

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In re Application No. D-78904 of	)	
	)	DOCKET NO. TC-000676
HECKMAN MOTORS, INC.,	)	
d/b/a OLYMPIC BUS LINES	)	
	)	
for extension of authority under	)	
Certificate of Public Convenience	)	
and Necessity No. C-992	)	
.....	)	
	)	DOCKET NO. TC-000835
In re Application No. D-78916 of	)	
	)	
JEFFREY LYNN PORTER d/b/a	)	INITIAL ORDER
PENNCO TRANSPORTATION	)	
	)	
for extension of authority under	)	
Certificate of Public Convenience	)	
and Necessity No. C-1054	)	
.....	)	

1 Administrative Law Judge Dennis J. Moss heard these applications upon due and proper notice on October 10, 2000, in Port Angeles, Washington.

2 **NATURE OF PROCEEDINGS:** Docket No. TC-000676 concerns an application by Heckman Motors, Inc., d/b/a Olympic Bus Lines for expanded authority under its WUTC Certificate of Public Convenience and Necessity No. C-00992. Docket No. TC-000835 concerns an application by Jeffrey Lynn Porter d/b/a Pennco Transportation for expanded authority under its WUTC Certificate of Public Convenience and Necessity No. C-001054. Although there are differences between the two applications in terms of the segments of the public proposed to be served (*i.e.*, Heckman Motors, Inc., seeks expanded authority generally, including expanded airporter service, all at existing rates; Jeffrey Lynn Porter seeks expanded authority to and from various medical facilities in Seattle and proposes reduced-fare service targeted to lower income persons who require transportation to and from medical appointments in Seattle), they propose to operate in territory that overlaps in part. The two applications were submitted within 30 days of each other. These dockets accordingly were consolidated and heard on a common record. WAC 480-30-32(3) and (4).

3 **APPEARANCES:** James Heckman and John Heckman, owner/operators of applicant Heckman Motors, Inc., d/b/a Olympic Bus Lines (Olympic), appeared *pro se* on behalf of their company. Jeffrey Lynn Porter, owner/operator of Pennco Transportation (Pennco), appeared *pro se* on behalf of his company. Robert Cedarbaum, Assistant Attorney General, Olympia, Washington, appeared for Commission Staff.

4 Parties who initially protested, but either stipulated to withdraw their protest or elected not to pursue their protest, appeared as follows: Brooks E. Harlow, Miller Nash LLP, Seattle, Washington, appeared for Shuttle Express, Inc., d/b/a Super Shuttle, in both proceedings. Mr. Harlow also appeared for Evergreen Trails, Inc., d/b/a Gray Line of Seattle, in Docket No. TC-000676. Richard E. Asche, President, Bremerton-Kitsap Airporter, Inc., appeared *pro se* (via written communication only) in Docket No. TC-000835. Steve Hutchins and Robert Campbell, officers of Clallam Paratransit Services, appeared *pro se* to represent their organization's asserted interests in Docket No. TC-000835.

5 **CONCLUSION:** The public convenience and necessity require the expanded services proposed by Olympic and Pennco. Both Olympic and Pennco are financially and otherwise fit to provide the proposed services. Both applications are granted.

### MEMORANDUM

6 **Background and Procedural History.** Applicant Olympic has authority under Certificate No. C-000992 to provide auto transportation service in certain areas of Washington. Specifically, Certificate No. C-000992 authorizes Olympic to provide scheduled passenger service between Port Angeles and Seattle (including the Seattle-Tacoma International Airport (SeaTac)), with an intermediate stop at Sequim. Olympic's authority is subject to a "closed-door" operating condition between Seattle and SeaTac.

7 On April 27, 2000, Olympic applied for expanded authority. Olympic requests that its Certificate be amended to authorize an intermediate stop at the Hood Canal bridge and scheduled shuttle service between Port Townsend and the Hood Canal Bridge to provide a convenient way for individuals in Port Townsend to use Olympic's existing service. Individuals in Port Townsend who would use Olympic's proposed shuttle service to connect to Olympic's existing service to Seattle destinations would pay the same total fare to Seattle as those traveling to and from Port Angeles or Sequim (*e.g.*, Seattle destinations other than SeaTac: \$49 per round-trip, \$29 per one-way trip).

