be
12 representative of industry-wide costs.

13 Mr. Eckhardt relies on the Association of Washington Movers
14 statement that its "members" could make a profit at a 20%-30%
15 discount. We question how a Staff economist can reasonably rely
16 upon an unsupported (and unsupportable) statement from a non-
17 existent entity made up of illegal movers.

18 Oregon tariff rates are also relied upon but incomplete
19 information is provided to understand what is meant. Oregon does
20 not use banded rates but sets its rates on a regional basis.
21 Just how Oregon data might support the lower banded rate is
probably irrelevant in any event.

 The conclusion is offered the proposed rules "better reflect
the needs and attitudes of current society." This is a rather
surprising economic conclusion as is the opinion offered

1 regarding balancing the interests of industry and the public.
2 (Eckhardt memo, p. 13). This seems far afield from the bounds of
3 economics.

4 It is imprudent to adopt the proposed banded rates without
5 first obtaining reliable data regarding industry costs. Rather
6 than accept that premise, Staff suggests that a fully allocated
7 cost study should be undertaken 2 years after adoption of the
8 banded rates. The suggestion sidesteps the issue of whether the
9 banded rates are based on solid data. The suggestion implicitly
10 recognizes that the banded rates will probably need revision
11 after an allocated cost study is completed. Yet, under this
12 view, industry must experience a new totally new and untried
13 tariff regime for 2 years before a study is authorized to see if
14 the banded rates truly encompass industry costs. This is putting
15 the proverbial cart before the proverbial horse.

16 As Mr. Nikula recommends, a banded rate proposal should be
17 deferred until a fully allocated cost study can be completed.
18 Staff argues that a cost study based on current conditions would
19 not represent a true cost picture for the moving industry. This
20 simply is not so because costs of equipment, employees,
21 facilities, etc. common to all moving companies (permitted or
not) represent fixed costs. Variations in vehicle and equipment
age (depreciation rates), size, number, and in facilities exist
in the permitted industry today. There is no basis for making
the contrary assumption that unpermitted movers do not have

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COMMENTS OF J. LAWRENCE CONIFF - 11

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1 similar fixed costs as Staff obviously does.

2 The range of the bands as proposed is not accurately
3 calculated according to Mr. Nikula. The lower band should be
4 reduced to 15%. See: Nikula Comments.

5 The Washington Movers Conference recommends that the banded
6 rate proposal be deferred until a fully allocated cost study can
7 be performed.

8 C. DEFINITION OF HOUSEHOLD GOODS.

9 Staff maintains that Door to Door type moving activities are
10 excluded from the definition of household goods by relying on a
11 letter written by a trial attorney in the Motor Carrier Law
12 Division, Federal Highway Administration. Copy attached as
13 Exhibit R. The trial attorney interprets federal law to reach
14 his conclusion. We rely on state law, as cited in our opening
15 comments (which we will not here repeat). We also rely on the
16 latest Oregon decision treating this issue which is favorable to
17 our view. Staff, on the other hand, believes that the earlier
18 (overruled) Oregon decision is "more appropriate" without
19 explanation. (CR 102 Summary, p. 8).

20 D. ENFORCEMENT CAPABILITY.

21 Staff says that it has capability to enforce the proposed
rules and the statutes. (CR 102 Summary, p. 17). This statement
is at odds with the SBEIS at page 14 which says that household
goods regulatory costs currently exceed regulatory revenues. Ms.
Pat Dutton stated, during a visit with our Board of Directors in

1 January, 1998, that costs of enforcement for household movers
2 exceeded available revenues and that the garbage haulers were
3 making up the difference.

4 Given the recent and substantial reduction in enforcement
5 personnel, Staff's assurance that the proposed rules (and the
6 statutes) will be enforced is incredible because, if the proposed
7 rules are implemented, there will be many more newly permitted
8 moving companies to regulate and educate. If compliance cannot
9 now be assured, how can an additional work load ameliorate this
10 condition?

11 III. RIFLE SHOTS.

12 These rifle shots are random capsule rebuttals to errors or
13 misleading statements made in Staff's Recommendations received on
14 November 13, 1998.

