

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application of

NORTHWEST SMOKING & CURING,
INC. d/b/a SEATAC DIRECT

For Permanent Auto Transportation
Authority.

DOCKET TC-130708

COMMISSION STAFF MOTION
FOR CLARIFICATION

1 Staff of the Washington Utilities and Transportation Commission (Staff) submits this motion for clarification regarding whether the Commission will consider the application set for hearing on October 2, 2013, under the auto transportation rules in WAC 480-30, which will become effective September 21, 2012, by order of the Commission on August 21, 2013 (“2013 rules”), or under WAC 480-30 rules currently in effect (“2006 rules”).

I. INTRODUCTION

2 On May 7, 2013, Northwest Smoking and Curing, Inc. d/b/a SeaTac Direct (SeaTac Direct) filed an application in the above-referenced matter for an auto transportation certificate. Wickkiser International Companies, Inc. d/b/a Airporter Shuttle (Wickkiser) and SeaTac Shuttle, LLC d/b/a/ Whidbey-SeaTac Shuttle (SeaTac Shuttle), both existing auto transportation companies, filed “protests” on June 5 and 6, 2013, respectively. In its Notice of Prehearing Conference, the Commission advised that

statutes and rules that apply to this matter include, among others, RCW 81.68.030, RCW 81.68.040, and WAC 480-30.¹ At the August 5, 2013, prehearing conference, the Commission took appearances, Wickkiser was allowed to participate as a protestant in the docket, and SeaTac Shuttle was granted party status as an intervenor, and the matter was set for hearing on October 2, 2013.²

3 In 2012, the Commission opened Docket TC-121328 for the purpose of commencing a rulemaking to amend WAC 480-30, its auto transportation rules. The Commission filed a Notice of Proposed Rulemaking (CR-102) on June 5, 2013. Staff and many existing auto transportation companies, including the protestant and the intervenor in this case, participated in the rulemaking. After issuing draft rules, receiving and considering written comments, and convening a workshop, the Commission held an adoption hearing on July 26, 2013. On August 21, 2013, the Commission issued General Order R-572, Order Amending and Adopting Rules Permanently, along with a copy of the amended rules, attached to this motion for ease of reference.³ The order revised WAC 480-30, which included amending WAC 480-30-096 (Certificates, application filings, general), WAC 480-30-116 (Certificates, application docket, and objections, auto transportation company), WAC 480-30-126 (Certificates, applications, auto transportation company), WAC 480-30-136 (Procedure for applications subject to objection, information required of applicant and objecting company), and adopting new sections, including WAC 480-30-140 (standards for determining “public convenience and necessity,” “same service,” and “service to the satisfaction of the commission”). The

¹ See Notice of Prehearing Conference, Docket TC-130708 (July 9, 2013).

² See *In re Application of Northwest Smoking & Curing, Inc. d/b/a SeaTac Direct*, Order 01, Prehearing Conference Order, Docket TC-130708 (August 9, 2013).

Commission explained that it “developed the standards in the proposed rules for reviewing applications with the intent to inform existing companies and applicants how the Commission will evaluate applications” and these standards “are based in part on the Commission’s interpretation of the statutory requirements in RCW 81.68 and applications adjudicated over the past three decades...”⁴ The rules will take effect on the thirty-first day after the date the Order was filed with the Code Reviser, or September 21, 2013.⁵

4 The purpose of the amended 2013 rules is in large part to clarify the application process and how the Commission will review applications for new service, which existing companies would have status to object to an application for new service, and how the Commission will consider the application and objections, and make a determination.⁶

5 In effect, the 2013 rules streamline the application process. They narrow the circumstances under which existing companies can object to applications for new service to those in which the existing company provides the “same service”⁷ and set out standards for what is meant by “same service.”⁸ They set out out procedures for considering valid objections (via a brief adjudicative proceeding),⁹ and narrow the scope of the objection to the issues of whether the existing company holds a certificate to

³ *In the Matter of Amending and Adopting Rules in WAC 480-30 Relating to Passenger Transportation Companies*, General Order R-572 Order Amending and Adopting Rules Permanently, Docket TC-121328 (August 21, 2013).

