

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In re)	
Application No. D-079294 of)	
)	
Pennco Transportation, Inc.)	
)	Post Hearing Brief
For Extension of Authority)	
Under Certificate No. C-01054)	filed: April 28, 2005
In re)	
Application No. D-079302 of)	to: Jonathan Thompson
)	Assistant Attorney General
Heckman Motors, Inc.)	jthompson@wutc.wa.gov
d/b/a Olympic Bus Lines)	
For Extension of Authority)	Bonnie Allen
Under Certificate No. C-992)	ballen@wutc.wa.gov
For a Certificate of Public)	
Convenience and Necessity to)	
Operate Motor Vehicles in)	
Furnishing Passenger and)	
Express Service as an Auto)	
Transportation Company.)	

Your Honor,

Our position is that according to the requirements outlined in RCW 81.68.040 for the granting of a Certificate of convenience and necessity, Pennco has met the burden of proof requirement established through oral testimony and through both oral and written evidence the following:

1. That there is a public need for our proposed Express Bus Service which will form a ground –transportation link between the Port Angeles-Victoria Ferry Terminal and the Kingston-Seattle Ferry Terminal via stops along the Olympic Peninsula.
2. There is no other transportation company currently authorized by the Commission to service the proposed route.
3. The service along the proposed route currently being provided by Olympic Bus Lines is outside the authority it has been granted by the Commission and therefore no consideration as to whether it will “provide the same to the satisfaction of the commission” should be given.
4. The service being offered by Olympic Bus Lines is significantly different from the service proposed by Pennco for this route.
5. Requiring Olympic Bus Lines to operate “closed-door” through Kingston will not unduly impact Olympic because the customers currently utilizing Olympic Bus

- Lines to be either picked up or dropped off in Kingston are limited and represent a very small fraction of the customers Olympic Bus Lines currently serves.
6. That Pennco already provides service to Seattle for Olympic Peninsula residents, the authority to do so having been granted by the Commission. And as a result;
 - a. Pennco already competes with Olympic Bus Lines in this market.
Therefore, the granting of this authority by the Commission will not create a new level of competition for Olympic Bus Lines. Competition for this market already exists between the two companies.
 - b. That Pennco transports substantially more people to and from Seattle for medical appointments and treatments and has done so for a longer period of time than Olympic Bus Lines.
 7. That Pennco has the Equipment & Facilities necessary to service the proposed route.
 8. That Pennco has the Experience necessary to service the proposed route.
 9. That Pennco has the trained personnel to service the proposed route.
 10. That Pennco has the financial capacity to service the proposed route.

That there is a public need for our proposed Express Bus Service which will form a ground-transportation link between the Port Angeles-Victoria Ferry Terminal and the Kingston-Seattle Ferry Terminal via stops along the Olympic Peninsula.

If you asked us to sum up our proposal in a sentence this would be it. To provide a way for people to get around the Olympic Peninsula that is fast, reliable, comfortable and inexpensive.

Although there is potential for this service to serve as a catalyst for the continued growth of travel and tourism in the area; the initial focus of our efforts will be aimed at the commuter market.

That our area has a significant commuter market (people who travel daily from the Olympic Peninsula to the Seattle area for work) has been both identified and documented. Based on a study done by the Washington State Department of Transportation in 1999 (provided as an Exhibit) there are more than 600 people a day who commute to Seattle and the surrounding area from the Olympic Peninsula. Based on growth in the area, and with the assistance of the Port Townsend Chamber of Commerce we conservatively estimate that number has grown to over 1000 in 2005.

Our goal is to provide an inexpensive, comfortable alternative for these commuters to get to Seattle. Rather than driving themselves to the closest ferry terminal or driving around the water, we will allow them to convert what would have been 1-2 or more unproductive driving hours into additional hours of productivity.

Rather than dealing with trying to park in Seattle, waiting in long peak-time vehicle ferry lines to come home, or ever increasing fuel costs; the commuter can take our internet-capable, tour bus quality highway coach from a central point in their community and be dropped off right at the ferry terminal.