8 Applicant Pennco has authority under Certificate No. C-001054 to provide auto transportation service in certain areas of Washington. Specifically, Certificate No. C-001054 authorizes Pennco to provide door-to-door passenger service by reservation only between Port Angeles and points in Clallam and Jefferson Counties, between Clallam and Jefferson Counties, and Seattle and Tacoma hospitals, Amtrak stations, Greyhound stations and the Seattle-Tacoma International Airport. Additionally, Olympic is authorized to provide service between Clallam and Jefferson Counties and Port Townsend, Port Ludlow, and Silverdale for passengers whose point of origin or destination is in Clallam or Jefferson Counties. Pennco's authority is subject to a "closed door" operating condition between points in Clallam and Jefferson Counties and points in King and Pierce Counties. In addition, minimum one-hour advance reservations are required for any service that involves picking a passenger up at a point served by Olympic under Certificate No. C-000992.

- 9 On May 24, 2000, Pennco applied for expanded authority. Pennco requests that its Certificate be amended to include scheduled passenger service by reservation only between Sequim and Seattle hospitals with intermediate stops in Port Townsend, Port Hadlock, and Port Ludlow, to the Kingston/Edmonds Ferry with closed door service between Edmonds and Seattle. The proposed one-way fare is \$18 and the proposed round-trip fare is \$30.
- 10 The two applications involve overlapping service territory (*i.e.*, both would allow for service between Port Townsend and Seattle medical facilities) along a route not presently served by any auto transportation company. Consistent with the Commission's rules concerning applications for overlapping service that are filed within 30 days of one another, the applications were consolidated for hearing and decision. WAC 480-30-32(3) and (4).
- 11 A prehearing conference was conducted before Administrative Law Judge Dennis J. Moss on September 8, 2000. Several protests were considered. Shuttle Express, Inc., d/b/a Super Shuttle, protested in both proceedings. Evergreen Trails, Inc., d/b/a Gray Line of Seattle, protested in Docket No. TC-000676. Bremerton-Kitsap Airporter, Inc., protested in Docket No. TC-000835. Clallam Paratransit Services, also protested in Docket No. TC-000835. Except for Clallam Paratransit Services, the basis for these protests essentially was the same in the respective dockets. Shuttle Express, Evergreen Trails, and Bremerton-Kitsap Airporter each provide auto transportation service in areas through which Olympic, Pennco, or both, pass on their runs between the Olympic Peninsula and various points in King and/or Pierce Counties. These protestants stated they wished to participate to ensure that existing closed-door conditions in those overlapping areas were not removed.
- 12 Shuttle Express and Evergreen Trails entered into formal stipulations with Olympic and Pennco to protect their asserted interest. The stipulations, which provided that Shuttle Express and Evergreen Trails would withdraw their respective protests so long as existing closed-door conditions are retained, were received and approved. Shuttle Express and Evergreen Trails elected to not participate actively in further proceedings in these consolidated dockets.
- 13 Bremerton-Kitsap Airporter did not appear at prehearing but was offered an opportunity to state in writing whether its concerns were adequately addressed by the clarification that the existing closed-door operating conditions that are part of the subject Certificates would remain in place. By letter filed September 26, 2000, Bremerton-Kitsap Airporter clarified that its only interest in the proceeding is to ensure that existing closed-door operations between points in Kitsap County and SeaTac be maintained. Apparently satisfied in this regard, Bremerton-Kitsap Airporter elected to not participate actively in further proceedings in these consolidated dockets.
- 14 Clallam Paratransit Services stated that its preliminary concerns with respect to Pennco's application was based on a belief that there would be an impact on Clallam Paratransit

Services' activities as the Medicaid transportation broker for the Medical Assistance Administration. It became clear at the prehearing conference that no such impact would occur. Clallam Paratransit Services elected to not participate actively in further proceedings in these consolidated dockets.

