

[Service Date September 7, 2012]

September 7, 2012

**NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS
(By Monday, October 8, 2012)**

Re: Rulemaking to Consider Rate Setting Flexibility and Competition for Auto Transportation Companies in WAC 480-30, Docket TC-121328

TO ALL INTERESTED PERSONS:

On September 5, 2012, the Washington Utilities and Transportation Commission (Commission) filed with the Code Reviser a Preproposal Statement of Inquiry (CR-101) to consider rules to establish rate setting flexibility and competition for auto transportation companies in Washington Administrative Code (WAC) 480-30. The Commission filed the CR-101 under Docket TC-121328.

The CR-101, as filed with the Code Reviser, is available for inspection on the Commission's website at www.utc.wa.gov/121328. If you are unable to access the Commission's web page and would like a copy of the CR-101 mailed to you, please contact the Records Center at (360) 664-1234.

Background

Under RCW 81.68, the Commission regulates the fares, routes, services, safety and insurance of auto transportation companies. Auto transportation companies include privately-owned scheduled bus and airporter service.

RCW 81.68.040 allows the Commission to issue a certificate to an auto transportation company if it meets the public convenience and necessity standard. If there is an incumbent carrier, the Commission may issue a certificate to the applicant after a hearing only if:

- The incumbent company does not object; or
- The Commission determines that the incumbent will not provide service to the satisfaction of the Commission.

Under RCW 81.04.250, the Commission may use “any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing just and reasonable rates.”

Over the last several years, the Commission has held extensive discussions with stakeholders about regulation of the auto transportation industry and the appropriate methodology for setting rates. Given that competition among passenger transportation providers may exist in most, if not all, areas of the state, including private cars, taxis, limousines, and public transit, the Commission believes that the current method of strict economic regulation of rates and entry of auto transportation companies may no longer be effective or efficient. Further, the current rate methodology results in numerous tariff filings before the Commission, requiring companies and Commission staff to spend extensive time and resources, where a different, more flexible methodology may reduce the time and expense for both companies and the Commission. Thus, the Commission has determined that it should consider amending WAC 480-30 to promote rate flexibility as well as competition among carriers.

Outline of Concept for Rate Flexibility and Competition Rule

The Commission offers the following concept for comment. The Commission is open to comments regarding other methods for promoting rate flexibility and competition through amendments to WAC 480-30.

Rate flexibility, in this context, means authority granted by the Commission to a company to charge rates, at the company’s discretion, within a band published in the company’s tariff and approved by the Commission, without requiring the company to file tariff changes or the Commission to take any action.

The Commission suggests that a “rate flexibility” rule would include the following concepts:

1. A company seeking rate flexibility would file a petition for authority from the Commission to exercise the rate band option. The petition would include:
 - a. A statement that the company would not object under RCW 81.68.040 to the issuance of an auto transportation certificate to another company seeking to provide service within the incumbent’s territory.

- b. A request that the Commission add a condition to the company's operating authority, such as:

“This operating authority, as requested by the petitioner, does not allow the holder to object under RCW 81.68.040 to the issuance of an auto transportation certificate to another company seeking to provide service within the territory set forth herein.”

- c. A complete proposed tariff that publishes minimum, maximum and base rates to implement a 25 percent rate band. (The band concept is discussed below under Item 3).

Once approved, the rate band option and condition in the certificate could be changed only with the permission of the Commission. In the event the Commission changed the condition, the change would not affect the certificate of any other company, nor would it affect any pending application. A change in the rate band option would require the company to file a revised tariff to eliminate the “maximum” and “minimum” rate band.

