

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Seatac Shuttle, LLC d/b/a Whidbey-Seatac Shuttle For a Declaratory Order Regarding the Definition of "New Service" as Used in Both Transportation Rule and Code

DOCKET TC-121504

COMMISSION STAFF'S STATEMENT OF FACT AND LAW

I. INTRODUCTION

1 The Staff of the Washington Utilities and Transportation Commission (Commission) files this Statement of Fact and Law in response to the Commission's Notice of Receipt of Petition for Declaratory Order and Opportunity to Submit Statements of Fact and Law served September 17, 2012. The petition referenced in the Commission's notice seeks an interpretation of the phrase "new service" with respect to State laws and rules governing auto transportation service, specifically citing RCW 81.28.050 and WAC 480-30-301. These two provisions address required notice periods for tariff and time schedule filings.

II. BACKGROUND

2 Seatac Shuttle, LLC d/b/a Whidbey-Seatac Shuttle (Seatac Shuttle) holds a certificate from the Commission to provide auto transportation service on specified routes within the state.¹ One of these routes runs between Whidbey Island and Bellingham International Airport (the Whidbey-BLI route).²

3 The rate schedule for the Whidbey-BLI route appears at Original Page No. 10 in

¹ Certificate Number C-1077.

² Seatac Shuttle acquired authority to serve this route by Commission order entered July 12, 2012, in Docket TC-120834.

Seatac's Tariff No. 5, which is the tariff currently in effect for this company. Consistent with all of the other rate schedules in this tariff, the rate schedule for the Whidbey-BLI route appears to be seasonal. The rate schedule for the Whidbey-BLI route states that it is "[e]ffective July 16, 2012 through August 31, 2012."³

4 Separate from its tariff, Seatac Shuttle also has a time schedule in effect and on file with the Commission. Its current time schedule is Time Schedule No. 10, and the time schedule for the Whidbey-BLI route appears on Original Page No. 10. The Whidbey-BLI time schedule states, "Daily Service – July 16, 2012 thru August 31, 2012." This temporary time schedule for the Whidbey-BLI route stands in contrast to the time schedules for most of the other routes.⁴

5 On August 29, 2012, Seatac Shuttle filed a proposed time schedule titled "Time Schedule No. 10" with a proposed effective date of September 30, 2012. The schedule as proposed would limit service to the time period of September 1 through September 30, 2012. Other revisions included changing the Tuesday morning departure time, changing the evening departure time, and eliminating the Wednesday and Saturday evening departures from Whidbey Island; and eliminating the Wednesday and Saturday evening departures from BLI. Seatac Shuttle also filed a request for less than statutory notice (LSN), seeking an effective date of September 14, 2012, for the proposed time schedule.

6 Seatac Shuttle subsequently added to its filing a proposed change in its rate schedule for the Whidbey-BLI route. The proposed change consisted of deleting the following language: "Effective July 16, 2012 through August 31, 2012." Seatac Shuttle also filed a LSN request along with the proposed rate schedule change.

³ The Whidbey-BLI rate schedule bears an issue date of June 1, 2012, and an effective date of July 14, 2012.

⁴ The only other temporary time schedules appear to be those for Seatac Shuttle's Whidbey-Seattle route, appearing at 1st Revised Pages 6 and 7 (effective "only May 18, 2012 thru September 16, 2012").

7 On the morning of September 13, 2012, Seatac Shuttle withdrew its proposed time schedule. The following day, the company filed a petition for a declaratory order defining “new service.” At its regularly scheduled Open Meeting on September 27, 2012, the Commission allowed the revised rate schedule to become effective September 30, 2012, by operation of law.

III. DISCUSSION

8 Under WAC 480-30-301(3), a company need provide only one business day’s notice to the Commission for “[t]ariff and time schedule filings whose only purpose is to add a new service option or a service level which has not been previously included in the company’s tariff.” Otherwise, under RCW 81.28.050, “[u]nless the commission otherwise orders, a change may not be made to any. . .rate, fare, charge, rule, or regulation. . .except after thirty days’ notice to the commission and to the public.”

9 Seatac Shuttle would have the Commission allow the company to file its proposed time schedule on one business day’s notice. The company contends that, because the existing time schedule would have expired by the time the proposed time schedule went into effect, the proposed time schedule would constitute a “new service” and could be filed on one day’s notice.

