

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CLUTTER, INC.,

Respondent.

DOCKET TV-200432

JOINT NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 This Joint Narrative Supporting Settlement Agreement (“Narrative”) is filed pursuant to Washington Administrative Code (“WAC”) 480-07-740(3)(a) on behalf of Clutter, Inc. (“Clutter” or “Company”) and Staff of the Washington Utilities and Transportation Commission (“Commission”) (collectively, the “Settling Parties”). The Settling Parties have signed the settlement agreement (“Agreement”), which is being filed concurrently with this Narrative. This Narrative summarizes the Agreement. It is not intended to modify any terms of the Agreement.

II. PROPOSAL FOR REVIEW PROCEDURE

2 In accordance with WAC 480-07-740, the Settling Parties propose the following settlement consideration procedure for review of the proposed Agreement. The Settling Parties believe that this matter is a less complex matter under WAC 480-07-740(2)(b). Accordingly, the Settling Parties submit that a hearing will not assist the Commission in deciding whether to approve and adopt the settlement because of the limited scope of the

incident and the Company’s cooperation with Commission staff (“Staff”). *See* WAC 480-07-740(2)(e).

3 If the Commission conducts a hearing, however, the Settling Parties will present one or more witnesses to testify in support of the Agreement and to answer questions concerning the Agreement’s details, costs, benefits and compliance with the public interest standard. *See* WAC 480-07-740(3)(b). In addition, counsel for each party will be available to address any legal matters associated with the Agreement. If the Commission requires supporting documents beyond the Agreement and Narrative, the Settling Parties will provide any documentation needed.

III. APPLICABLE LAW

4 WAC 480-15-490 requires household goods carriers to follow the rates, terms, and conditions authorized in the Commission-published tariff, Tariff No. 15-C—*Rates, terms and conditions for the transportation of household goods between points in the state of Washington* (Tariff 15-C). WAC 480-15-490(3). Tariff 15-C, among other things, contains the rates and charges that household goods carriers must assess on shipments of household goods, including rules governing how rates and charges are assessed, and establishes minimum and maximum rates that household goods carriers may charge. WAC 480-15-490(1), (4).

5 WAC 480-15-710 requires household goods carriers to issue a bill of lading for each shipment of household goods it transports, and to provide the customer a completed copy of the bill of lading used for the customer’s shipment. WAC 480-15-710(2). A bill of lading is a “shipping document issued by the household goods carrier, signed by both the customer and the household goods carrier that establishes a legal contract with terms and conditions for a shipment of household goods.” WAC 480-15-710(1). The carrier must include the information

in a bill of lading as described in the Commission’s Tariff 15-C. WAC 480-15-710(3). The carrier must keep the bill of lading and all associated documents for three years from the date the move was completed. WAC 480-15-710(4).

6 WAC 480-15-630 requires household goods carriers to provide a written estimate to every customer prior to moving a shipment of household goods. The carrier must provide estimates by following the requirements set in the Commission-published tariff covering household goods movers. *Id.* Carriers must complete the estimates as required by tariff. WAC 480-15-630(7). All written estimates must be signed and dated by both the carrier and customer prior to the move. WAC 480-15-630(8).

7 The Commission defines household goods as “the personal effects and property used, or to be used, in a residence” in the context of transportation from one residence to another, or to a storage facility. WAC 480-15-020.

8 Any public service company that violates or fails to comply with any provisions of Title 81 RCW or any order, rule, direction, or requirement of the Commission is subject to a penalty of up to \$1,000 per violation.¹

9 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission.²

IV. SCOPE OF THE UNDERLYING DISPUTE

10 On July 31, 2018, a consumer filed an informal complaint against Clutter related to a household goods move. After investigating this complaint, Staff cited one violation of WAC 480-15-620 (failure to provide a copy of the commission consumer guide), one violation of

¹ RCW 81.04.380.

² RCW 81.04.110.

WAC 480-15-630 (failure to provide an estimate), and one violation of WAC 480-15-710(2) (failure to issue a bill of lading). Clutter implemented corrective action in response to the complaint.

11 On August 26, 2019, a consumer filed an informal complaint (CAS-25543-C4C7G2) against Clutter regarding a household goods move. After investigating this complaint, Staff cited one violation of WAC 480-15-890(1) (failure to provide requested documentation within required timeframe), one violation of WAC 480-15-890(2) (failure to provide additional requested documentation within required timeframe), and three violations of WAC 480-15-490(3) (failure to charge rates in accordance with Tariff 15-C). Clutter implemented corrective action in response to the complaint.

