



July 25, 2013

TO: Dave Danner, Chairman
Jeff Goltz, Commissioner
Phil Jones, Commissioner

FROM: Ann Rendahl, Chris Rose, Gene Eckhardt, Adam Torem, Betty Young and Greg Trautman

CC: Steve King, Executive Director and Secretary

SUBJECT: Rulemaking to consider modifications and additions to rules governing auto transportation companies in WAC 480-30, Docket TC-121328

RE: Adoption Hearing, July 26, 2013

RECOMMENDATION

Staff recommends that the Utilities and Transportation Commission (Commission) adopt the revised rules as published in the CR-102 filing with the Code Reviser, with correcting and clarifying changes.

BACKGROUND

On September 5, 2012, the Commission initiated this rulemaking to review the rules in WAC 480-30, related to passenger transportation companies. While the chapter addresses charter and excursion companies as well as auto transportation companies, the Commission initiated this rulemaking to determine whether to consider rules to establish fare setting flexibility and competition for auto transportation companies.

The Commission received written comments on its CR-101 filing on October 8, 2012. The Commission issued a set of draft rules on February 8, 2013, and conducted a workshop on the draft on March 22, 2013. The Commission issued a second set of draft rules on April 12, 2013, along with a notice of opportunity to comment and a small business economic impact statement (SBEIS) questionnaire, and received comments by May 17, 2013. The Commission then issued a CR-102 on June 7, 2013, publishing proposed rules and an SBEIS and scheduling a hearing for July 26, 2013.

STAKEHOLDER COMMENTS

While the companies agree with the proposal to streamline the application process and provide for fare flexibility, they express concern about several specific provisions in the proposed rules. The companies expressed these concerns about language in prior drafts, and the Commission modified the language to address some of these concerns prior to publishing the proposed rules. The Commission received comments from SeaTac Shuttle, LLC (SeaTac Shuttle), Bremerton-Kitsap Airporter (Bremerton-Kitsap) and Pacific Northwest Transportation Services (Capitol Airporter), focused on whether:

- The proposed rule in WAC 480-30-096 will allow consideration of incomplete applications;
- The scope of objections in WAC 480-30-116 should be narrowed: SeaTac Shuttle believes the incumbent companies are the best source of information for the Commission as to the regulatory and financial fitness of an applicant. The company does not believe the agency can or will adequately investigate regulatory and financial fitness;
- The proposed changes in WAC 480-30-140 eliminate the distinction between “territories” and “routes,” and require a company to make unreasonable efforts to continually expand and improve its service to be responsive to consumer requests;
- The proposed changes to the application standards in WAC 480-30-096 will allow the Commission to approve both door-to-door service and scheduled service in the same rural territory, forcing one or both companies out of business because the market will not sustain both;
- The allowance of a 25 percent maximum fare and five percent annual increase in WAC 480-30-420 will be sufficient;
- The proposed rules will allow the Commission to consider the stability and sustainability of service when evaluating applications; and
- The Commission should adopt a policy statement in rule to guide interpretation of the changes in rules.

The Commission provides responses to these comments in the comment summary matrix in Attachment B to this memo. Most of the stakeholders’ comments concern how the Commission will implement the rules for considering applications for competing service. The changes in the proposed rules governing review of applications are intended to streamline the process for reviewing applications and incorporate standards the Commission has applied in application cases over the past 30 years. The changes in the proposed rules provide greater clarity to companies, applicants and the Commission during the application process.

To address stakeholders concerns that the proposed maximum rates and annual increases in WAC 480-30-420 may not be sufficient, the Commission has included a provision in WAC 480-30-075 to require a review of the rate flexibility provisions after five years. This will allow the Commission to determine if any changes are necessary to the proposed rule, including annual adjustments.

PROPOSED CHANGES TO THE PROPOSED RULES

After reviewing the comments and the proposed rules in preparation for the adoption hearing, we conclude that there is no need change the proposed rules in response to the comments. However, we recommend the following corrections or clarifications to ensure clarity in implementing the rules:

- **New section WAC 480-30-075(1):** The end of the first sentence reads “adopted by the commission on (date)”. To avoid trying to estimate a correct adoption date in the rules, we recommend removing the phrase and allowing the information provided in the published rules to identify rules adopted and amended in the rulemaking.
- **WAC 480-30-096(7):** The language is intended to explain that applicants for extension of authority must file tariff and time schedules only for the proposed service. The language is not as clear as it could be, so we recommend deleting the language in subsection (7) and adding the phrase “for the proposed service” following the language in subsection (3)(d).
- **WAC 480-30-096(3)(h) and (i):** The word “and” between subsections (3)(h) and (i) should be moved between subsections (3)(i) and (j), as (j) is the last subsection.
- **New section WAC 480-30-140(3)(c):** The phrase: “in determining that the company does not meet the criteria of service to the satisfaction of the commission” should be deleted from the first sentence, as it is redundant with the first phrase in the sentence.
- **New section WAC 480-30-140(2)(f) and (g), (3)(a)(i),(ii), and (iv):** These subsections of the proposed rule refer to “scheduled route service,” while the proposed rule in WAC 480-30-096 includes a definition for “scheduled service.” The proposed rules should include the term defined in the proposed rules.
- **New section WAC 480-30-420(7) and (14):** The language in subsection (14) should be modified to clarify that companies that advertise or provide notice of flexible fares or changes in fares may not state that the Commission approves or sets specific fares. The language in subsection (7) should include a reference to subsection (14).
- **New section WAC 480-30-420(15):** The language in the explanatory chart for year 1 should be changed from “25% increase in Base Fare” to “25% above Base Fare” to match the language in subsection (2)(c) of the rule.

CONCLUSION

After reviewing the comments filed in response to the proposed rules, we recommend the Commission adopt the proposed rules as published on June 7, 2013, with the correcting and clarifying changes recommended above, and identified in Attachment A. The proposed rules reasonably address the concerns expressed by the companies, while achieving the Commission’s goals of increasing fare flexibility, improving competition, and streamlining the application process.

ATTACHMENTS: A: Proposed Rules, as published on June 7, 2013, with correcting and clarifying changes.

B: Matrix Summary of Comments and the Commission’s Responses