They'll be able to continue working while on the Aqua Express (internet-capable as well) or have an enjoyable breakfast onboard instead while the ferry whisks them for the final leg of their trip to Seattle. Fast, comfortable, efficient.

To illustrate, consider the oral testimony of Tim Caldwell (Manager of the Port Townsend Chamber of Commerce, Board Member of the Port Ludlow Chamber of Commerce, Member of the Jefferson Transit Citizens Advisory Committee, Member of the Olympic Peninsula Work Force Advisory Board, Member of Jefferson County Ferry Advisory Committee, Member of the Washington State Ferry Advisory Committee and a life-long Olympic Peninsula resident). Mr. Caldwell pointed out that once our ground-transportation link is in place, it will be possible for someone living in Port Ludlow to commute to Seattle for work in about one hour each way.

This is the less time than it takes to drive to Seattle from many popular residential communities, including Everett, Snohomish and others. We believe given a choice of commuting from Port Ludlow (a resort golf-course community) to Seattle, as opposed to commuting from Everett to Seattle; many home-owners would choose Port Ludlow. Mr. Caldwell confirmed that the local real estate professionals are looking forward to this route being put into place and are in favor of it. *See also letter of support from Windermere Real Estate*

The numbers of people commuting from the Olympic Peninsula is already significant, but we believe it will continue to grow. Once local real estate professionals are able to tell prospective buyers that they can get to Seattle faster from Port Ludlow (via the Express Bus and the passenger ferry) than they can from Snohomish, then we feel, almost like improving or expanding an old highway; once this route is in place, additional growth will naturally follow.

Will granting Pennco's request to serve the ferry terminals and require Olympic Bus Lines to operate closed door in Kingston cause a hardship for Olympic Bus Lines? We believe the answer to be no.

First, both Pennco and Olympic Bus Lines currently offer transportation to Seattle. However, in spite of what we have previously established as a significant and growing number of daily commuters, few, in any, of these people are riding with Olympic Bus Lines. This statement is based on the testimony Mr. Estes and Mr. Farmer, both witnesses for Olympic Bus Lines. They both testified that there are only a few people, if any, riding with them on Olympic when they head into Seattle. They both claimed to be frequent Olympic Bus Lines customers as well, so one could assume their comments to be a fair reflection of ridership to Seattle on Olympic.

So it is apparent that Olympic Bus Lines is not capturing the daily commuter market from the Olympic Peninsula. For that matter, neither is Pennco. Finding a way to get 10-20% of those commuters out of their cars and into shared transportation services benefits everyone who lives in our community.

It also complements the mission and goals of most of the organizations involved in Economic Development on the Olympic Peninsula as well.

According to Mr. Caldwell, Pennco's proposed Express Bus ground transportation link through the Olympic Peninsula fits nicely with the goals of the Port Townsend Chamber, an organization made up of some 200 Olympic Peninsula businesses.

As Mr. Caldwell stated; One of the "primary goals" for the Port Townsend Chamber "is to support transportation infrastructure"... "the underlying goal...to support and help enhance alternative transportation to the Olympic Peninsula" recognizing that "tourism has become one of three major industries in East Jefferson County."

He said further that the current state of alternative transportation on the Olympic Peninsula is "fragile". He explained that the Chamber worked actively to assist the Aqua Express passenger-only ferry to get its approval to operate, including testifying on its behalf before the WUTC. He explained that as successful as the Aqua Express ferry has been in getting up and running, without, as he put it "proper ground transportation" the benefit of the new ferry service to Olympic Peninsula residents would be "very limited".

Mr. Caldwell further testified that having a private company operate this proposed route was in harmony with the goals of both the Jefferson Transit Citizens Advisory Committee (appointed by the Board of Jefferson Transit) on which he serves as well as the management of Jefferson Transit.

He explained that the Citizens Advisory Committee saw a need for this proposed route, and requested Jefferson Transit to consider providing it. He then went on to explain how Jefferson Transit preferred to offer the service to the community in partnership with a private carrier. As proposed by Jefferson Transit, the private carrier would service the main route along the main highway and Jefferson Transit could provide a connector to and from Port Townsend and surrounding areas at the intersection of Hwy 104 and Hwy 19.

