

ATTACHMENT A TO PUBLIC COUNSEL COMMENTS  
DOCKET TV-210737

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In re: Petition of the Washington  
Movers Conference for a Declaratory  
Order Clarifying Whether  
Commission Household Goods Rules  
Authorize Permitted Carrier to use  
Third-Party Contractors to Perform  
Regulated Services

DOCKET TV-200348

PUBLIC COUNSEL'S RESPONSE  
TO PETITION FOR  
DECLARATORY ORDER

1. The Public Counsel Unit of the Washington Attorney General's Office ("Public Counsel") files this Response to the Washington Movers Conference's (WMC) Petition for Declaratory Order<sup>1</sup> pursuant to the Washington Utilities and Transportation Commission's ("UTC" or "Commission") Notice of Opportunity to Respond to Petition dated April 14, 2020 ("Notice").

**I. INTRODUCTION**

2. The WMC raises the question of whether the Commission's rules allow a UTC-permitted household goods carrier to contract out their moving services to a third party. Examples of potential third-party services provided by WMC's include (1) work crews used to pack and unpack customers' household goods, (2) work crews used to load and unload household goods to the permitted company's commercial truck for pick up or delivery, and (3) use of a third-party commercial truck, driver, and work crew to pick up and deliver household goods for the

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<sup>1</sup> WMC submitted a letter to the Commission, which the Commission has interpreted as a Petition for Declaratory Order. The Commission stated in its Notice that it will liberally construe pleading and motions, and that it exercises its discretion to accept WMC's letter as a petition for declaratory order. Public Counsel acknowledges the letter's shortcomings with respect to the requirement set forth in RCW 34.05.240, but does not object to the Commission's exercise of discretion.

permitted company's customers. WMC posits that such use of third-party contractors would allow companies to avoid paying unemployment and workers compensation premiums, which would not be in the public interest. Also, WMC believes the UTC should ensure a level playing field for all household goods companies.

3. Public Counsel suggests that whether the Commission allows household goods companies to use third-party contractors is a policy decision. Statutes and rules do not explicitly allow or disallow use of third-party contractors. Some ambiguity exists regarding whether household goods carriers may contract with third parties to provide services – and under what conditions. As a result, Public Counsel recommends that the Commission offer guidance and clarification through a policy docket or rulemaking.

## **II. REGULATION OF HOUSEHOLD GOODS CARRIERS AND USE OF THIRD-PARTY CONTRACTORS**

4. Under RCW 80.01.040(1) and (2), the Commission regulates all entities transporting persons or property within the state of Washington and applies a public interest standard. Common carriers and household goods carriers transport property, and in order to do so, they must have an operating permit from the Commission.<sup>2</sup> Household goods carriers transport personal effects and property used in a residence between residences or between a residence and a storage facility with the intent to later transport to a residence.<sup>3</sup> Transporting personal effects and property between residences or to a storage facility distinguishes a household goods carrier from a common carrier, and justifies the additional requirements and ongoing obligations for household goods movers to receive and maintain a permit in Washington.

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<sup>2</sup> RCW 81.80.070; RCW 81.80.075.

<sup>3</sup> WAC 480-15-020; WAC 480-15-180.

5. Certain activities undertaken by a household goods company do not require a permit.

WAC 480-15-181 sets forth activities that do not require a household goods carrier permit, which include:

- (1) Moving commercial or office goods, except when part of a household goods moves.
- (2) Transporting goods that are packed and loaded on the vehicle and unloaded by the customer.
- (3) Transporting goods which are loaded in customer packed and sealed self-storage type containers in conjunction with storage when no accessorial services are provided by the company.
- (4) Using a truck the customer owns or rents, even if the company does the packing and loading.
- (5) Packing and loading the goods but not transporting the belongings.
- (6) Moving goods interstate.

The anticipated activities listed in WMC's Petition do not fall within the activities described in WAC 480-15-181.

6. The Commission has addressed the need for contractors to have their own, independent permit in a case involving Dolly, Inc. Dolly uses a smartphone or tablet app to connect customers to transportation services and employs independent contractors to fulfill the services. The Commission determined that Dolly is a household goods carrier and requires a permit to operate in Washington.<sup>4</sup> RCW 81.80.070 requires all household goods carriers to obtain a permit from the Commission, regardless of size. The Commission stated that Dolly must either own its own vehicles and employ the personnel transporting the goods or require each of the personnel transporting the goods to have a valid household goods permit.<sup>5</sup> This order suggests that the Commission does not wish to allow household goods companies to use third-party service

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<sup>4</sup> *In re the Matter of the Petition of Dolly, Inc. to Amend Motor Carrier Rules or in the Alternative to Initiate Rulemaking*, Docket TV-170999, Order 01, ¶ 8 (Oct. 31, 2017).

<sup>5</sup> *Id.*, ¶ 12 (Oct. 31, 2017).

providers who are not licensed with the Commission, but it also suggests that the Commission would allow a household goods company to use third-party contractors if appropriately licensed.

### III. MICRO MOVERS UTILIZE A BUSINESS STRUCTURE THAT HIGHLIGHTS THE THIRD-PARTY CONTRACTOR ISSUE WITH RESPECT TO HOUSEHOLD GOODS CARRIERS

7. Micro movers are app-based companies focused on small jobs. Micro movers have developed in Washington to offer transportation services, such as goods hauling, goods hauling and disposal, and small residential moves. These companies operate by connecting consumers interested in transportation-related services to third-party contractors via a smartphone-based app or website. These companies are often referred to as “transportation network companies” (TNCs), a term also applied to ride-sharing services such as Uber and Lyft. The Commission has previously classified some of these companies as household goods carrier, including Dolly<sup>6</sup> (discussed above) and Ghostruck.<sup>7</sup>
8. It appears that several micro movers, or TNCs, have a presence in Washington to offer delivery and/or household goods moving service in a manner similar to Dolly.<sup>8</sup> All of these companies, except one, indicate that they currently operate in Washington, and one previously operated in the state. Public Counsel’s search for either a household goods permit or common carrier permit under the company names did not find any current permits.