15 A. No state has deregulated household goods to our
16 knowledge.

17 Contra: Staff Recommendation, page 1.

18 B. The initial notice to interested parties of the
19 proposed rulemaking contained a number of misstatements and
20 statements biased against the moving industry. The notice
21 indicated that movers are "confused" as to the definition of
household goods. This was not so. The notice portrayed the
industry in a negative light and as unconcerned with customer
satisfaction. Mr. Tutton pointed out the deficiencies of the
notice in his letter of November 7, 1997, to which he received no

1 response from Staff. Copy attached as Exhibit S.

2 C. Staff did not reach consensus with the stakeholders on
3 rule changes. Staff Recommendations, p. 4. Contra: See: our
4 comments.

5 D. There has been no apparent effort by Staff to review
6 the proposed regulations for compliance with existing statutory
7 directives and policies. Contra: Staff Recommendations; p. 4.

8 E. Gaining entry into the household goods moving industry
9 has not been restricted. The Commission entertains and processes
10 applications for permits and has historically done so. Contra:
11 Staff Recommendation, p. 4. Recently an application for a new
12 permit was issued expeditiously without protest. Id.

13 F. The comment by the Association of Independent Movers
14 that no applications have been granted since 1948 to movers who
15 are not members of the Washington Movers Conference is false.
16 Id. Mr. Tutton so advises. Many permitted movers are not
17 members of the Washington Movers Conference. Obviously, all non-
18 permitted movers (illegal movers) are not WMC members.

19 G. The Association of Independent Movers claimed that the
20 number of moving companies has been reduced since 1990 and Staff
21 compared this assumption to a 17% growth in Washington's
population since 1990. This is misleading because many permitted
movers expanded their operations to meet demand since 1990.
Obviously a 17% population increase must be accompanied by a
corresponding increase in moving services. Moreover the number

1 of moving companies, both permitted and illegal, has increased
2 since 1990.

3 H. The Washington Movers Conference, as a legal entity,
4 has never protested the grant of new permits. Contra: Staff
5 Recommendations, p. 5. Some applications for new permits have
6 been processed without protest from existing permittees.

7 I. It is not in the public interest to eliminate, willy-
8 nilly, local cartage area limitations. Contra: Staff
9 Recommendation, p. 6. Current WAC 480-12-080 defines local
10 cartage areas and places restrictions thereon. Authority to
11 provide moving services within a city (as defined) must be
12 separately obtained and specifically identified in the permit.
13 Elimination of this requirement will create problems for the
14 consumer. Consumers who select movers from advertisements and
15 who do not request an advance estimate of the cost of moving
16 services could be faced with additional costs because of tariff
17 based drive time requirements. For example a consumer hires a
18 mover from Lynnwood. A written estimate is not requested or
19 provided. Under the proposed rules, the Lynnwood mover can
20 service a local move in Tacoma. If the Lynnwood mover obtains
21 the order, the consumer must pay for drive time from Lynnwood to
Tacoma and return. The tariff requirement of payment for drive
time is beyond the scope of this rulemaking proceeding according
to Staff. The Tacoma customer pays for an extra two hours (+ or
-) which was not anticipated when the order was given. We

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COMMENTS OF J. LAWRENCE CONIFF - 15

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1 proposed (approximately 18 months ago) a regulation change that
2 would have eliminated local cartage authority by city and replace
3 it with a county-wide local cartage authority. Staff made no
4 response to our cartage proposal nor did Staff apparently even
5 consider it in connection with this rulemaking proceeding.

6 J. The Washington Movers Conference does not oppose the
7 proposed rule regarding estimates. Contra: Staff
8 Recommendation; p. 7). We do oppose binding estimates because of
9 the potential for abuse and customer harm.

10 K. There is a serious legal question regarding Commission
11 authority to issue individual rule waivers. No statute grants
12 that right. State agencies do not process equity powers of
13 courts. Contra: WAC 480-15-030 and Staff Recommendation, p. 9.

14 L. Carriers must be adequately compensated for last minute
15 additions to the move requested by the consumer. Contra: Staff
16 Recommendation, p. 10.

17 M. The proposed rules are not entirely within the
18 Commission's statutory authority. Contra: CR 102 Comments, p.
19 2. See: our comments on this issue.

