

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In re Application for Auto  
Transportation Authority by HopeSource  
Requesting Forbearance from Rate and  
Service Regulation as an Auto  
Transportation Company under RCW  
81.68 and requiring application to  
provide transportation under RCW 81.70

DOCKET NO. TC-111928

ANSWER OF RESPONDENT CITY  
OF YAKIMA SUPPORTING THE  
COMMISSION'S ORDER 01, AND  
OPPOSING PETITION FOR  
RECONSIDERATION

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1. **Identification of Respondent and Representative.**

Respondent City of Yakima (hereafter “City”) is a municipal corporation of the State of Washington, organized as a chartered first class city pursuant to RCW 35.01.010, with City Hall located at 129 North 2<sup>nd</sup> Street, Yakima, Washington 98901. The City’s designated representative is:

Mark A. Kunkler, WSBA No. 14995  
Senior Assistant City Attorney  
City of Yakima Legal Department  
200 South Third Street  
Yakima, Washington 98901-2830  
Telephone: (509) 575-6030  
FAX: (509) 575-6160  
Email: [mkunkler@ci.yakima.wa.us](mailto:mkunkler@ci.yakima.wa.us)

2. **Statutes and Rules in Issue.**

The pleadings in this matter concern the Washington Utilities and Transportation Commission’s (hereafter “WUTC” or “Commission”) Order 01, issued pursuant to the subparagraph five of RCW 81.68.015, granting HopeSource forbearance from rate and service regulation as an auto transportation company regulated by Chapter 81.68 RCW. The pleadings arise out of a Petition for Reconsideration filed pursuant to WAC 480-07-850 by CWA, Inc. d/b/a Central Washington Airporter, Airporter Shuttle, (hereafter “CWA, Inc.”). Respondent City of Yakima also opposes Petitioner’s reliance on RCW 81.68.040 as addressed herein.

3. **Statement of Facts.**

By Federal/State Operating Grant Agreement by and between HopeSource and the Washington State Department of Transportation (“WSDOT”), approved by WSDOT on October 5, 2011, HopeSource was awarded grant funds to implement transit services between the City of Ellensburg and the City of Yakima. The award of the grant agreement followed a competitive

process, and WSDOT awarded the contract to HopeSource on the basis of HopeSource's qualifications and proposed scope of service. The grant consists of funds from the Federal Transit Administration under the 5311 Reverse Access Commute funds and Washington State's Rural Mobility funds. CWA, Inc., had also submitted a proposal for this funding, but was not awarded the contract.

Following the grant award from WSDOT, the City of Yakima and HopeSource entered into an "Ellensburg-Yakima Commuter Service Contract," executed on or about October 25, 2011. Pursuant to such agreement, Yakima Transit provides a portion of the matching funds that HopeSource will use to operate the service under the grant. As noted above, HopeSource has the contract to provide the service through a WSDOT Consolidated Grant and is licensed with the WUTC to operate service in that corridor.

On November 23, 2011, pursuant to sub-paragraph five of RCW 81.68.015, the WUTC issued Order 01 granting HopeSource's application for forbearance from rate and service regulation as an auto transportation company regulated by Chapter 81.68 RCW and required HopeSource to file an application under Chapter 81.70 for a charter permit.

On November 28, 2011, HopeSource commenced operation of the commuter service authorized by the WSDOT Operating Grant Agreement, the agreement with the City of Yakima, and the requirements of WUTC's Order 01.

On or about December 16, CWA, Inc. filed its Petition for Reconsideration of WUTC Order 01.

On January 4, 2012, the WUTC issued its "Notice of Open Meeting Consideration of CWA Petition for Reconsideration (Set for January 26, 2012)," and on January 6, 2012, the

WUTC issued its “Notice of Opportunity to File Answer to Petition for Reconsideration (By Tuesday, January 17, 2012).”

4. **Discussion.**

Order 01 issued by the Commission is lawful and proper in all respects. The findings and decision of the Commission conform to the requirements of sub-paragraph five of RCW 81.68.015 and must be upheld.

A. Findings of the Commission are *Prima Facie* Correct.

Statutes governing the jurisdiction and authority of the Commission include the following:

**RCW 81.04.430**

**Findings of department prima facie correct.**

Whenever the commission has issued or promulgated any order or rule, in any writ of review brought by a public service company to determine the reasonableness of such order or rule, the findings of fact made by the commission shall be prima facie correct, and the burden shall be upon said public service company to establish the order or rule to be unreasonable or unlawful.

CWA, Inc. has not met its burden to establish Order 01 “to be unreasonable or unlawful.”

B. The Elements of Sub-paragraph Five of RCW 81.68.015 Have Been Satisfied.

As recommended by the Commission’s staff and found by the Commission, the elements of sub-paragraph five of RCW 81.68.015 have been met, and HopeSource is entitled to exemption from regulation under Chapter 81.68 RCW. The provisions of sub-paragraph five state:

This chapter does not apply to a service carrying passengers for compensation over any public highway in this state between fixed termini or over a regular route if the commission finds, with or without a hearing, that the service is provided pursuant to a contract with a state agency, or funded by a grant issued by the department of transportation, and that exemption from this chapter is otherwise in the public interest. Companies

providing these services must, however, obtain a permit under chapter 81.70 RCW.