- 15 As between the applicants, Pennco does not object to Olympic being granted the authority it requests. Olympic, however, does object to Pennco's application.
- 16 A schedule for hearing was determined at the prehearing conference. In accordance with that schedule, the Commission convened an evidentiary hearing in Port Angeles before ALJ Moss on October 10, 2000. The hearing produced a transcript of 123 pages and 13 exhibits, including testimony and exhibits from six witnesses.
- 17 Olympic did not call any witnesses at hearing to testify regarding the public's need for the service expansion it proposes. Because there is no active protest to Olympic's application, and no objection from any party, Olympic was permitted an opportunity to submit written support statements in lieu of live testimony to support the public need criterion. Olympic submitted one such statement on October 16, 2000, and it was admitted as Exhibit No. 14. Olympic also presented testimony by Mr. Jack Heckman and Mr. John Heckman regarding Olympics financial fitness and related matters. Finally, Olympic produced two witnesses who testified to their satisfaction with Olympic's existing service.
- 18 Pennco produced one witness to testify regarding the public's need for the service expansion it proposes. Mr. Porter also testified as Pennco's operations witness on the subject of financial fitness and related matters. Olympic challenged Pennco's application as being incomplete for its failure to include a balance sheet. Olympic, without objection, was permitted the opportunity to submit the required balance sheet as a post-hearing exhibit, which Pennco did on October 13, 2000. Pennco's balance sheet was admitted as part of exhibit No. 8, Pennco's application packet.
- 19 **Standard for Determination.** The fundamental standard upon which these applications are considered is that stated in RCW 81.68.040, as follows:

The commission shall have power, after hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, and in all other cases with or without hearing, to issue said certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require.

- 20 In addition, consistent with the Commission's rules for auto transportation companies in Chapter 480-30 WAC, the Commission considers an applicant's financial fitness, and its

fitness generally, to provide the service for which it seeks authorization. We must address, then, two sets of questions with respect to each application:

- 1) Public convenience and necessity:
  - a) Do the public convenience and necessity require the proposed service?
  - b) Does an existing auto transportation company operating in the territory at issue provide service to the satisfaction of the Commission?
- 2) Fitness:
  - a) Is the company financially fit and capable of providing the service?
  - b) Does the company exhibit regulatory fitness?

These questions are considered and answered below.

- 21 **Discussion:** Olympic presently provides scheduled service at various fixed points in Clallam and Jefferson Counties to and from various fixed points in Seattle and at SeaTac. What Olympic seeks under the present application is to add a “Park and Ride” parking lot in Port Townsend and an unspecified location on the west side of the Hood Canal bridge as fixed points at which passengers may embark or disembark from a proposed shuttle service between the two points. Olympic states that the proposed shuttle service would allow persons in Port Townsend to interconnect more conveniently with Olympic’s existing service by operating on a coordinated schedule to coincide with Olympic’s present arrivals at the Hood Canal bridge. In the applicant’s own words, the authority it seeks is to provide service

[b]etween Port Townsend and Hood Canal Bridge with connection to Seattle and SeaTac Airport [traveling] [f]rom Hwy. 20 in Port Townsend southbound to Hwy. 19, southbound to Hwy. 104, eastbound to Hood Canal Bridge [with] [c]onnection at Hood Canal Bridge [and] [r]eturn [by the] same route.

- 22 Olympic’s application states that “[t]here currently is no scheduled service between Port Townsend and Seattle and SeaTac Airport.”
- 23 Olympic offered a sworn statement from Melanie Bozak, Interim General Manager, Jefferson Transit Authority, in support of Olympic’s application. Ms. Bozak states that “the proposed service provides alternatives to citizens who are traveling to Seattle and SeaTac.” She asserts the proposed service “would enhance our fixed route connection to the Bainbridge ferry,” but the meaning of this statement is unclear. The statement is even more confusing when it is considered that Olympic’s primary route relies on the Kingston/Edmonds ferry. Olympic provides service via the Bainbridge ferry only as an alternative route if the Kingston/Edmonds ferry is closed, the Tacoma Narrows bridge is closed, or there is “extreme traffic congestion.” Exhibit No. 1 (~at p. 14--“Time Schedule Number 8”). Ms. Bozak also states that the Jefferson Transit Authority has “received requests from local citizens for direct service to Seattle and SeaTac” and she asserts that the proposed service “would enhance the service we provide.” It is unclear, however, how any service provided by the Jefferson Transit Authority would be enhanced since the proposed shuttle service is designed only to interconnect with

Olympic's existing service, and not transportation services offered by others.<sup>1</sup> Ms. Bozak's statement is equivocal regarding the need for the proposed service in that her support statement form includes both "yes" and "no" in response to the question whether current transportation needs are being met, and "no" in response to the question whether, if the application is denied, it would have any affect on her or her organization.