12 On August 13, 2020, a consumer filed an informal complaint (CAS-27207-N1H4F3) against Clutter related to a household goods move. In reviewing this complaint, Staff cited six violations of WAC 480-15-490(3) (failure to charge rates in accordance with Tariff 15-C), two violations of WAC 480-15-630 (failure to provide signature of company representative in accordance with Tariff 15-C), and two violations of WAC 480-15-710 (failure to provide start, stop, and any interruption time for each employee). Clutter implemented corrective action in response to the complaint.

13 On February 27, 2020, Staff issued a data request to the Company seeking compliance records and information for every residential move and small goods transportation and storage performed by the Company in the state of Washington between June 1, 2019, through January 31, 2020.

14 On March 24, 2020, Clutter provided the requested documents to Staff.

15 On June 3, 2020, Staff issued another data request seeking additional move-related documents and information from Clutter for all household goods moves and small goods transportation and storage between June 16, 2019, and June 30, 2019.

16 On June 26, 2020, Clutter provided move-related documents and information, including photographs, for 209 moves conducted between June 16, 2019, and June 30, 2019. Staff used documents and information provided by the Company to conduct its investigation of the Company's business practices. Of the 209 move records submitted, the company identified 98 moves as hourly-rated household goods moves, and 111 moves as small goods transportation and storage.

17 Of the 98 hourly-rated moves reviewed, Staff determined that Clutter failed to properly calculate and/or charge the correct tariff rate on 93 occasions in violation of WAC 480-15-490 and Tariff 15-C, Item 230(6). Specifically, eight moves were charged below the minimum tariffed rate, while 85 moves did not indicate the minimum tariff rate charged on the bill of lading (and therefore Staff was unable to determine if the correct tariff rate was charged).

18 Of the 98 hourly-rated moves reviewed, Staff determined that Clutter incorrectly charged customers on 33 occasions in violation of WAC 480-15-490 and Tariff 15-C, Item 230(7). Specifically, the Company failed to charge customers the required minimum hours for weekday hours, weekend hours, or state-recognized holidays.

19 Staff determined that each of the 98 hourly-rated moves reviewed by Staff contained one or more of the following violations of WAC 480-15-710 and/or Tariff 15-C provisions regarding bills of lading: (1) failure to issue a bill of lading for household goods move in violation of Tariff 15-C, Item 95(1); (2) failure to list the start, stop, and end time of the move

for each employee in violation of Tariff 15-C, Item 95(1)(m); and (3) failure to have the consumer select their preferences for valuation option in violation of WAC 480-15-710 and Tariff 15-C, Item 95(1)(k).

20 Staff determined that each of the 98 hourly-rated moves reviewed by Staff contained one or more of the following violations of WAC 480-15-630 and/or Tariff 15-C provisions regarding estimates: (1) failure to charge customers minimum tariffed rate in violation of Tariff 15-C, Item 230(6); (2) failure to charge customers the four-hour minimum for weekend rates or state-recognized holidays in violation of Tariff 15-C, Item 230(7)(a)(ii); (3) failure to correctly fill out the Table of Measurements (cube sheet) in violation of Tariff 15-C, Item 85(3)(g); (4) failure to have the customer select their valuation option in violation of Tariff 15-C, Item 85(3)(m); (5) failure to list the forms of payment accepted in violation of Tariff 15-C, Item 85(3)(r); and (6) failure to ensure the carrier and the customer signed the estimate in violation of Tariff 15-C, Item 85(3)(t).

21 Of the 111 small goods transportation and storage moves reviewed, Staff determined that Clutter either violated the maximum item limit, or included items that could not be reasonably carried by one person (or both) on 68 occasions in violation of WAC 480-15-490 and Tariff 15-C, Item 120(2). Specifically, within those 68 moves, Staff found: (1) 270 household goods articles that could not be reasonably carried by one person or an unboxed household goods that can reasonably be carried by one person (*e.g.*, a wood armoire, king size mattress, a sofa, and a grandfather clock) in violation of Tariff 15-C, Item 102(2)(b); and (2) 16 moves that exceeded the 25-article maximum in violation of Tariff 15-C, Item 102(2)(a).