HopeSource is a “service carrying passengers for compensation” between “fixed termini or over a regular route.” These elements have been established in the WSDOT Operating Grant Agreement with HopeSource.

The Commission may decide the application for forbearance “with or without a hearing.” Contrary to CWA, Inc.’s assertion, RCW 81.68.015 does not require a hearing prior to issuance of the Commission’s Order 01.

The service provided by HopeSource is funded by a grant through the Washington State Department of Transportation, and provided “pursuant to a contract with a state agency.” HopeSource provides the service pursuant to a contract with WSDOT.

The above-quoted statute allows the Commission to find that the exemption is warranted if the service is provided pursuant to a contract with a state agency or “funded by a grant issued by the department of transportation.” The use of the disjunctive “or” requires a conclusion that the grounds supporting the issuance of a forbearance are alternative justifications. In HopeSource’s case, both elements are satisfied. HopeSource provides the service pursuant to an Operating Grant Agreement with WSDOT, which also provides grant funding for the service.

It is important to note that the statute does not state that the service must be “fully funded” by a grant issued by the department of transportation. To construe this provision to require that the service must be “fully funded” by grant dollars is to ignore the practical reality that grant funding generally requires the recipient to include other “matching funds” – either cash or in-kind services from the recipient, and/or (as in this case) cash or in-kind services from other agencies or entities partnering with the recipient. Moreover, the issuance of the forbearance is available for “a service carrying passengers for compensation.” The plain meaning of this clause

allows payment, by passengers, to the service provider as compensation for transit services. The statute allows the recipient of grant funds to subsidize individual passenger fares with grant funding – but nothing in RCW 81.68.015 requires that all individual passenger fares be totally subsidized and paid by grant funding. As CWA, Inc. observes in its Petition for Reconsideration, the fact that passengers would be charged \$3.00 per trip (\$6.00 round trip) was part of HopeSource’s application for grant funds, was reviewed and approved by WSDOT, is clearly stated in the Agreement between the City of Yakima and HopeSource, and has been openly included in press releases and communicated to passengers.

The issuance of the exemption to HopeSource was also found by the Commission to be “otherwise in the public interest.” The exemption enables HopeSource to honor the terms and conditions of the WSDOT Operating Grant Agreement, and to provide the increased commuter services to qualifying residents of the Yakima-Ellensburg communities.

Finally, HopeSource was required to obtain a charter permit pursuant to Chapter 80.71 RCW.

C. CWA, Inc.’s Reliance on the Provisions of RCW 81.68.040 Regarding a “Certificate of Convenience and Necessity” is in Error.

The Petitioner, CWA, Inc., complains that the Commission did not invoke the procedures of RCW 81.68.040 before issuing the exemption pursuant to RCW 81.68.015. However, this reliance is misplaced.

The provisions and procedures of RCW 81.68.040 do not apply to a service provider exempted under RCW 81.68.015. The first clause of sub-paragraph five of RCW 81.68.015 provides: “This chapter does not apply” to a service provider meeting the qualifications listed. (Emphasis added.) Thus, a service provider receiving an exemption under RCW 81.68.015 is exempt from the procedures and provisions of RCW 81.68.040 and every other provision of

Chapter 81.68 RCW. Rather, the exempted service provider must comply with the charter permit provisions of Chapter 81.70 RCW. This has been done.

**5. Conclusion.**

For the reasons discussed above, and further based on the files and records before the Commission, HopeSource has met all requirements supporting the exemption from Chapter 81.68 RCW as set forth in sub-paragraph five of RCW 81.68.015. The Petitioner, CWA, Inc., has failed to show that the Commission's Order 01 was "unreasonable or unlawful," and the Commission's findings in support of Order 01 must be affirmed pursuant to RCW 81.04.430.

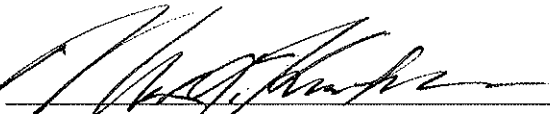
**6. Relief Requested.**

Respondent, City of Yakima, respectfully requests the following relief:

- A. That Order 01 of the Washington Utilities and Transportation Commission previously issued in this case be confirmed and affirmed in all respects;
- B. That the Petition for Reconsideration filed by Petitioner, CWA, Inc., be denied, and that CWA, Inc. take nothing by way of its petition; and
- C. For such other or further relief that the Commission deems just and equitable.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of January, 2012.

CITY OF YAKIMA LEGAL DEPARTMENT

By:   
Mark A. Kunkler, WSBA No. 14995  
Attorney and Designated Representative of and  
for CITY OF YAKIMA  
Senior Assistant City Attorney  
City of Yakima Legal Department  
200 South Third Street  
Yakima, Washington 98901-2830  
Telephone: (509) 575-6030  
FAX: (509) 575-6160  
Email: [mkunkler@ci.yakima.wa.us](mailto:mkunkler@ci.yakima.wa.us)