20 N. Staff has not responded to all comments made by WMC or
21 its representatives. Contra: CR 102 Summary, page 3. It is of
little solace to WMC that Staff says that it will respond fully
to our comments after the period for public comments has ended.
This is contrary to the full disclosure and informed public input
goals of the APA.

1 O. The process under the proposed rules differs
2 substantially from prior practice. Contra: CR 102 Comments, page
3 4. As stated in the SBEIS; page 4: "The requirement that the
4 Commission hold a hearing on every protested application for
5 authority is eliminated, and the conditions for demonstrating
6 "public convenience and necessity" are expanded to reflect a
7 consumer perspective, resulting in a higher probability that an
8 application will be approved." The statutory directives are not
9 followed as previously pointed out.

10 No provision is made for protests by permittees. Such
11 protests are based on the statutory requirement that a permit
12 only be issued if there is a failure to provide adequate moving
13 services in a market. Protests are commonly based on existing
14 permittees showing of idle equipment and employees. Such
15 evidence can prove that the market is presently being adequately
16 served.

17 The Commission is thus deprived of the opportunity to to
18 make statutorily required findings that issuance of the permit
19 meets a present or future market requirement. RCW 81.80.070.

20 P. The proposed entry rules improperly expand what the
21 Commission may consider as proof that the proposed services will
be required by present or future public convenience and
necessity. Contra: CR 102 Comments, page 9. The proposed
regulation lowers the standards required by RCW 81.80.070, as
discussed in rifle shot O.

1 Q. The household goods moving industry is not a
2 historically closed market. Contra: CR 102 Comments, p. 10.
3 The fact that the Commission has been open for business since the
4 1920's refutes this argument. The household goods industry has
5 been heavily regulated -- but not closed under state law.

6 R. The moving industry does not presently use a
7 significant amount of temporary labor. Contra: CR 102 Comments,
8 p. 14. Mr. Tutton advises that this statement by Staff is flatly
9 wrong. Mr. Tutton's prior comments make it clear that industry
10 wishes to retain trained employees (via employee benefits) as
11 opposed to the use of casual labor. It is preferable to use
12 trained employees to pack and move household goods rather than
13 casual labor. This will decrease damaged goods and consumer
14 complaints. Contra: CR 102 Comments, p. 14.

15 S. The "floor" of the low end of the proposed banded rate
16 will not prevent predatory market activities. Staff makes no
17 meaningful argument in response to Mr. Tutton's concerns. CR 102
18 Comments, p. 15.

19 T. Staff now acknowledges that existing permits held by
20 legal movers have economic value (contrary to the SBEIS). We
21 agree. But Staff has not attempted to quantify economic losses
caused by lowered entry standards. The Commission ought to have
evidence of financial losses incurred by the industry prior to
adoption of the proposed rules. Financial losses of the
magnitude caused by adoption of the proposed rules must be

1 considered.

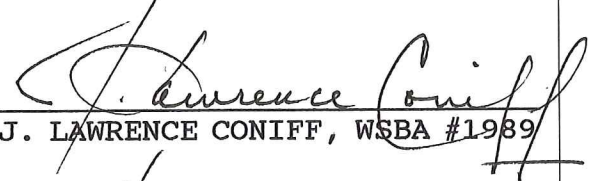
2 **III. RECOMMENDATION**

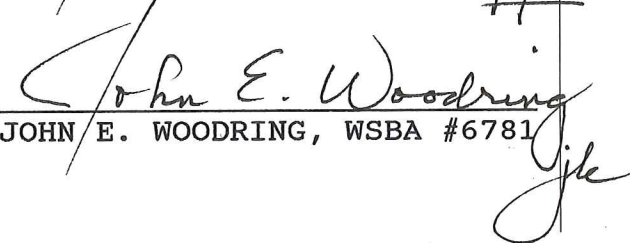
3 Staff's effort seeks to accomplish deregulation or at least
4 a substantial lessening of regulation of the household goods
5 moving industry. The effort was prompted in large part, we
6 suspect, by federal deregulation of interstate haulers. We think
7 intrastate regulatory issues ought to be addressed by our state
8 legislature just as the interstate regulatory issue were
9 addressed by Congress. Staff's present efforts to stretch
10 existing state laws to cover their proposals are highly
11 questionable. Furthermore, speculation, not solid data, are
12 offered to support the proposed rules.