Mr. Caldwell's testimony in this matter dovetails nicely with Mr. Harris' later testimony that Pennco decided to request authority for this new route after extensive market research, comprised in part of discussions with other local transportation organizations as to what if any transportation needs in the community were going unfilled.

There is no other transportation company currently authorized by the Commission to service the proposed route.

Although Olympic Bus Lines apparently picks-up and drops-off some passengers at Kingston, such service to the Kingston community is not currently authorized by the Commission.

This fact has been established through the following means:

1. Through the fact the Olympic is applying for this authority now.
2. By oral testimony of Olympic Bus Lines President, Jack Heckman, when questioned by Mr. Thompson in the March 11, 2005 hearing.
3. In a letter from the Commission addressed to Olympic Bus Lines, Pennco Transportation and the Clallam County Transit Board of Directors, following up on an article in the Peninsula Daily News, where Jim Heckman, the Chairman of Olympic Bus Lines is quoted as having said "Olympic has the exclusive right to service the Kingston Ferry"

Although we recognize that the Commission has a policy of combining requests for Authority that come in for service to the same area within a 30-day period, we feel it should be noted that it was Pennco that did the market research to determine this unmet transportation need, it was Pennco that worked with staff at both Jefferson and Clallam Transit to move this project forward, it was Pennco that reached out to Olympic Bus Lines and asked them to consider partnering with us on this project (they said no repeatedly, said they didn't feel it was viable) and it was Pennco applied for this Authority first.

The service along the proposed route currently being provided by Olympic Bus Lines is outside the authority it has been granted by the Commission and therefore no consideration as to whether it will "provide the same to the satisfaction of the commission" should be given.

Because Olympic Bus Lines is not authorized to service the Kingston market, we feel no consideration as to whether it will "provide the same to the satisfaction of the commission" should be given.

It should also be noted that Olympic Bus Lines has not proposed anything different in their level of service which would allow them to capitalize on the commuter market. They are offering only their currently available service. This we argue is insufficient to attract the commuter market.

To prove this, I draw your attention to two facts; first Mr. Heckmans comments at the hearing where he admits, when questioned by Mr. Thompson, that although the Kingston

passenger ferry has been in operation for several months already, he has not experienced any growth in passengers wanting to get on or off in Kingston.

Mr. Heckman provided proof of his low numbers of Kingston travelers in supplemental documentation, placing all Kingston passengers at a little under 80 for the entire past year.

Second, to Mr. Caldwell's testimony. Mr. Caldwell, who sits on numerous boards and committee's and who uses to new foot ferry to travel to Seattle frequently was asked about Olympic Bus Lines. He said *although he was familiar with their service offerings and their vehicles, he's never used their service to get to Kingston*. Additionally, when asked specifically, whether Olympics vehicles could adequately service the commuter/tourist market he said; "No" .

So, although they do not have the Authority to service the Kingston market, Olympic Bus Lines in doing so has established that they do not currently have the capacity to attract the commuter market to their vehicles. If they did, it would already be happening.

This matter has been before the commission for many months. As already established, in all this time, Olympic Bus Lines has not proposed anything new, no modifications or changes to their service offering which would be substantially different enough from their current offerings to pull the commuter market in.

Therefore, although such a consideration is unwarranted based on their lack of Authority to service the Kingston market, it could be reasonably concluded from the above facts, that Olympic Bus Lines "cannot provide the same to the satisfaction of the commission".

The service being offered by Olympic Bus Lines is significantly different from the service proposed by Pennco for this route.

Although some of our vehicles will travel along the same route for a portion of their journey, the service offerings will be completely different.