10 Seatac Shuttle’s position may serve the company’s convenience but is not a reasonable interpretation of the law and rule it cites. For WAC 480-30-301(3) to apply to a filing, the filing must meet all of the elements of the rule. First, the filing must propose adding “a new service option or a service level”; second, the new service option or service level cannot have been included previously in the company’s tariff; and finally the filing can have only one purpose, which is to add a new service option or service level.

11 Seatac Shuttle’s proposed time schedule fails to meet any of these elements. In its time schedule filing, Seatac proposed to change and eliminate departure times, not add any. The “new” departure times represented different times and not additional departure times.

12 The proposed time schedule for the Whidbey-BLI route as a whole could not be considered a new service option because a time schedule for this route had been published previously by the company. Whether the previously included schedule was “then in force” (see RCW 81.28.050) is irrelevant to the application of the rule. The language “previously included” encompasses not only service that is currently in effect but also service that was in effect at some point in the past.

13 Finally, even if the revised departure times could be construed somehow as a new service option or an additional service level, the filing contained multiple purposes. One purpose of the filing was to change the departure times, and another purpose was to extend the season during which Seatac Shuttle intended to serve the Whidbey-BLI route.

14 It is worth noting, as well, that WAC 480-30-301(3) literally applies only to additions to a company’s tariff and not to additions to a separate time schedule. The language at the very end of the rule, “in the company’s tariff” does not say “in the company’s tariff or time schedule,” which indicates that the rule contemplates only tariff filings. This may have been an oversight when the rule was drafted. Time schedules can be filed as part of a tariff or separately,⁵ so the rule still applies squarely to time schedules filed as part of a tariff. Seatac Shuttle’s time schedule is separate from its tariff, and accordingly the one business day’s notice of WAC 480-30-301 appears to be unavailable to its time schedule filings.

⁵ WAC 480-30-281(2).

15 Seatac Shuttle reasons that the 30-day notice period of RCW 81.28.050 would not apply to the company's proposed time schedule because the time schedule in effect at the time of the filing would have expired by the time the proposed time schedule went into effect. It is true that RCW 81.28.050 contemplates that proposed tariff changes will relate to a "schedule then in force" and is silent regarding the context of proposed schedules filed to replace expired schedules. Seatac Shuttle would have the Commission consider such proposed time schedules to be "new service" that is not subject to the 30-day notice period. The term "new service," however, does not appear in RCW 81.28.050 and does not appear in isolation in WAC 480-30-301(3). To qualify for one business day's notice, which appears to be Seatac Shuttle's objective, a filing must meet the requirements of WAC 480-30-301(3).

16 The terms present in WAC 480-30-301 are "new service option" and "service level." These terms are not defined in the auto transportation rules. Service additions that Staff believes would qualify for one business day's notice under WAC 480-30-301(3) include adding a departure time or adding a departure point to a time schedule. These are two likely examples; no doubt there are other possibilities that would constitute a new service option or an additional service level, but further speculation as to what additional services a company conceivably might offer will not necessarily provide a more definitive interpretation of these terms.

IV. CONCLUSION

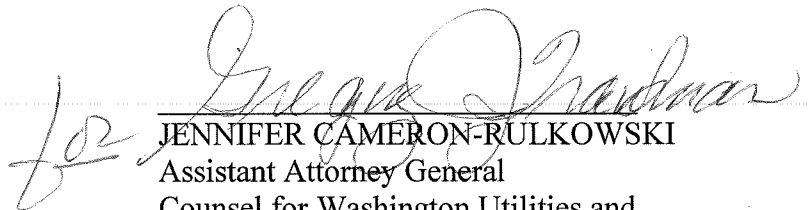
17 Seatac Shuttle's interpretation of "new service" relies on the extraction of the term from the remainder of the language in WAC 480-30-301(3). All of WAC 480-30-301(3) must be considered, however, in order to determine whether a filing qualifies for one

business day's notice. Accordingly, seeking a definition of "new service" will not automatically yield the notice period that applies to a filing, and granting this petition may not provide the company with the answers it seeks. Seatac Shuttle appears to want to know how to prepare a schedule filing concerning its existing authority so as to qualify for one business day's notice. The answer to that question is to ensure that the filing meets all of the elements of WAC 480-30-301(3). Reference to WAC 480-30-301(3) in its entirety is the key to evaluating whether a filing qualifies for one business day's notice, and companies can perform this evaluation without the declaratory order Seatac Shuttle requests. For this reason, Staff recommends that the Commission decline to enter a declaratory order in this matter.

Dated this 28th day of September 2012.

Respectfully submitted,

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