22 On March 25, 2021, the Commission issued a Complaint for Penalties and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements on May 4, 2021, at 9:30

a.m., in Docket TV-200432. The Complaint alleged: (1) 93 violations of WAC 480-15-490 and Tariff 15-C, Item 230(6), with \$100 recommended per violation; (2) 33 violations of WAC 480-15-490 and Tariff 15-C, Item 230(7), with \$100 recommended per violation; (3) 98 violations of WAC 480-15-710 and Tariff 15-C, Item 95, with \$500 recommended per violation; (4) 98 violations of WAC 480-15-630 and Tariff 15-C, Items 85 and/or 230, with \$500 recommended per violation; and, (5) 68 violations of WAC 480-15-490 and Tariff 15-C, Item 102, with \$100 recommended per violation. The Complaint also requested that the Commission order such other or additional relief as appropriate under the circumstances.

23 On June 11, 2021, the Settling Parties notified the Commission of their settlement in principle, and indicated the Settling Parties' intent to file settlement papers by July 1, 2021.

V. DESCRIPTION OF SETTLEMENT AGREEMENT

24 The Agreement resolves all of the issues in dispute in Docket TV-200432. The Settling Parties agree to the following terms set forth in the Agreement:

25 Admission to violations: The Company admits that it committed the violations alleged in the Complaint in this matter.

26 Mitigating circumstances and reduced likelihood of future violations: Due to the Company's cooperation with Staff and the subsequent corrective action taken by the Company, and the Company's commitment to implement further corrective action, Staff believes the likelihood of repeated future violations to be low. While Staff recommended a penalty of \$117,400 in the Complaint, the Settling Parties agree that \$17,400 of the \$117,400 penalty is mitigated.

27 Penalty: The Settling Parties agree that a \$100,000 penalty will be imposed on Clutter. \$50,000 of the \$100,000 penalty is to be paid by Clutter in 12 monthly installments

beginning 30 days from the effective date of the Commission order approving this settlement. The first 11 monthly installments will be for \$4,166.66, and the final monthly installment will be for \$4,166.74. The remaining \$50,000 of the \$100,000 penalty will be conditionally suspended for a period of two years from the effective date of the Commission order approving this settlement. The \$50,000 portion of the penalty that is conditionally suspended will be waived after a period of two years, provided that the Company refrain from any material³ repeat future violations of the statutes and rules that are the subject of the Complaint, during the two-year period.

28 Clutter agrees to implement the remaining corrective actions described in Clutter’s Response to Staff Data Request 6 (attached to the Agreement as Attachment A) within 90 days of the effective date of the Commission order approving this settlement.

29 Clutter will retain Washington compliance related documents pursuant to a Washington compliance record retention policy, which shall be shared with Staff and Public Counsel.

30 Staff agrees not to issue a press release regarding the settlement.

31 Staff confirms that it will not pursue further enforcement against the Company arising out of any of the allegations set forth in Docket TV-200432.

³ By “material,” the Settling Parties intend to mean: “[N]ot insubstantial; of consequence; not be dispensed with; important; significant.” (Webster’s 1913).

VI. STATEMENT OF IMPACT ON THE PUBLIC INTEREST

32 The Settling Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the public interest that this dispute conclude without the further expenditure of public resources or litigation expenses.

33 In accordance with WAC 480-07-740 and 750, the Settling Parties believe the Agreement is in the public interest and appropriate for the Commission's acceptance without conditions under WAC 480-07-750(2)(a) for four reasons. First, the Company demonstrated that it took substantial and relevant corrective action with respect to its platform and business practices following the receipt of customer complaints. Second, the Company agreed to implement further corrective action, described specifically in its response to Staff Data Request No. 6 in this matter, to bring its operations into compliance with Tariff 15-C unless Clutter has its own tariff approved by the Commission or seeks an exemption from certain provisions of Tariff 15-C. Third, the Company's good faith cooperation with Staff in this matter demonstrates the Company's understanding of the importance of compliance with Commission rules and intention to comply on a going-forward basis. Fourth, the significant suspended penalty imposed under this settlement will create a strong incentive for the Company to comply with the terms of the settlement and discourage future violations. In sum, there is a low likelihood that the Company will again violate the statutes and rules that are the subject of the Complaint, the Agreement is in the public interest, and the Commission should therefore accept it without conditions.

34 The Commission has formally expressed its support for negotiated resolutions of enforcement actions. The rule states: "the commission supports parties' informal efforts to

resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest” WAC 480-07-700. For the reasons stated above, the Settling Parties contend that their Agreement is lawful and consistent with the public interest.

VII. CONCLUSION

35 The Agreement resolves all of the issues in this docket and the Settling Parties submit that their resolution complies with applicable legal requirements and is consistent with the public interest. The Settling Parties respectfully request that the Commission issue an order approving the Agreement in its entirety.

DATED this 30th day of June, 2021.

CLUTTER, INC.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

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