Between Port Angeles and Kingston

	Pennco's Proposal	Olympic Offering
Daily Runs:	6	2
Capacity:	47+ passenger	16 passenger
Rate:		
commuter pass:	TBD (\$13 -\$20)	n/a
all day unlimited use pass:	\$25.00	n/a
roundtrip:	n/a	\$58.00
Amenities:		
Internet Capable	yes	no
Primary Market:	Seattle Commuters	Seatac Travelers
Secondary Market:	Medical Appts.	Seattle Travelers
Tertiary Market:	Tourists	Medical Appts.

Olympic Bus Lines currently offers 3 trips to Seattle and Seatac. Only 2 of those trips go through Kingston. The last run drives around.

As proposed, Pennco will offer multiple trips to Kingston. A frequent, inexpensive way for commuters to get to Seattle via the Kingston passenger-only Ferry.

Requiring Olympic Bus Lines to operate “closed-door” through Kingston will not unduly impact Olympic because the customers currently utilizing Olympic Bus Lines for Kingston service are very limited and represent a small fraction of their customer base.

As previously established, Olympic Bus Lines does not have the Authority to service the Kingston market.

Since they do not have that Authority, we believe no priority, extra weight or additional consideration should be given Olympic based on the fact that they are servicing the market outside of their Certificated Authority.

Although we hold such an evaluation to be inappropriate based on the above arguments, If you were to evaluate the impact to Olympic Bus Lines of requiring them to operate closed door service through Kingston, then based on there passenger count of a little under 80 for the entire past year, you get a gross income at \$60 per passenger, of only \$4,800.00.

It has been established through oral testimony and summarized again in this brief that even though the passenger-only ferry has been operating for a number of months, and many, many people are using the ferry, (Mr. Caldwell testified that the Aqua Express has exceeded its goals and approached break-even far ahead of schedule) primarily frequent commuters and few if any of these people are traveling on Olympic Bus Lines to get to Kingston passenger ferry.

Therefore it is clear that with the equipment and services they offer Olympic Bus Lines is not currently able to access the commuter market. We have also established that Olympic has no plans to change, modify or alter their equipment of services to better target the commuter market in the future.

Offering pickup and drop-off in Kingston is not critical to Olympic Bus Lines customer base. Their primary markets are people going to Seattle and Seatac. Consider that their last run of the day does not even come back through Kingston on the way home, they travel around through Tacoma and up Highway 3 instead.

Pickup and drop-off at Kingston is critical to the Pennco proposed route. It is in fact the single most important stop on the entire proposed route.

Pennco has made repeated attempts to convince Olympic Bus Lines to participate with us in establishing this new service to the community. They have repeatedly declined our invitation. For this, and many of the other reasons outlined in this brief, we feel it would be unfair to Pennco to allow Olympic Bus Lines to piggy-back on the considerable investment of time, energy and financial resources necessary to bring this new Express Bus Service online and make it a success, by being allowed to also offer service to Kingston.

Pennco currently provides service to Seattle for Olympic Peninsula residents, and as a result;

- 1. Pennco already competes with Olympic Bus Lines in this market.*
- 2. Therefore, the granting of this new Authority by will not create a new level of competition for Olympic Bus Lines; said competition for this market already exists between the two companies.*
- 3. Pennco transports substantially more people to and from Seattle for medical appointments and treatments and has done so for a longer period of time than Olympic Bus Lines.*

In oral testimony Mr. Heckman spent some time trying to establish the fact that although Pennco's request was to service Kingston, the ultimate destination of many of its passengers would be Seattle.

We acknowledge that our initial target market is people going to Seattle on a frequent or semi-frequent basis. We believe this market, which we have defined as commuters, is significant, growing and currently not being effectively accessed by the shared transportation services organizations on the Olympic Peninsula. As detailed in this brief, we do not believe our providing these services to the commuter market will unduly impact Olympic Bus Lines.

As to the matter of whether or not non-commuters would begin to use the new service to get to Seattle, well we certainly hope so. Would adoption of this new service by non-commuters create new competition for Olympic Bus Lines, the answer to that question is NO.

