

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Seatac Shuttle, LLC C-1077 : Docket No. TC-121432
Petitioner : Petition for Declaratory Order
WAC 480-30-301; RCW 81.28.050; 34.05.240

PETITION

- 1 Seatac Shuttle petitions the Commission to issue a Declaratory Order resolving the definition of “NEW SERVICE” as used in both transportation rule and code.

APPLICABLE STATUTES

- 2 RCW 81.28.050; 34.05.240 WAC 480-07-390; 480-30-301

RCW 34.05.240 requires that:

- (1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:
- (a) That uncertainty necessitating resolution exists;
Circumstances: *Staff has determined a new and heretofore unused definition of New Service.*
 - (b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;
Circumstances: *Future filings and service to the public is dependent upon a clear definition of the term New Service.*
 - (c) That the uncertainty adversely affects the petitioner;
Circumstances: *The Petitioner cannot provide service to the public in the currently undefined or unresolved regulatory interpretation.*
 - (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and
Circumstances: *The public and the Petitioner are adversely affected by the lack of a clear definition. Service was suspended by the commission because of a lack of mutual interpretation of the term to the detriment of both the Petitioner and the public.*
 - (e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.
Circumstances: *Petitioner believes and asserts that the Petition is compliant.*

BACKGROUND

- 3 UTC staff has recently reversed its interpretation of the definition of the term New Service with particular respect to RCW 81.28.050 and WAC 480-30-301. Historically the commission has recognized that when one service is terminated and replaced by another, the replacing service is a New Service and subject to the notification requirements of WAC 480-30-301. Staff has reversed this interpretation and now considers the replacing service a Continuing Service. This reversal of interpretation, without precedent or written justification, has placed the Petitioner in an untenable position with respect to its authority, granted by the commission, and its right and obligation to serve the public.

STAFF POSITION

- 4 In Docket TC-121342, staff refused a filing of a notice of new service by the Petitioner, filed in accordance with WAC 480-30-301(3) stating that the filing represented a change to an existing service and therefore was subject to the filing requirements of WAC 480-30-311. This represented a change from a one day notice to a thirty day notice. This resulted in a stop service notice from the commission and interruption of service to the public. It is staff's position that "...it is more important to strictly follow a new and unprecedented interpretation of a rule than to provide service to the public....". Staff held that the only way to shorten the thirty day notice period was for the Petitioner to file an LSN with the Commission for consideration at a later date. Staff suggested that RCW 81.28.050 supported their position.

PETITIONER'S POSITION

- 5 Petitioner filed in accordance with staff's previous interpretation of the rule and in good faith. WAC 480-30-301 (3) states "(Tariff and time schedule filings whose only purpose is to add a **new service** option or a service level which has not been previously included in the company's tariff."

Further RCW 81.028.050 states:

RCW 81.28.050

Unless the commission otherwise orders, a change may not be made to any classification, rate, fare, charge, rule, or regulation filed and published by a common carrier subject to regulation by the commission as to rates and service, except after thirty days' notice to the commission and to the public. In the case of a solid waste collection company, a change may not be made except after forty-five days' notice to the commission and to the public. The notice must be

published as provided in RCW 81.28.040 and **must plainly state the changes proposed to be made in the schedule *then in force*** and the time when the changed rate, classification, fare, or charge will go into effect. All proposed changes must be shown by printing, filing, and publishing new schedules or must be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission, for good cause shown, may by order allow changes in rates without requiring the notice and the publication time periods specified in this section. When any change is made in any rate, fare, charge, classification, rule, or regulation, attention must be directed to the change by some character on the schedule. The character and its placement must be designated by the commission. The commission may, by order, for good cause shown, allow changes in any rate, fare, charge, classification, rule, or regulation without requiring any character to indicate each and every change to be made.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population.

6 The Petitioner’s position is that as no service was “in force” as of the effective date of the filing, the filing is not subject the requirements of RCW 81.28.050 as no service existed. Additionally, as no service existed as of the effective date it is, by definition, a New Service.

REQUEST FOR DECLARATORY ORDER

6 Petitioner seeks a Declaratory Order from the Commission resolving the definition of New Service. It will have no effect upon the docket that raised the question, but will establish the parameters of future filings and preclude future interruption of service to the public.

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Respectfully submitted this 13th day of September, 2012

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