- 24 Pennco currently provides door-to-door service, by advance reservation only, between Clallam and Jefferson Counties and various points in King and Pierce Counties, including medical facilities and transportation hubs (i.e., bus, rail, and airport terminals). By its application, Pennco seeks authority to provide in addition a reservation only service on a schedule between various fixed points in Clallam and Jefferson Counties to and from five Seattle hospitals. The proposed service is targeted to lower income persons in Clallam and Jefferson Counties who require transportation to and from medical facilities in Seattle. The proposed rate is substantially below Pennco's current rates for reservation only, door-to-door service, and substantially below Olympic's rates for scheduled point-to-point service. Pennco's proposed service would pick up passengers at fixed points that are different from those currently used by Olympic, on a different schedule, and by reservation only.
- 25 In support of its application, Pennco states that "[a]t this time there is no scheduled service in Port Townsend, Port Hadlock, Chimacum, and Port Ludlow to Seattle for residents in the lower income bracket." Indeed, from review of both existing certificates under consideration for amendment here, there is no scheduled service at all in these locations, except, arguably, "flag stops" Olympic asserts it is authorized to make as it travels along part of Pennco's proposed route on Highway 101.<sup>2</sup> The only definite overlap between the service Pennco proposes and the service Olympic proposes is at Sequim where Olympic's Certificate currently authorizes a scheduled stop, while any stops in Sequim by Pennco currently must be prearranged on a door-to-door basis.
- 26 Pennco offered testimony by its witness Marcie Jaffe in support of the public's need for the proposed service. Ms. Jaffe testified that during the period June 1998 through September 1999, she conducted a study of transportation needs in Jefferson and Clallam Counties for the Olympic Area Agency on Aging. TR. 101. Ms. Jaffe found, among other things, that approximately one-quarter of the residents in these counties are 65 years of age, or older; approximately 5 percent are at least 80 years old. TR. 102. Ms. Jaffe testified that a significant number of such individuals should, and would use a service such as the one proposed by Pennco. *Id.* Asked which of the two proposed services she would recommend to a potential user, Ms. Jaffe stated that she was not prepared to make such a comparison. In Ms. Jaffe's opinion, there would be a need for both services

---

<sup>1</sup> It may be that Jefferson Transit Authority could deliver Seattle-bound passengers to Olympic's proposed stop at Hood Canal Bridge. In that event, the principal advantages of Olympic's proposed shuttle would be that riders' total cost would be lower and that the proposed shuttle schedule is coordinated to meet Olympic's main line transit that proceeds to Seattle.

<sup>2</sup> Olympic's current Certificate provides for passenger service between Port Angeles and Seattle, with an intermediate stop at Sequim, and between Port Angeles and SeaTac, with an intermediate stop at Sequim. Flag stops along these routes are not expressly authorized under Olympic's Certificate.

and choice would depend in individual cases on schedule, cost, and a persons ability to pay.

