

SERVICE DATE

FEB 16 2001

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

Synopsis

1 The Commission affirms the initial order in this docket, affirming the grant of authority to two competing applications for authority to provide bus service.

Nature of proceeding

2 These are applications for extension of authority to provide bus service, to allow the transportation of passengers between listed points on the Olympic Peninsula and points in the City of Seattle. Under WAC 480-30-032 and WAC 480-09-610 the Commission consolidated these applications for hearing because portions of the applications overlap.

Initial order

3 Administrative Law Judge Dennis Moss entered an initial order proposing that both of the applications be granted. No party sought administrative review in Docket TC-000676 of Heckman Motors' unprotested Application D-78904.

Petition for Administrative Review

4 Protestant Heckman Motors seeks administrative review of the initial decision that proposes to grant Jeffrey Lynn Porter’s application No. D-78916 in Docket No. TC-000835. The petition contends that a grant of overlapping authority is impermissible because the initial order made no finding that an existing carrier failed to provide service to the satisfaction of the Commission, because proposed price levels may not be considered in support of an application, and because the market is not sufficiently robust to support competitive services. The respondent did not answer the petition.

Appearances

5 Representatives James Heckman and John Heckman, owners, appeared for applicant Heckman Motors, Inc., d/b/a Olympic Bus Lines (Olympic), their company. Jeffrey Lynn Porter, owner, appeared on behalf of Pennco Transportation (Pennco). Robert Cedarbaum, Assistant Attorney General, Olympia, Washington, appeared for Commission Staff.

Commission Decision

6 The Commission denies the petition for administrative review and affirms both grants of authority.

7 The initial order properly found that both existing carriers fail to provide service to the satisfaction of the Commission. Failure to meet the real needs of travelers is a sufficient basis for finding that a carrier has failed to provide service to the Commission’s satisfaction under RCW 81.68.040.

8 The Commission in general will not consider proposed price levels in support of an application because under law it must allow carriers to charge fair, just, and compensatory rates based on the actual costs of operation. Those costs cannot be accurately estimated in advance. No difference in the kind of operation is demonstrated to support a different price structure.

9 The Commission finds no credible basis in the record to support a finding that the market cannot support two operators.

Background and Context

10 This matter involves the applications of two existing providers of bus service based on Washington’s Olympic Peninsula. They propose to increase the level of service that each offers between Peninsula locations and points in the City of Seattle.

- 11 Applicant Olympic has authority under Certificate No. C-000992 to provide auto transportation service in certain areas of Washington. Under its certificate, Olympic provides 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. That is, no passengers are picked up or left off between those two stops.
- 12 On April 27, 2000, Olympic applied for expanded authority. It seeks authority to make an intermediate stop at the Hood Canal bridge and to provide scheduled shuttle service between Port Townsend and the Hood Canal Bridge as 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).
- 13 Applicant Pennco has authority under Certificate No. C-001054 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. Olympic is also authorized to provide service between the cities of Port Townsend, Port Ludlow, and Silverdale, on the one hand, and points in Clallam and Jefferson Counties, on the other, limited to passengers whose original destination is in Clallam and 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.
- 14 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.
- 15 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 currently 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); WAC 480-09-610.

16 The initial order proposed that both applications be granted. It found that both services were supported by evidence of public need and that each carrier failed to operate to the satisfaction of the Commission because each of the carriers failed to meet public need in its territory. The initial order did not find that a barrier exists to granting both applications. Olympic seeks administrative review of the order, contending that the order erred in proposing to grant Pennco's application. Neither Commission Staff nor Pennco answered the petition.

Discussion and decisions

17 Olympic makes three principal contentions in its opposition to Pennco's proposed authority.

18 **Satisfaction of the Commission.** First, it contends that a grant of authority that overlaps Olympic's existing authority (service between Sequim and Seattle) is impermissible because Olympic does not fail to provide service to the satisfaction of the Commission. The Commission disagrees.

