

DOCKET # TC-060177

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September 21, 2006

Ms. Penny Hansen, Regulatory Analyst
WUTC
Olympia, WA

cc: **records@wutc.wa.gov**
Via email

Re: your memorandum of 9/13/06

Dear Ms. Hansen:

I was unfortunately out of town on September 13 and therefore unable to attend the Adoption Hearing of that date regarding TC-060177 and the resulting CR-102. However, I did obtain a copy of your memorandum to the Commissioners that Gene Eckhardt passed out to those in attendance at the meeting. After reading it I did have a few comments and questions which follow.

In the **Background** section of your memorandum to the commission you neglected to mention the extensive comments and input that were received from the various stakeholders and what the emphasis of those comments were. There was no mention of the time, effort and expense put into this proceeding, in good faith, by the stakeholders in the clear expectation of rate (fare) making methodology reform as promised.

In the **Discussion** section there is no mention of any of the methodologies suggested or proposed by the stakeholders. Your only reference is to a letter by Mark Sidran regarding “effective competition”, a concept never raised before the very last workshop or defined, in four and one half years of discussions by and between the WUTC staff, the commission and the stakeholders, as “an important precursor to being more flexible in our

approach to approving fares.” You further quote “the commission will pursue legislation to give the commission the flexibility to tailor entry and fare-setting standards to the market conditions within specific geographic areas.”

I am deeply disturbed on numerous levels; first, at the last minute the commission introduced a concept of “effective competition” which Commissioner Oshie attempted to explain in terms of utilities not transportation (prior to which the staff and the commission refused to accept the concept of competition for regulated airports). It is my recollection that his explanation was to describe “effective competition” as a subjective analysis left solely to the discretion of the staff and commission with no clear definition. This is neither a concept proposed or supported by any stakeholder that I am aware of. Second, there is NO impediment to the commission creating a fare-setting standard or methodology within RCW. The RCW authorizes, empowers and delegates the authority to set fair, just, reasonable and sufficient rates to the commission, period. This is also the analysis of senior WUTC staff. Executive Director Danner, in a letter to this office, on your behalf, stated categorically “Because these matters of rate flexibility and open entry require legislative action....” If, in fact this is the case, please advise me of the restrictions imposed on the commission by the legislature. Please be specific and cite the sections of the RCW that these statements were based upon.

In yet another part of the letter you referred to, the Commissioner states “We have decided that we will not codify this methodology in rule.” This was arguably the most important facet of all the discussions held between staff and stakeholders. It is vitally important to us to know what the nature of the commission’s regulation is. How can we possibly be expected to comply with an undefined “policy” subject to change and interpretation with out notice? This is nothing less than a slap in the face and an insult to the work we have put in on this issue. As above, nothing was included in the Discussion section on this topic and the disquieting effect it will have upon the stakeholders.

You close your **Discussion** section with “On August 4, 2006, the commission issued a CR-102 to seek comment on a proposed rule (WAC 480-30-306 Tariffs and time schedules) that would reduce the advance notice for filing rate decreases from seven days notice to one day. The purpose of the rule change is to allow companies more flexibility to adjust

rates to market conditions. The commission received a couple of comments regarding its legislation proposal, however, there were no comments received regarding the specific rule proposal.”

Are staff and the commission really to have us to believe that on one hand they must have legislative approval for any change in rate flexibly and on the other they can put into rule that it's acceptable for us to reduce our rates “to allow companies more flexibility to adjust rates to market conditions.” Isn't this what we were just told that the commission couldn't do? This is exactly what we asked for and have been discussing for four and one have years.

As to why no one commented on the change of section -306, it didn't merit comment. It was and is a meaningless change that has no impact on our industry. The comments you received regarding the proposed legislation were made because the intent of the legislation was what we expected the CR-102 to be about. We perceive this code change to be “tossing us a bone” because the commission felt that after all the time and effort put in on this subject they had to produce something. Frankly I would not have felt as insulted if the commission had just disregarded all of our proposals and done nothing and not disguised the lack of progress with this proposal.

In summation, I feel that Chris Rose's recent meetings with the stakeholders were a positive step if he gives any credibility to the concerns and comments of the stakeholders. They were certainly designed to defuse this CR-102 issue and make an attempt to explain the reasoning behind the RCW approach, however, I still can't find any rational for it. It will take far more than just a meeting to restore the lost credibility and any trust that I held out for the commission. This CR-102 and accompanying memorandum I hold as a betrayal of our good faith and trust.

It is very hard for us to fathom how something as simple as taking people back and forth to the airport in vans and buses can get to this over regulated, complicated state. It isn't rocket science, it's just customer service. If we were the deranged, greedy businessmen that you feel we are and must protect the consumer from, we would have been out of business years ago. The public isn't stupid (and neither are we). If it's a good deal they'll buy it, if it's not they won't. They have lots of choices open to them. In our case a shuttle wasn't even an option a few years ago, now our satisfied customers have us as a transportation option.

This experiment proposed by the commission just takes us from an undesirable position to a ridiculous one. More subjectivity, less definition, total unrestrained regulation; definition and application not defined for any particular company. How do you possibly see this as an improvement? The industry has not asked for nor does it desire deregulation, just common sense. I am quite serious about this. As I have stated before, I expect excellence from our government and regulators not mediocrity and complacency. If the WUTC feels that they can duck the responsibility they are charged with by tossing it back to the legislature in a delaying tactic and ignore the people that they are in office to serve, we will be left with no recourse but to go directly to the legislature with our concerns.

There seems to be no reason we can't work together on these issues other than an entrenched mind set by those that have been with the staff for a long time, a bureaucratic mentality and the intent of the commissioners to use us lab animals for this new experiment in regulation/deregulation. The current and past governors have both called for reform of regulatory agencies through executive orders, it's time to reform. That reformation is to take place within the agencies, not the legislature. The stakeholders have exhibited a strong desire to work with the staff and commissioners over the years on reform and it has been promised to them. We are at an impasse now, my desire to continue the dialog is minimal as I have seen no evidence of willingness on the part of the WUTC to work with us or place any value on our input.

I would like a simple, clear cut explanation for why the WUTC is doing this to our industry, why in an environment where the State of Washington itself is getting into the business of transporting people to the airport as our competitors, you are not seeking ways to protect and foster our industry to the benefit of the public. I would also like a concise explanation, in plain English, as to why you and the commission feel that a change in RCW is required to address the issue of rate reform. A timely response is anticipated.

Thank you

Mike Lauver