First, lets look at the broader perspective; Olympic Peninsula residents have multiple ways to get to Seattle and Seatac Airport; Olympic and Pennco are but two of the options. They can also travel on Horizon Air, they can travel with San Juan Air, they can drive, they can take a taxi, etc. So just like us at Pennco, the folks at Olympic Bus Lines already compete with multiple other companies for the Olympic Peninsula to Seattle/Seatac customer.

Then, lets just consider certificated van/bus service, Olympic vs. Pennco. Will granting this new Authority to Pennco create unfair competition for Olympic?

Again, the answer is NO. Pennco and Olympic are both authorized by the WUTC to provide transportation from the Olympic Peninsula to Seattle. We have competed against each other for years in this market.

Could it alter the dynamics of how we compete against each other for the Olympic Peninsula to Seattle customer? Probably. So at worse, we're talking about some amount of increased competition. Is that bad, We don't think so. To us this seems like a normal competitive business environment.

That Pennco has the Equipment & Facilities necessary to service the proposed route.

We currently own almost 40 vehicles spread between Pennco and its Charter Services division, Peninsula Charters. These vehicles range in size from 4-door passenger cars to 55-passenger highway coaches.

We currently own an adequate number of vehicles to service the route while maintaining our existing service levels.

We have a full-time Ford-certified mechanic with more than 20 years experience and a full-time assistant in our repair shop.

That Pennco has the Experience necessary to service the proposed route.

Pennco has been in business for more than 9 years. Over the years we have safely transported 100,000's of thousands of people throughout the Olympic Peninsula; to-and-from Seattle, Victoria, BC and many other destinations within Washington State. During this period, we have become one of the largest passenger-transportation companies in the area.

Every day we successfully arrange the pickup and drop-off of 50-100 passengers, from their homes and offices to their destination in Seattle or Seatac.

That Pennco has the trained personnel necessary to service the proposed route.

We average, depending on seasonal traffic flows, between 15 and 25 drivers. Our drivers are well-trained, and our training program for both new drivers and our ongoing program for seasoned drivers is comprehensive. Most of our drivers hold a commercial drivers license, even though such license is not needed on most of the vehicles we operate. Although such certification isn't required by the State, we have encouraged our drivers (in fact, we offer them incentives) to take the steps necessary to obtain their certification. Most of our drivers are also certified in CPR and PARA Transit (medical transportation) services.

We have a more than 110 years of management expertise in our firm, more than half of that specifically in transportation services.

That Pennco has the financial capacity to service the proposed route.

The matter of Pennco's financial capacity to service the route in view of its submitted financials which showed a significant net operating loss in the 12 months immediately preceding its application for this route, was brought up by Olympic Bus Lines.

The also reference a handwritten note from Kevin Harris to Jack Heckman which highlights Mr. Harris' hope that some grant assistance to operate the new service may be available. Olympics contention was that denying Pennco's request would somehow protect the State of Washington's investment of the grant dollars they gave to Olympic.

To build their case, Olympic referenced a couple of documents including the company financials submitted with its application, newspaper article from the Port Townsend Leader, and a letter from James Sells to the President of the Bremerton-Kitsap Aeroporter.

To recap the discussion, Pennco argues that the letter from James Sells should be inadmissible since it was un-substantiatable. Your Honor agreed therefore we will not address the issues raised in that document with the exception of those also raised in the Newspaper article.

The issues raised in the Port Townsend Leader article deal primarily with other no-transportation companies owned, controlled or managed by Kevin Harris, Pennco's President. The one exception to this is a reference to a tax lien again Pennco which the article clearly explains had been filed, but had also been paid off.

Tax Lien:

Our feeling is that the simple act of falling behind with a creditor, especially when there is clear evidence that we worked quickly to satisfy the obligation, should not be held against us as proof of unfitness to service the route.

The Issues We Face:

We feel that your Honor will recognize how difficult is for transportation companies to make it these days; be they airlines, trains or airport shuttle companies. The rising costs of fuel, skyrocketing insurance costs, increased competition they can all take their toll. These are issues all the transportation companies on the Peninsula deal with. Hopefully, your Honor will also recognize that the logistics of providing an on-demand, door-to-door pickup and drop-off service, far exceed those of a scheduled service by a factor of at least 5.