2. The Commission would issue its decision through an order that would:
 - a. Grant the company's petition for rate flexibility.
 - b. Grant the company's petition to issue a new certificate that includes a condition that the company would not object under RCW 81.68.040 to an application by another company. The rate flexibility option and the condition not to object would apply to the entirety of the company's certificate.
 - c. Establish a rate band of 25 percent, which would set the Base rates at the company's permanent tariff rates in effect on the date that the company files its petition, with Minimum rates at 25 percent less than the Base rate (Base rate x .75), and Maximum rates at 25 percent greater than the Base rate (Base rate x 1.25).
 - d. Authorize the company to charge any rate within the band, including the Minimum rate and Maximum rate. Special or promotional fares (WAC 480-30-436) outside the band would need to be filed in compliance with

WAC 480-30-436 and all other filing requirements, including tariff publication rules and notice requirements.

3. The company would be required to post the Minimum, Base and Maximum rates on its own website (if it has one) and at its office. The company would be required to honor the rate for any tickets previously sold without imposing any additional charges.
4. Effective May 1, 2014, and each May 1 thereafter, a company's authorized "rate band" would automatically increase (Maximum rate) by a predetermined percentage point or by some predetermined index or method.

The company would implement the adjusted rate band by filing the appropriate tariff pages in compliance with tariff publication rules and notice requirements.

5. A company granted rate flexibility under this rule would use the band to address changes in fuel costs, tolls or ferry fares, or any other changes that might result in rate adjustments; the Commission expects companies to manage all costs and revenue within the rate band.
6. Companies applying for a new certificate would indicate on their application whether or not they are opting for rate flexibility. In the event a company applies to provide service along a route or in a territory served by an incumbent company that has opted for rate flexibility, the applicant company would be granted rate flexibility and a certificate including a condition that it would not object to applications within the territory under RCW 81.68.040. New companies would continue to submit a tariff with the application, for review, whether or not the company was seeking rate flexibility.
7. In the event that on the effective date of the rule two or more companies are authorized to provide service within the same territory, a company may apply for rate flexibility, but the certificate condition that the holder will not object to an application will apply to only the company seeking rate flexibility.
8. Except in the case of paragraph 7, a company that has not been granted rate flexibility may not seek new authority to provide service to pick up or drop off passengers within the territory of a company that has been granted rate flexibility.

WRITTEN COMMENTS

Written comments on the CR-101 to consider rules to establish rate flexibility and competition for auto transportation, as well as the concepts for such rules described above, must be filed with the Commission no later than **5:00 p.m., Monday, October 8, 2012**. The Commission requests that comments be provided in electronic format to enhance public access, for ease of providing comments, to reduce the need for paper copies, and to facilitate quotations from the comments. You may submit comments via the Commission's Web portal at www.utc.wa.gov/e-filing or by electronic mail to the Commission's Records Center at records@utc.wa.gov. Please include:

- The docket number of this proceeding (TC-121328).
- The commenting party's name.
- The title and date of the comment or comments.

An alternative method for submitting comments is by mailing or delivering an electronic copy to the Commission's Records Center on a 3 ½ inch, IBM-formatted, high-density disk, in .pdf Adobe Acrobat format or in Word 97 or later. Include all of the information requested above. The Commission will post on its web site all comments that are provided in electronic format. The web site is located at www.utc.wa.gov/121328.

If you are unable to file your comments electronically or to submit them on a disk, the Commission will accept a paper document. If you have questions regarding this rulemaking, you may contact staff lead, Ann Rendahl, Director, Policy and Legislation, at (360) 664-1144, or by email at arendahl@utc.wa.gov.

Stakeholders will have further opportunity for comment. Information about the schedule and other aspects of the rulemaking, including comments, will be posted on the Commission's website as it becomes available. If you wish to receive further information on this rulemaking you may:

- (1) Call the Commission's Records Center at (360) 664-1234
- (2) Email the Commission at records@utc.wa.gov
- (3) Mail written comments to the address below

When contacting the Commission, please refer to Docket TC-121328 to ensure that you are placed on the appropriate service list. The Commission's mailing address is:

Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

NOTICE

If you do not want to comment now, but do want to receive future information about this rulemaking, please notify the Executive Director and Secretary in one of the ways described above and ask to be included on the mailing list for Docket TC-121328. If you do not do this, you might not receive further information about this rulemaking.

Sincerely,

DAVID W. DANNER
Executive Director and Secretary