

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition of

JAMES AND CLIFFORD COURTNEY

For a Declaratory Order on the Applicability
of Wash. Rev. Code § 81.84.010(1) and
Wash. Admin. Code § 480-51-025(2).

DOCKET TS-143612

COMMISSION STAFF'S
STATEMENT OF FACT AND LAW
IN RESPONSE TO PETITION FOR
DECLARATORY ORDER

I. INTRODUCTION

1 On October 2, 2014, James and Clifford Courtney jointly filed a petition for a
declaratory order with the Washington Utilities and Transportation Commission.

2 In a notice issued on October 3, 2014, the Commission requested that interested
persons respond to the petition by filing statements of fact and law in Docket TS-143612.

3 Commission Staff recommends that the Commission: (1) decline to enter a
declaratory order based on the petition's lack of specificity, and (2) allow the petitioners
to file an amended petition containing a more detailed statement of the operative facts.

II. STATEMENT OF FACT AND LAW

**A. Staff Recommends that the Commission Decline to Enter a Declaratory
Order Based on Lack of Specificity**

4 The petitioners request a declaratory order "declaring that a certificate of public
convenience and necessity is not required to provide boat transportation service on Lake
Chelan for customers or patrons of specific businesses or a group of businesses."¹ From
Staff's perspective, this request lacks sufficient detail.

¹ Petition for Declaratory Order at 19.

5 The Administrative Procedure Act (APA), chapter 34.05 RCW, provides that
“[a]ny 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.”² The petition here lacks the requisite specificity.

6 The APA also provides that declaratory order petitions must “set forth facts and
reasons on which the petitioner relies to show: (a) That *uncertainty* necessitating
resolution exists”³ The petition here fails for the additional reason that it lacks
sufficient detail to establish “uncertainty.”

7 Under the APA, the Commission may “decline to enter a declaratory order,
stating the reasons for its action.”⁴ Staff recommends that the Commission decline to
enter a declaratory order here based on the petition’s general lack of specificity and,
additionally, based on its lack of detail establishing “uncertainty.”

8 Under state law, the petitioners must obtain a Commission-issued certificate of
convenience and necessity before operating a vessel “for the public use for hire between
fixed termini or over a regular route upon the waters of this state”⁵ The operation
proposed by the petitioners may or may not require such a certificate—it is difficult to
predict without assuming facts not supplied by the petitioners.

9 The petition refers to a hypothetical “boat transportation service,” to be
established by an unnamed party, on an unidentified vessel, for the benefit of unidentified
“customers or patrons” of unidentified “businesses” or a “group of businesses.” No route

² RCW 34.05.240(1) (emphasis added); see WAC 480-07-930(1).

³ RCW 34.05.240(1) (emphasis added); see *Wash. Refuse and Recycling Ass’n*, UTC No. TG-971676 (Dec. 23, 1997) (declining to issue a declaratory order where, among other considerations, the underlying petition failed to set forth facts and reasons demonstrating existence of “uncertainty”).

⁴ RCW 34.05.240(5)(d); see WAC 480-07-930(5)(b).

⁵ RCW 81.84.010(1); see also WAC 480-51-020(7) (“‘for hire’ means transportation offered to the general public for compensation”).

is specified. Distances and points served are not identified. No rates or timetables are proposed. Terms of service are left undefined.

10 In short, more information is needed.

11 To aid the Commission's understanding, the petitioners could file a revised petition identifying and describing with as much detail as possible:

- The ownership of the proposed "boat transportation service"
- The particular "business" or "group of businesses" served by, or otherwise connected to, the proposed operation
- Whether the identified "business," or any business within an identified "group of businesses," will own any portion of the proposed "boat transportation service," and, if so, what percentage each identified business will own
- The "customers" or "patrons" that will utilize the "business" or "group of businesses," and the distinction, if any, between "customers" and "patrons"
- The proposed reservation and booking system
- The proposed method for determining ridership for a particular trip—i.e., how the proposed "boat transportation service" will know whether a person is a "customer" or "patron" of the particular "business" or "group of businesses" and, therefore, eligible for transportation
- Any other information about the proposed operation, including but not limited to route, rates, schedules, terms of service, and customer policies, that will help the Commission determine whether the operation is "for the public use for hire between fixed termini or over a regular route upon the waters of this state"⁶

Staff reserves its right to respond to any amended petition filed by the petitioners.

12 The present petition is deficient both in its failure to specify the "circumstances"⁷ on which the requested order will be based and in its failure to establish "uncertainty."⁸

Therefore, the Commission should decline to enter a declaratory order.

⁶ RCW 81.84.010(1); *see* WAC 480-51-020(7).

⁷ RCW 34.05.240(1); WAC 480-07-930(1).

⁸ RCW 34.05.240(1)(a).

B. If the Commission Issues a Declaratory Order, the Order Should Declare that the Proposed Operation Requires a Certificate

13 In the event the Commission reaches the merits, Staff recommends it declare that the proposed operation—“boat transportation service on Lake Chelan for customers or patrons of specific businesses or a group of businesses”⁹—requires a Commission-issued certificate of convenience and necessity pursuant to RCW 81.84.010.

14 Absent clarification, the Commission must assume that the proposed operation will serve any member of the public who desires to visit any one or more of Stehekin’s businesses, on any given day, for any length of time, and for any reason. Unquestionably, an operation of this scope would be “for the public use for hire.”¹⁰


III. CONCLUSION

15 Staff recommends that the Commission decline to issue a declaratory order but allow the petitioners to file an amended petition containing sufficient detail to permit a decision on the merits. If the Commission deems the current petition sufficient, Staff recommends it declare the proposed operation subject to the certificate requirement.

Dated this 7 day of November, 2014.

Respectfully submitted,

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⁹ Petition for Declaratory Order at 19.

¹⁰ RCW 81.84.010(1); see WAC 480-51-020(7).