Then there's the increased competition from the airlines. For example, two years ago, Horizon Air lost more than \$1,000,000 in one year offering roundtrip flights to the Seattle area for between \$159 and \$179. Currently in the Port Angeles market, both Kenmore Air and San Juan Airlines are engaged in a fare war. In an effort to drive the other company out of the market, these firms have lowered airfare to the Seattle area to between \$29 and \$89 roundtrip. These fares, undoubtedly subsidized somehow, have had a significant impact on our firm. As difficult as these challenges are, we feel that over the past 9 years we've done a pretty good job of providing this much needed service to the community. It is our intention to continue to do so.

Pennco's Potential Request for Grant Assistance:

Our research indicates that most med to large size public transportation companies receive some assistance (equipment, operational, etc) to help them to make it. Pennco, which has grown to become the largest privately-owned public transportation company in the area, has received no financial assistance of any kind from any local, state or national government agency or entity. We are a privately-owned and funded company and we've tried to do the best we could with the resources we've had available to us. *Olympic Bus Lines on the other hand has received a little more than \$300,000 from the Washington State Department of Transportation.*

Although we at Pennco assume responsibility for not knowing such assistance was available for companies like ours, we feel the State of Washington holds some accountability as well. Olympic has used this money to buy new vehicles and to improve their operating budget. At the time the State of Washington allowed transportation companies to apply for this assistance, Pennco was under different management and information about grant availability was not provided to Pennco's prior owner about these programs. I feel it was in error for the State of Washington to only provide funding to Olympic as it significantly improved their service offering (to Seattle and Seatac) in direct competition with Pennco. We feel that had the State of Washington reached out to Pennco as well and helped us to apply for and secure this type of grant funding, it would have had a significant positive impact on our net operating figures.

Although we do not fault Olympic for applying for and receiving this assistance, we feel it is disingenuous for Olympic to negatively reference either Pennco's desire to receive grant assistance (if such is available), or for Olympic to assert that the State's investment in grant assistance to Olympic should be protected. We feel that over the past 9 years Pennco has provided just as meaningful a service to the community as Olympic has and therefore, Pennco also should have been entitled to State financial assistance. We do not feel that the State should have chosen to support Olympic, to the exclusion of Pennco, and further we do not feel any prior grant assistance given to Olympic by the State should have any bearing on the WUTC's decision in this matter.

Continued Support by Kevin Harris:

In view of the fact that Pennco has received no grant assistance, and is currently operating at a loss, the question was posed as to how Pennco was able to survive. When asked specifically about his overall (in view of the comments in the Leader about some of Mr. Harris' other business ventures having a difficult time financially) financial condition and willingness to continue to support Pennco, Mr. Harris testified that his overall financial condition was ok. He said it wasn't the best shape he'd ever been in, nor was it the worst. He said he had personally helped to made up the past cashflow shortfalls and he planned to continue to do so in the future.

Mr. Harris also pointed out that the company estimates that it will have no increased costs as a result of offering the new service because it would be able to use the new service to provide a faster, cheaper way for its Seattle-bound customers (both medical and non-medical) to get across the water to Seattle. This he said would result in significant savings both to Pennco as well as the State of Washington, for whom Pennco provided more than \$240,000 worth of medical transportation services to in the 12 months preceding the submittal of the application for this proposed route.

In conclusion, we feel that Pennco has established beyond a doubt that there is a need for the proposed new service. That the public will benefit greatly from the new service. That Pennco has the equipment, personnel, facilities, infrastructure, expertise and financial backing necessary to operate the service. We feel that Pennco has proven through 9 years of operation that it can and will deliver excellent service to the community on this new route. Your Honor, this new route will do much to make getting around the Olympic Peninsula easier, faster just flat out better. It will do the same for anyone traveling to Seattle as well.

We urge you to approve our application and allow Pennco to continue to do what it does best, "*help Olympic Peninsula people on the Move, get to where they're Going*".