19 The initial order found that both carriers had failed to operate to the satisfaction of the Commission. In particular, statements of Pennco's supporting witness detailed specific needs for service schedules that Olympic failed to provide. There is sufficient evidence of record to support the finding and the conclusion drawn from it.

20 **Proposed price levels.** Pennco proposed fare levels for its Seattle service that are lower than comparable fares that Olympic charges. The initial order appeared to rely on the price differential as one factor in granting Pennco's application.

21 Olympic's second contention is that Pennco's proposed price levels may not be considered in support of an application. In this regard, the protestant's contention is correct. The Commission is obligated to set rates sufficient to allow a carrier to recover its costs of investment and its operating expenses. *Federal Power Commission et al. v. Hope Natural Gas Co.*, 320 U.S. 591, 64 S. Ct. 281, 88 L. Ed. 333 (1944). Under RCW 81.28.230, the Commission is required to set rates that are just, reasonable, and compensatory. Irrespective of an applicant's present intentions, it is legally entitled and legally obligated to price its services over time based on its operating experience and its reasonable expenses. The Commission has rejected proposed rate levels as the basis for granting an application. *In re Application P-67291 of Geer Brothers Trucking, Inc.*, Order M.V. No. 129935 (1984); *In re OK Distribution, App. No. P-67056*, Order M.V. No. 128996 (1984). There is no evidence of record that the proposed service is of a type that is of a different quality or that its costs are inherently lower.

22 While the Commission will not consider Pennco’s proposed price level in support of its application, we find that the remaining evidence is sufficient to support a grant of authority to Pennco under all of the relevant tests.

23 **Dilution of the market.** Third, Olympic contends that the market is not sufficiently robust to support competitive services – in other words, that it is wrong to grant both applications because doing so prevents both applicants from operating a service that produces a profit. We find no credible evidence that the market is insufficient to support both operations. There are no market studies, no studies of transportation needs, no statistical demonstration of the validity of the asserted proposition. Instead, we find credible evidence that need exists for the service that each will provide and that the lack of current service leads some prospective passengers to drive or seek other alternatives rather than travel by bus. We cannot deny an application because of the likelihood of asserted future facts when we have no credible evidence of those asserted facts. *In re Application P-68139, of Liquid Transporters, Inc., Order M.V. No. 131563 (1985); In re Application P-68437 of Fin-A-Key Express, Inc., Order M.V. No. 135886 (1987).* In the absence of evidence supporting a limited-market argument, we cannot deny a competing application.

The remainder of the initial order

24 In all other regards, the Commission has reviewed the initial order, finds that it is properly based on the record, and concludes that the Commission should adopt it as its own for purpose of this proceeding. In so doing, the Commission makes and enters the following findings of fact.

FINDINGS OF FACT

25 (1) Heckman Motors, Inc. d/b/a Olympic Bus Line (Olympic) provides twice-daily scheduled service between a limited number of fixed termini in Clallam and Jefferson Counties and Sea-Tac 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.

26 (2) Jeffrey Lynn Porter d/b/a Pennco Transportation (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 destinations are in Clallam or Jefferson Counties. Pennco operates under WUTC Certificate No. C-01054.

- 27 (3) Olympic applied 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.
- 28 (4) Pennco applied 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.
- 29 (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 and would continue to apply to all services, including services sought in these applications.
- 30 (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.
- 31 (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.

- 32 (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.
- 33 (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.
- 34 (10) Olympic has sufficient funding to conduct the proposed operations for a reasonable period and is thus financially fit to provide the services for which it seeks authorization.
- 35 (11) Pennco has sufficient funding to conduct the proposed operations for a reasonable period and is thus financially fit to provide the services for which it seeks authorization.
- 36 (12) Olympic will conform its operations to the Commission's regulatory requirements and otherwise conduct its operations in accordance with law.
- 37 (13) Pennco will conform its operations to the Commission's regulatory requirements and otherwise conduct its operations in accordance with law.