13 It is, however, possible to revise the proposed rules to
14 comport with state law and solidly ground them on reliable data.
15 WMC is prepared to work to achieve this goal despite Staff's
16 dismal track record to date.

17 DATED this 16th day of November, 1998.

18 Respectfully submitted,

19 
20 J. LAWRENCE CONIFF, WSBA #1989

21 
JOHN E. WOODRING, WSBA #6781

REPLY TO STAFF'S RECOMMENDATION-
COMMENTS OF J. LAWRENCE CONIFF - 19

John E. Woodring
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Online Document

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General Info

Document Name: 1996 Strategic Plan

Description: This document includes the agency's mission statement and strategic plan.
Revised July 1996.

Body

STRATEGIC PLAN

July 1996

Public interest regulation is in an era of unprecedented change. Advances in technology, changing economics, and emerging competition have combined to radically alter the issues brought before the Commission, as well as the resources and skills needed to effectively regulate. This strategic plan is designed to assist the Commission in focusing its resources on the most important aspects of its legislative mandate, as well as to identify key strategies for recruiting, developing, and maintaining a highly competent staff. By design, not every function or task performed by the Commission is reflected in this plan. We have chosen to focus on areas where opportunities or threats compel a rapid and concentrated response.

MISSION STATEMENT

The Washington Utilities and Transportation Commission serves the needs of the current and future generations of the citizens of Washington State by regulating the utility and transportation industries. It does this by:

- Protecting consumer interests through efficient and effective regulation, including appropriate support of competitive markets;
- Developing an innovative regulatory practice that keeps rates affordable, promotes viable utility and transportation industries, and enhances consumer choice;
- Providing efficient and effective dispute resolution;
- Representing and advocating consumer interests on national regulatory policy issues;
- Sharing impartial and comprehensive information on regulatory issues; and
- Operating as an effective, efficient, and ethical public agency.

GOALS AND STRATEGIES

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EXHIBIT "Q"

desirable in many markets, and entry and price pressures have developed in virtually all industries the Commission regulates. At the same time, competition is developing unevenly and may not develop at all unless the Commission is committed to ensuring a fair competitive marketplace. For consumers who have not yet seen competitive options develop, Commission regulation remains to protect them from monopoly practices. Appropriate changes in our regulation can also serve to support social, economic, and environmental goals by encouraging innovation and fostering consumer choice.

GOAL

Revise regulatory policies and practices to permit competition and market flexibility in the transportation, telecommunications, and energy industries, where appropriate, and to effectively regulate remaining services.

Key Strategies

- Evaluate and implement alternative regulatory methods for transportation, telecommunications and energy industries that address changing market conditions;
 - Establish quality thresholds for all industries to promote safety and protect consumers against deteriorating service quality and disruption as competitive forces emerge in essential service markets;
 - Participate actively in relevant state and federal forums in the ongoing debate over the optimal market structure for the transportation and utility industries and strive to protect the public interest in widely available and affordably priced services;
 - Focus our public involvement, public information, and consumer protection functions to aid in addressing changing market conditions and regulatory approaches;
 - Make intercity bus and passenger rail transportation viable options for the traveling public;
- Balance customer and shareholder interests for markets that are not yet competitive; and
- Promote the safe operation of utility and transportation companies.

Increased Efficiency

The public has a right to expect government agencies to be as efficient as possible, and the Commission has an outstanding record of efficient operation. We reaffirm this commitment, and recognize its increasing importance in an era of reduced resources.

GOAL

Increase the efficiency of Commission operations and staff productivity.

Key Strategies

- Use information technology and training to increase productivity and enhance communication;
- Eliminate redundant levels of approval and review for administrative and internal policy decisions;
- Refine roles and responsibilities to reduce duplication of effort between and among organizational units and to eliminate the performance of unnecessary tasks and identical work;
- Increase training opportunities and activities by identifying core training needs, ensuring equitable training funding, and utilizing the investment we have in current employees through mentoring and internal training programs;
- Revise our operating procedures to be more understandable and less burdensome;
- Promote the use of alternative dispute resolution techniques wherever appropriate.