⁴ See Attachment, General Order R-572, paragraph 35.

⁵ *Id.*, paragraph 64.

⁶ See, i.e., Attachment, Amended WAC 480-30-096, WAC 480-30-116, WAC 480-30-126, WAC 480-30-136.

⁷ See Attachment, Amended WAC 480-30-116.

⁸ See Attachment, New Section WAC 480-30-140.

⁹ See Attachment, Amended WAC 480-30-136.

provide the same service in the same territory, is providing the same service, and whether the service is to the satisfaction of the Commission.”¹⁰

6 Given the context of the 2013 rules and the streamlined process, the pending application in this docket is somewhat unusual in that, while the 2006 rules were in effect when SeaTac Direct filed its application, new rules will have taken effect by the time of the hearing on October 2, 2013, and when the record will be fully developed for the Commission to make a determination on the application. The Commission will have otherwise abandoned the process under the 2006 rules by the time of the hearing, but SeaTac Direct and other parties are set to go through the time and expense of a hearing on the application. Based on its review of existing certificates and published tariffs and time schedules, Staff believes it unlikely that under the amended 2013 rules either SeaTac Shuttle or Wickkiser would be found to have the “same service” as SeaTac Direct and therefore a valid “objection” that would require a brief adjudicative proceeding. This is because, while SeaTac Direct requests direct service between Bellingham and Sea-Tac Airport, SeaTac Shuttle does not hold a certificate for service between Bellingham and Sea-Tac Airport and Wickkiser holds and provides only multi-stop, but *not* direct, service between Bellingham and Sea-Tac Airport. At any rate, if an application like that of SeaTac Direct’s were filed, or withdrawn and re-filed, after the effective date of September 21, 2013, the application would be subject to the 2013 rules and process.

II. MOTION

7 Staff files this motion to seek clarification from the Commission as to whether the Commission and its presiding officer will apply the 2006 WAC 480-30 rules or the 2013 WAC 480-30 rules to the consideration of SeaTac Direct’s application.

¹⁰ See Attachment, General Order R-572, paragraph 29. See Amended WAC 480-30-116(3).

8

Generally, it is presumed that newly amended administrative regulations will be applied prospectively.¹¹ Prospective application is not absolute, however. The effective date of a regulation does not prohibit the regulation from applying retroactively where the purpose of the regulation is curative or remedial in nature.¹² A regulation or statute may be curative when adopted to clarify an internal inconsistency to help it conform to its original intent.¹³ It may be remedial in nature when it relates to practice, procedure, or remedies, and does not affect a substantive right; in which case it may be applied retroactively if such application would further its purpose.¹⁴ If it is the case that the 2013 rules should be applied prospectively, that means that a new auto transportation application filed on or after the effective date of September 21, 2013, will be considered under those 2013 rules, but may also require that, since SeaTac Direct's application was *filed before* that date, the 2006 rules should apply to the Commission's consideration of the matter in this docket.

9

Staff believes that, in fairness, all parties in this matter should have a common and clear understanding of which rules will apply to the Commission's consideration of SeaTac Direct's application in this docket. Clarification from the Commission in light of the new rules will serve to eliminate any confusion over this issue as the parties prepare for formal consideration of SeaTac Direct's application. Staff also supports efficient processing, administration and resolution of applications for auto transportation authority, and believes that it is important to the efficient judicial administration of this case that the Commission has sufficient record before it, consistent with the applicable statutes and

¹¹ See *Champagne v. Thurston County*, 163 Wash.2d 69, 79, 178 P.3d 936 (2008).

¹² See *State v. MacKenzie*, 114 Wash. App. 687, 699, 60 P.3d 607 (2002).

¹³ *Id.*

¹⁴ *Id.*

rules, with which to issue a decision on an application. Staff respectfully requests that the Commission provide clarification as requested in this motion.

DATED this 10th day of September 2013.

Respectfully submitted,

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