- 27 Ms. Jaffe testified that during the course of her study she learned that “quite a few” older residents in Clallam and Jefferson Counties found that public transportation to Seattle was not adequate to meet their needs and that they had to rely on family members to drive them on trips into Seattle for medical appointments and other needs. TR. 87. Among other problems Ms. Jaffe cited with respect to existing transportation options are cost, the necessity to make one or more transfers, and a dearth of fixed route options. TR. 86-87.
- 28 Ms. Jaffe’s testimony is corroborated, in part, by Exhibit No. 5, submitted by Pennco. Exhibit No. 5 is a letter from Marny Hannan, Executive Director or the Sequim-Dungeness Valley Chamber of Commerce. Ms. Hannan could not attend the hearing in person due to a schedule conflict, according to her letter. Substantively, Ms. Hannan’s letter states that “[f]ifty-five percent of the population of Sequim and the Sequim-Dungeness Valley are retired. Although Clallam County has a very adequate medical infrastructure, many residents require services provided in Seattle.” Ms. Hannan opines that residents in the low to moderate-income level would benefit from the option Pennco proposes.
- 29 In sum, there is substantial competent evidence in the record to support a finding that the public convenience and necessity require the proposed expansions of service by both carriers. The service offerings are sufficiently different to appeal to discrete segments of the market and the multiple schedules that will be available expand the options available to the traveling public generally. That is, by approving both applications, the public’s need will be optimally served by giving more choices to riders in terms of schedule, convenience, and price.
- 30 Turning to the questions of financial and regulatory fitness, there is no serious challenge to either application. Both companies have been operating successfully for some time and appear from their respective balance sheets and other financial data to be financially sound. Exhibit No. 8 (Pennco balance sheet); Exhibit No. 1 (Heckman balance sheet). There is no evidence in the present record to suggest that either Olympic or Pennco have failed in any way to conform their operations to the Commission’s regulatory requirements and otherwise conduct their operations in accordance with law.

#### FINDINGS OF FACT

- 31 1) Olympic provides twice a day scheduled service between a limited number of fixed terminals in Clallam and Jefferson Counties and Seatac International Airport, Seattle hospitals, the Amtrak train terminal in King county, the Greyhound bus terminal in King county, and various other points in Kitsap and King Counties. Olympic Van Tours, Inc. operates under WUTC Certificate No. C-00992.

- 32 2) Pennco provides on-call, door-to-door services, 24 hours per day, seven days per week to or from Seatac International Airport, Seattle and Tacoma hospitals, Amtrak train terminals in King and Pierce Counties, Greyhound bus terminals in King and Pierce Counties, Port Ludlow, Kingston, Bainbridge, and Silverdale, for persons whose points of origin and/or destination are in Clallam or Jefferson Counties. Pennco operates under WUTC Certificate No. C-01054.
- 33 3) Olympic filed an application on April 27, 2000, to request expanded authority under WUTC Certificate of Public Convenience and Necessity No. C-00992 to provide new, scheduled service in territory adjacent to its present route of travel between the Olympic Peninsula and Seattle, including SeaTac International Airport. Olympic would continue to operate fixed-route, scheduled service in its authorized service territory. Olympic would add fixed-route, scheduled shuttle service between Port Townsend and the Hood Canal Bridge where its shuttle would rendezvous with Olympic's main line service between Seattle and the Olympic Peninsula. Olympic would offer fixed-route, scheduled service along a route presently served by Pennco's door-to-door, reservation-only service.
- 34 4) Pennco filed an application on May 24, 2000, to request expanded authority under WUTC Certificate of Public Convenience and Necessity No. C-01054. Pennco would continue to operate door-to-door, reservation-only service throughout its authorized service territory, and would add fixed-route, scheduled service between Sequim and Seattle area medical facilities, with stops in Port Townsend, Port Hadlock, and Port Ludlow. The Port Townsend to Port Hadlock portion of the proposed route presently is unserved by fixed-route, scheduled service.
- 35 5) The authority Pennco requests overlaps in part territory presently served by Olympic Van Tours, Inc. The authority Olympic requests overlaps in part territory presently served by Pennco. However, the two companies already operate in this same service territory under certificate conditions designed to optimize the range of services available to the traveling public over the long term. Those conditions are unaffected by either of the present applications.
- 36 6) Residents of, and visitors to, Clallam and Jefferson Counties require both scheduled service between various fixed terminal points in Clallam and Jefferson Counties and Seatac International Airport, Seattle and Tacoma hospitals, Amtrak train terminals in King and Pierce Counties, and interstate bus terminals in King and Pierce Counties; and on-call, door-to-door services, 24 hours per day, seven days per week to or from those same points in King and Pierce Counties and numerous points in Clallam and Jefferson Counties.
- 37 7) Olympic does not provide service to the satisfaction of the Commission because the scope and nature of its services do not meet the full range of public needs for commercial auto transportation services that exist for travelers between Clallam and Jefferson Counties and diverse points in King and Pierce Counties.