Internal Transformation

Ultimately, the Commission is its people. An ever-changing external environment will

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require changes of each of us -- in the way we do our jobs, in our interaction with the public and our colleagues, and in the manner and the success with which we adapt to new challenges. Developing a culture that masters change is essential to accomplishing our substantive mission.

GOAL

Transform our culture, continuously improve our services, and provide the opportunity for satisfying and rewarding work experience.

Key Strategies

- Attract, develop, and retain capable employees;
- Provide positive and productive customer service to colleagues within the agency;
- Create a positive work environment by supporting and modeling agency values;
- Promote diversity and create a cultural environment where all individuals are valued and respected;
- Encourage creativity and risk-taking and reward innovation;
- Improve the effectiveness of teams and work groups;
- Develop an information culture which supports clear communications and open sharing of information; and
- Clarify expectations for our employees.

► Creation Info

Jeffrey Showman was the last to edit this document, on 10/27/97.

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To request availability of documents
in alternate format, please contact
(360) 664-1133 or
TTY at (360) 586-8203

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U.S. Department
of Transportation
**Federal Highway
Administration**

JAN 20 1998

400 Seventh St., S.W.
Washington, D.C. 20590

Refer to: HCC-20

William A. Mullins, Esq.
Troutman Sanders LLP
1300 I Street, NW.
Suite 500 East
Washington, D.C. 20005-3314

Dear Mr. Mullins:

This is in response to your November 20 letter to Paul Brennan, requesting an informal opinion regarding the regulatory status of Shurgard Storage to Go, Inc. (SSTG).

According to your letter, SSTG operates self-storage facilities in several states. It provides residential and business customers with movable 320-cubic foot storage containers, which are loaded and secured (and eventually unloaded) by the customer. Upon request, SSTG will transport: (1) empty containers to the customer's residence or business location for loading by the customer; (2) loaded containers from the customer's residence or business to SSTG's storage facility; and (3) loaded containers from the SSTG storage facility to a location designated by the customer at the conclusion of the storage contract. Customers also have the option of transporting their property to and from the SSTG facility. You assert that transportation charges are not billed separately, but are incorporated into the overall price of the storage contract. You estimate that the cost to SSTG of container pickup and delivery approximates 13 to 15 percent of SSTG's overall cost of operation.

Based on the above facts, you contend that SSTG is not providing for-hire transportation because its operations are private carriage, as defined in 49 U.S.C. § 13102(13), and are incidental to a primary business other than transportation under 49 U.S.C. § 13505. Furthermore, you argue that even if SSTG is providing for-hire carriage, it is not engaged in the transportation of household goods. Consequently, you claim that the states are preempted from regulating SSTG's rates, routes and services under 49 U.S.C. § 14501(c)(1).

I concur that the transportation provided by SSTG, as described in your letter, is not for-hire carriage. It meets the definition of private carriage under § 13102(13) because SSTG is acting as a bailee of property being transported for bailment. Since, it also appears to be incidental to, and in furtherance of, SSTG's primary storage business, it would not be considered for-hire transportation under § 13505. Of course, these conclusions only apply to transportation in interstate commerce subject to the Secretary's jurisdiction.

*

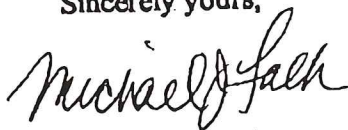
EXHIBIT "R"

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I also agree that regardless of whether SSTG is considered to be a for-hire carrier, it is not providing transportation of household goods under Federal law. In determining whether a motor carrier was transporting household goods for the purpose of applying household goods-specific regulatory requirements, the Interstate Commerce Commission focused on the type of service provided rather than the identity of the commodities transported. See Practices of Motor Common Carriers of Household Goods, 17 MCC 467 (1939), and American Red Ball Transit Co. v. McLean Trucking Co., Inc., 67 MCC 305 (1956). Since SSTG is not providing the specialized services which household goods carriers typically provide, it would not be considered subject to the FHWA's regulations governing household goods transportation (49 CFR part 375), the dispute resolution requirements of 49 U.S.C. § 14708, or the tariff requirements of 49 U.S.C. § 13702. Because SSTG is not providing transportation of household goods within the meaning of the ICC Termination Act, states cannot regulate its rates, routes and services under the § 14501(c)(2) exception to Federal preemption.

