

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of	DOCKET TC-230063
ROCKET TRANSPORTATION LLC	ORDER 01
For Extension of Certificate C-062991 of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company	INITIAL ORDER OVERRULING OBJECTION AND APPROVING APPLICATION SUBJECT TO CONDITION

BACKGROUND

- 1 On February 2, 2023, Rocket Transportation LLC (Rocket or Company) filed with the Washington Utilities and Transportation Commission (Commission) an application to extend its existing auto transportation authority (Application).¹ Rocket proposes to provide what it describes as “door-to-door passenger service” between East Jefferson County, Clallam County, or Poulsbo and Kitsap County and Seattle and Tacoma Amtrak stations, Seattle and Tacoma Greyhound bus terminals, Seattle and Tacoma Hospitals, Seattle waterfront Cruise Ship Piers, SeaTac Airport, and hotels along the route.
- 2 On February 14, 2023, the Commission served a Notice of the Application on its list of persons requesting such notification.
- 3 On March 16, 2023, Bremerton-Kitsap Airporter, Inc., (BKA) filed a protest to the Application.
- 4 Pursuant to Washington Administrative Code (WAC) 480-30-116, the Commission scheduled a hearing on the Application for May 17, 2023.
- 5 On May 17, 2023, the Commission conducted a virtual brief adjudicative proceeding before Administrative Law Judge Rayne Pearson.

¹ An auto transportation certificate is formally referred to in RCW 81.68 as a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company.

6 Kathy Roman, owner and CEO, Sequim, Washington, represents Rocket. Blair Fassburg, Williams, Kastner & Gibbs PLLC, Seattle, Washington, represents BKA.

7 At hearing, Kathy Roman testified that Rocket seeks to add two scheduled stops to its route that runs through BKA's service territory. According to Roman, the northern end of Kitsap County between Poulsbo and Hansville is entirely unserved by any certificated auto transportation company. Rocket requests that BKA add two stops to serve this area. If BKA declines to add these stops, Rocket proposes to add two stops to serve the north Kitsap County area. Roman explained that Rocket receives calls on a regular basis from residents of north Kitsap County requesting service. Roman testified that she does not have strong feelings about which company provides the service, but she believes the area should be served.

8 On cross-examination, Roman explained that Rocket serves Jefferson and Clallam counties, but the two proposed stops in north Kitsap County are on the route the Company currently travels. Roman also clarified that Rocket receives an average of six calls per month from people requesting auto transportation service in the north Kitsap County area.

9 Richard Asche, company owner, testified that BKA's northernmost stop in Kitsap County is at Keyport Junction (Viking Way) in Poulsbo. Asche explained that approximately 10 percent of its customers are picked up or dropped off at that location each day. According to Asche, only one passenger has requested to be picked up north of the Viking Way stop in the past two to three months. Asche concludes from this low number that "there's no need to extend our route any further than what we're doing right now."² Asche also argues that expanding BKA's route further would increase travel time for its passengers to get to the airport. Asche contends that BKA's pickup locations are centrally located, and all its passengers must travel some distance to get to those locations.

10 In BKA's closing statement, the company argued that Rocket proposes to add two scheduled stops to its door-to-door shared ride route, and that combining scheduled and door-to-door service is not permitted by Commission rules. BKA further argued that Rocket has not demonstrated that it is financially fit to provide the proposed service. Finally, BKA argued that because northern Kitsap County is sparsely populated, the nature of the service that Rocket proposes to provide is not justified, and that BKA provides service that reasonably serves the market.

² Asche, TR 33:8-13.

DISCUSSION AND DECISION

- 11 Existing passenger companies may file objections to applications for authority to operate a passenger transportation company in Washington on limited grounds that, if sustained, will result in denial of the application.
- 12 WAC 480-30-116(3) provides that adjudications of auto transportation applications are “limited to the question of whether the objecting company holds a certificate to provide the same service in the same territory, whether the objecting company provides the same service, and whether an objecting company will provide the same service to the satisfaction of the Commission.” All three elements must be present for the Commission to deny an application to serve a given route.
- 13 Under WAC 480-30-140(2) the Commission may consider several factors to determine whether service applied for is the same as existing service. Those factors include but are not limited to whether existing companies are providing service to the full extent of their authority; the type, means, and methods of service provided; whether the type of service provided reasonably serves the market; and, for scheduled service, the proposed route’s relation to the nearest route served by an existing certificate holder.

Application

- 14 In its Application, Rocket proposes to provide “door-to-door service” from “a stop in Poulsbo (Kitsap County) at S. Bridge Way or Olhava Way for travelers who wish to pay our BASE zone fare for travel to/from our normal points in Tacoma, SeaTac, and Seattle.”³
- 15 As a threshold matter, we agree with BKA that the service described in the Application is not “door-to-door service,” which is defined as “an auto transportation company service provided between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule.”⁴ Rather, the Application describes scheduled service, which is defined as “an auto transportation company providing service at specified arrival and/or departure times at points on a route.”⁵
- 16 Whether Rocket provides door-to-door service, scheduled service, or both, we conclude based on our findings below that Rocket does not propose to offer the same service that

³ Application, p. 3.

⁴ WAC 480-30-036(2).

⁵ *Id.*

DKA currently provides. Accordingly, we approve Rocket’s Application subject to the condition that the Company must file within 10 days a corrected application that either designates and describes “door-to-door” service and/or designates and describes “scheduled service” consistent with the direction provided in this Order.

17 Because we determine that Rocket proposes to offer a different service than BKA provides, we need not and do not reach the question of whether BKA provides service to the Commission’s satisfaction. We address the relevant factors set out in WAC 480-30-140 below.