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<sup>6</sup> Docket TV-170999, Order 01, ¶ 8.

<sup>7</sup> *In re Determining the Proper Carrier Classification of, and Complaint for Penalties against Ghostruck, Inc.*, Docket TV-161308, Order 04 (Apr. 25, 2017).

<sup>8</sup> The companies include Lugg (<https://lugg.com/cities/seattle>), Bellhops (<https://www.getbellhops.com/locations/>), Truxx (<https://www.truxxit.com/map>), Dispatch (<https://www.dispatchit.com/>), Takl (<https://www.takl.com/>), Gozova (<https://gozova.co/>) (currently operating only in Texas, but previously operated in Washington), and Haul (<https://www.seattlehaul.com/>).

9. In addition to TNCs, there are other companies that offer a variety of services for consumers in addition to household goods moving and delivery.<sup>9</sup> A commonality between the micro movers/TNCs and these broader services companies is that they all connect consumers with moving and delivery services provided by independent contractors.

10. The Commission has determined that the household goods services offered by such companies fall within its jurisdiction. Because statutes and rules do not conclusively allow or prohibit use of third-party contractors, or the terms under which they can be used, the Commission may make a policy decision. This policy decision could be made on a case-by-case basis, but Public Counsel believes that the number of companies seeking to offer these services will only increase over time. It would be more efficient to address the issue in a policy or rulemaking docket.

#### **IV. NEED FOR RULEMAKING OR OTHER CLEAR GUIDANCE FROM THE COMMISSION**

11. The question raised by WMC in its Petition appears to be unsettled. Entities engaged in household goods transportation must operate with a permit from the Commission. The Commission has stated in order that it requires moving companies using a third-party contractor to use permitted service providers. The rules and statutes do not explicitly prohibit the use of third-party service providers, but they also do not provide clear direction regarding the conditions under which third-party service providers may be used.

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<sup>9</sup> Companies that offer a variety of services, which include household goods moving and delivery include, for example: TaskRabbit (<https://www.taskrabbit.com/locations/seattle>) and NeedTo (<https://needto.com/helpers/moving-hauling>).

12. Public Counsel seeks a regulatory framework that protects consumers while allowing the market to function and evolve. The Commission has the authority to promulgate rules regarding the regulation of household goods carriers. If micro mover and TNC services qualify as household goods transportation, as the Commission has previously determined, then the Commission should update its rules to provide guidance to these companies as well as more “traditional” moving companies. The Commission should take this opportunity to augment its regulatory scheme to protect customers of all household goods carriers, including TNCs. The Commission’s rules can be updated to maintain requirements that ensure safe and reliable transportation services, while also ensuring that these new business models do not slip through the regulatory cracks, potentially placing the public in unnecessary harm.

13. Through a rulemaking, the Commission would have an opportunity to update rules to apply to changing business models. For example, WAC 480-14-250 details insurance requirements that provide protection to consumers, companies, vehicle operators, and other motorists on Washington roadways. This is an essential tool to provide safe and reliable transportation of goods. TNCs using independent contractors may be unable to comply with certain requirements<sup>10</sup> because the company does not own the vehicles that are transporting household goods. However, the Commission might require TNCs to maintain a particular type of insurance in addition to documenting that its third-party contractors meet the requirements currently in rule. The current rule does not contemplate the type of business and vehicle ownership structure used by these companies, but the Commission has the authority to change

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<sup>10</sup> WAC 480-14-250(1)(a)-(d).  
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the rule and add requirements to address situations where the carrier is using a third-party contractor.

14. Additionally, the Commission can express its expectations of accountability in rule. For example, the Commission may explicitly hold the permitted household goods carriers using third-party services accountable for the actions of the contractor, even if the contractor is also required to be permitted. Public Counsel views this accountability as critically important to protect customers and the public.

15. In the alternative, if the Commission does not wish to pursue a policy docket or rulemaking, the Commission could consider initiating a show cause proceeding to determine whether the companies currently offering household goods moving and delivery services in Washington, but that do not currently hold the appropriate household goods or common carrier permits, are operating in violation of Commission regulations.<sup>11</sup> A rulemaking or policy docket would more efficiently and conclusively address the issues and provide better, clearer guidance to the public and the industry.

## V. CONCLUSION

16. The WMC's Petition for Declaratory Order raises an important issue. There seems to be some uncertainty among the industry regarding the ability to use third-party service providers and, if so, the conditions under which they can be used. The statutes and rules do not conclusively prohibit the use of third-party contractors. Thus, the Commission may make a

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<sup>11</sup> See, e.g., *SEC v. Chenery Corp.*, 332 U.S. 194, 202-03, 67 S. Ct. 1575, 91 L.Ed. 1995 (1947) (agency may set policy by either general rule or on a case-by-case basis); *Budget Rent-a-Car v. Dep't of Licensing*, 144 Wn.2d 889, 898, 31 P.3d 1174 (2001) (provisions on rulemaking in administrative procedure act "were not designed to serve as a straitjacket of administrative action" requiring rulemaking to the exclusion of case-by-case decision-making).



policy determination about whether third-party contractors are allowed and under what conditions. Instead of making this policy determination on a case-by-case basis, Public Counsel recommends that the Commission do so in a policy statement or rulemaking. In any event, any household goods carrier using a third-party contractor should be held responsible for that contractor's actions.

DATED this 30th day of April, 2020.

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