I hope I have been of assistance to you.

Sincerely yours,



Michael J. Falk
Trial Attorney
Motor Carrier Law Division



WASHINGTON MOVERS CONFERENCE

930 South 336th Street • Federal Way, WA 98003-6384
(206) 838-1650 • 1-800-732-9019 • Fax (206) 838-1715

James R. Tutton, Jr.
Executive Director

November 7, 1997

Mr. Paul Curl
Deputy Director, Regulatory Services
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Dear Paul,

Re: Letter, Household Goods Rulemaking, Docket No. TV-971477, dated November 4, 1997.

Paul, I am deeply disturbed with the descriptive content of the above referenced letter that has been distributed to all interested persons seeking written comments on the Commission's intent to conduct a rulemaking for motor carriers with authority to transport household goods.

This announcement, which will for the Commission's purposes reach out to the shipping public, is completely biased against the professional and properly permitted household goods carriers. The way the need for rulemaking is addressed in the announcement intimates that the Washington State Household Goods Moving Industry is operating in a manner of deception with no real consumer protection rules in place. Examples follow:

A. **"The current definition of "household goods" is not consistent with that established in recent federal legislation which may result in confusion."**

The above statement portrays a bias that the professional movers don't know or understand what constitutes household goods resulting in confusion amongst themselves and the shipping public. A better way to state this issue might have been to phrase it as - The current Washington State definition of "household goods" needs to be reviewed for compliance with recent federal legislation.

B. **"Federal preemption of economic regulation of motor carriers, with the exception of household goods carriers, has left household goods carriers, a group of 250 regulated carriers, under the rules, policies and procedures designed to regulate almost 4,000 motor carriers. Some of these rules, policies and procedures appear less relevant in today's environment, may be unnecessarily complex and/or ill suited to regulating the carriers that remain subject to the chapter...."**

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"Committed To Excellence"

EXHIBIT "S"

It is not clear what the above paragraph is attempting to address. Without going into such negative toned detail, a better way to state this issue might have been to phrase the issue as - Some of the rules, policies and procedures contained in Chapter (?) relating to household goods carriers need to be reviewed for clarity and applicability in today's technologically advanced environment. Areas under consideration include:

C. **“Consumer protection rules for household goods customers are minimal. When the household goods company is at fault”**

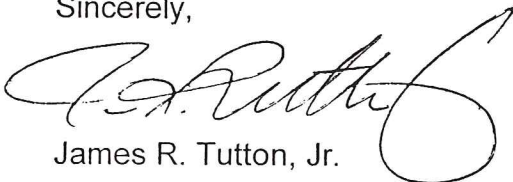
Once again we have a biased statement against the professional household goods carrier. This descriptive paragraph was not needed. The areas listed for review could have just as easily been listed under the previous paragraph. In addition, Paul, we have addressed many of these issues with you in the past with little or no resolution.

D. **“It is difficult to acquire household goods authority under current application of the “public convenience and necessity” standard. The Commission believes it is appropriate to consider whether the current application of the entry standard is still appropriate under emerging market and legal conditions.”**

Is the professional statewide moving industry to assume the Commission has made up its mind to do away with the “public convenience and necessity” standard? Are you caving into the ill founded logic presented by the illegal movers? The same illegal movers who offer low, cut-rate pricing because they have no intention of paying applicable state taxes, insuring their employees against on-the-job injuries, or offering any type of loss or damage claim resolution. If so, the Commission's “consideration” of doing away with this standard contradicts the earlier statement that reflects a concern that: “Consumer protection rules for household goods customers are minimal.”

It would be our hope that your letter of November 4, 1997, would be immediately rescinded and rewritten in a more logical, unbiased form that would allow a much less confrontational atmosphere among all interested parties once the stakeholder meetings begin in January 1998.

Sincerely,



James R. Tutton, Jr.

cc: Mr. Terry PomArleau, PomArleau Transfer and Storage, President, WMC