CONCLUSIONS OF LAW

- 38 (1) The Washington Utilities and Transportation Commission has jurisdiction under chapter 81.68 RCW and Title 81 RCW over both the subject matter of and the parties to both pending applications.
- 39 (2) The public convenience and necessity require the operations proposed by Olympic in its application, and the Commission should issue an amended certificate of public convenience and necessity in accordance with RCW 81.68.040 to provide the proposed operations.
- 40 (3) The public convenience and necessity require the operations proposed by Pennco in its application, subject to conditions, and the Commission should issue a certificate of public convenience and necessity in accordance with RCW 81.68.040 to provide the proposed operations.
- 41 (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.

- 42 (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.
- 43 (6) Olympic exhibits the degree of financial and regulatory fitness necessary to support an application for expanded authority under RCW 81.68.040.
- 44 (7) Pennco exhibits the degree of financial and regulatory fitness necessary to support an application for expanded authority under RCW 81.68.040.


ORDER

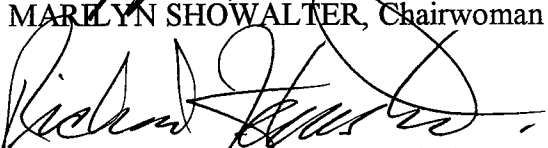
45 THE COMMISSION ORDERS That Application No. D-78904 of Heckman Motors, Inc. d/b/a Olympic Bus Lines is granted and the Commission will revise and reissue certificate of public convenience and necessity No. C-00992, as set forth in Appendix A to this order, to authorize the proposed service.

46 THE COMMISSION FURTHER ORDERS That Application No. D-78916 of Jeffrey Lynn Porter d/b/a Pennco Transportation is granted and the Commission should revise and reissue certificate of public convenience and necessity No. C-001054, as set forth in Appendix B to this order, to authorize the proposed service.

DATED at Olympia, Washington and effective this ^{16th} day of February, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


 MARILYN SHOWALTER, Chairwoman


 RICHARD HEMSTAD, Commissioner

NOTICE TO PARTIES: This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

Heckman Motors, Inc.
d/b/a Olympic Bus Lines
111 East Front St.
Port Angeles, WA 98362

PASSENGER SERVICE

BETWEEN: Port Angeles and Seattle, with an intermediate stop at Sequim.

BETWEEN: Port Angeles and the Seattle-Tacoma International Airport with an intermediate stop at Sequim.

BETWEEN: Port Townsend and Hood Canal Bridge with connections to Seattle and the Seattle-Tacoma International Airport via Hwy. 20 in Port Townsend southbound to Hwy. 19, southbound to Hwy. 104, eastbound to Hood Canal Bridge. Connecting with buses at Hood Canal Bridge and return to Port Townsend by the same route.

No service shall be rendered between Seattle and the Seattle-Tacoma International Airport.

The holder of this certificate may operate an 8 foot 11 inch length by 4 foot width by 5 foot 7 inch height trailer when such a trailer is used to carry passenger luggage and is towed by a vehicle in which passengers are being transported.

APPENDIX B

Jeffrey Lynn Porter
d/b/a Pennco Transportation
P.O. Box 1687
Port Angeles, WA 98362

PASSENGER SERVICE: Door-to-door, 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 with closed door service between Clallam and Jefferson Counties, and the indicated points in King and Pierce Counties.

BETWEEN: Clallam and Jefferson Counties and Port Townsend, Port Ludlow, and Silverdale, for passengers whose point of origin or point of destination is in Clallam or Jefferson County.

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.

Conditions: Pennco may not provide service to passengers from any point served by Heckman Motors, Inc., d/b/a Olympic Bus Lines, under Certificate No. C-992 without advance reservations made at least one hour in advance of the pick-up times at each such point indicated by Heckman Motors, Inc., d/b/a Olympic Bus Lines's schedule as published from time-to-time in accordance with WAC 480-30-060.

The holder of this certificate may operate a five foot by eight foot trailer when such a trailer is issued to carry baggage or express and is towed by a vehicle in which passengers are being transported.