- 38 8) Pennco does not provide service to the satisfaction of the Commission because the scope and nature of its services do not meet the full range of public needs for commercial auto transportation services demonstrated to exist for travelers between Clallam and Jefferson Counties and diverse points in King and Pierce Counties.
- 39 9) The public convenience and necessity require the expanded transportation services that would be made available by Olympic and Pennco consistent with their respective applications.
- 40 10) Olympic is financially fit to provide the services for which it seeks authorization.
- 41 11) Pennco is financially fit to provide the services for which it seeks authorization.
- 42 12) Olympic will conform its operations to the Commission's regulatory requirements and otherwise conduct its operations in accordance with law.
- 43 13) Pennco will conform its operations to the Commission's regulatory requirements and otherwise conduct its operations in accordance with law.

#### CONCLUSIONS OF LAW

- 44 (1) The Washington Utilities and Transportation Commission has jurisdiction under RCW 81.68 and other authority both over the subject matter and the parties to both pending applications
- 45 (2) The public convenience and necessity require the operations proposed by Olympic in its application, and there is, therefore, good cause to issue a certificate of public convenience and necessity in accordance with RCW 81.68.040.
- 46 (3) The public convenience and necessity require the operations proposed by Pennco in its application, subject to conditions, and there is, therefore, good cause to issue a certificate of public convenience and necessity in accordance with RCW 81.68.040.
- 47 (4) Olympic does not provide service to the satisfaction of the Commission in the territory in which Pennco Transportation proposes to operate and it therefore is proper to grant overlapping authority to Pennco under RCW 81.68.040.
- 48 (5) Pennco does not provide service to the satisfaction of the Commission in the territory in which Olympic proposes to operate and it therefore is proper to grant overlapping authority to Pennco under RCW 81.68.040.
- 49 (6) Olympic exhibits the degree of financial and regulatory fitness necessary to support an application for expanded authority under RCW 81.68.040.

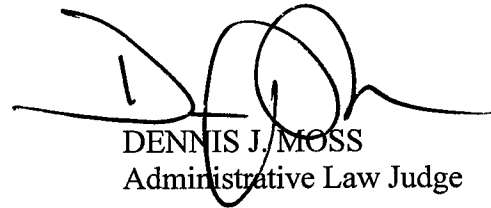
- 50 (7) Pennco exhibits the degree of financial and regulatory fitness necessary to support an application for expanded authority under RCW 81.68.040.

### ORDER

51 IT IS ORDERED That Application No. D-78904 by Heckman Motors, Inc. d/b/a Olympic Bus Lines is granted and the Commission should issue an appropriate certificate of public convenience and necessity to authorize the proposed service, employing language consistent with the terms of this Order.

52 IT IS ORDERED That Application No. D-78916 by Jeffrey Lynn Porter d/b/a Pennco Transportation is granted and the Commission should issue an appropriate certificate of public convenience and necessity to authorize the proposed service, employing language consistent with the terms of this Order.

DATED at Olympia, Washington and effective this <sup>14</sup> day of November 2000.



DENNIS J. MOSS  
Administrative Law Judge

### NOTICE TO PARTIES:

**This is an Initial Order. The action proposed in this Initial Order is not effective until entry of a final order by the Utilities and Transportation Commission. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below.**

**WAC 480-09-780(2) provides that any party to this proceeding has twenty (20) days after the service date of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-09-780(3). WAC 480-09-780(4) states that an *Answer* to any Petition for review may be filed by any party within ten (10) days after service of the Petition.**

**WAC 480-09-820(2) provides that before entry of a Final Order any party may file a *Petition To Reopen* a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition To Reopen will be accepted for filing absent express notice by the Commission calling for such Answer.**

**One copy of any Petition or Answer filed must be served on each party of record, with proof of service as required by WAC 480-09-120(2).**

203

**An original and three copies of any Petition or Answer must be filed by mail delivery to:**

**Office of the Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250**

**or, by hand delivery to:**

**Office of the Secretary  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive, S.W.  
Olympia, WA 98504**