BKA’s Service and Authority

18 Rocket contends, and BKA does not dispute, that BKA does not currently provide service to the full extent of its authority. We agree. As relevant here, BKA’s certificate authorizes the company to provide passenger and express service “between Poulsbo and Seattle-Tacoma International Airport” via various routes. BKA’s service territory includes the area in Kitsap County north of Poulsbo that Rocket proposes to serve.⁶ Viking Way at Keyport Junction is BKA’s northernmost stop in Kitsap County, and no other auto transportation company provides service in Kitsap County north of Poulsbo.

19 In its protest, BKA submits that Rocket’s proposed stops in Kitsap County are “within our approved service area location.”⁷ Asche argued at hearing, however, that “there’s no need to extend our route any further than what we’re doing right now” because there’s “no demand” for additional stops.⁸ Accordingly, we find that BKA is not providing service to the full extent of its authority. We address BKA’s arguments related to demand for additional service in the following section.

Type, Means, and Methods of Service Provided; Proposed Route’s Proximity to Existing Route; Whether the Market is Reasonably Served

20 Rocket’s proposed scheduled service route includes two stops in north Kitsap County, neither of which overlap with BKA’s Viking Way stop. Rocket’s proposed stops are four and twelve miles north of the Viking Way stop, respectively.⁹ At hearing, Asche argued that all Kitsap County residents must travel some distance to the Viking Way stop, and

⁶ BKA Protest (March 1, 2023).

⁷ *Id.*

⁸ Asche, TR 33:10-13.

⁹ BKA Protest.

that no one has complained that the company does not stop at other locations.¹⁰ Asche acknowledged, however, that BKA has received one inquiry about service in north Kitsap County in the past two to three months.¹¹ We observe that BKA, whose vehicles do not travel through north Kitsap County, may be less likely to receive inquiries about service north of Poulsbo than Rocket, whose vehicles traverse that area daily.

21 Asche further testified that BKA is primarily concerned with serving military personnel near the Bangor Naval Base in Kitsap County, and that the Company chose the Viking Way stop because of its proximity to Bangor.¹² Asche opined that, “As long as we keep that pickup location at Keyport Junction, we’re good to go for all the Bangor people. There’s no need for anybody ... from Bangor to go to these other two proposed stops.”¹³

22 While nothing prohibits BKA from prioritizing service for its Naval Base customers, the company’s decision to operate in this manner is not without consequence for residents of Kitsap County who live north of Poulsbo. Two additional factors also create service limitations for north Kitsap County passengers: (1) BKA does not offer door-to-door service, which means BKA’s scheduled service is the only type and means of auto transportation service available for residents in north Kitsap County, and (2) BKA does not offer transportation from Kitsap County to locations other than SeaTac. In addition to the airport, Rocket proposes to transport passengers to the Seattle and Tacoma Amtrak stations, Seattle and Tacoma Greyhound bus terminals, and Seattle waterfront Cruise Ship Piers.

23 WAC 480-30-140(2)(f) provides that the Commission views routes narrowly for the purpose of determining whether service is the same. Alternative routes that may run parallel to an objecting company’s route, but which have a convenience benefit to customers, may be considered a separate and different service. Applying this standard, we find that adding stops further north in Kitsap County will provide a convenience benefit to customers separate and distinct from BKA’s current scheduled service because the proposed stops are closer to those customers’ homes, and because Rocket proposes to provide service to multiple destinations in addition to SeaTac Airport.

24 We also find that BKA’s current service does not reasonably serve customers in north Kitsap County, and that the traveling public will benefit from auto transportation service

¹⁰ Asche, TR 35:7-36:11.

¹¹ *Id.* at 33:8-13.

¹² *Id.* at 29:21-30:22.

¹³ *Id.* at 34:22-25.

in that area. Roman's testimony that Rocket receives an average of six inquiries per month requesting service north of Poulsbo is also persuasive on these points.¹⁴

25 Based on the totality of these factors, we conclude that Rocket's proposed scheduled service is different than the service that BKA currently provides.

26 We also find that any impact on BKA's existing service will be minimal, and that Rocket's proposed service will not degrade BKA's ability to sustain service between its Viking Way stop and SeaTac Airport. Asche testified that customers traveling from the Viking Way stop comprise approximately 10 percent of BKA's total passenger count, and that most of those customers live on or near the Bangor Naval Base, approximately one mile from the Viking Way stop.¹⁵ Given these facts, any decrease to BKA's passenger count at Viking Way is likely to be small in proportion to its overall passenger count and thus will have a negligible impact on its revenues.

27 Finally, we observe that BKA provides hourly scheduled service to SeaTac Airport and does not offer door-to-door service. Under WAC 480-30-140(2)(g), door-to-door service and scheduled service in the same territory are not considered the same service. Accordingly, Rocket may amend its Application to offer door-to-door service in Kitsap County north of Poulsbo. An amended application should clearly describe door-to-door service as service between a location identified by the passenger and a point specifically named by Rocket in its filed tariff and time schedule. If Rocket amends its Application to offer scheduled service from different points than Viking Way in Poulsbo, it must describe that service as scheduled service.

28 By way of guidance, Rocket may not combine scheduled and door-to-door service. WAC 480-30-346 requires an auto transportation carrier to include in its time schedules for scheduled service a list of each flag stop along a given route. While carriers are not required to stop at every flag stop each time the route is traveled, they are prohibited from stopping at any location that is not listed as a flag stop. Accordingly, picking up door-to-door passengers on a scheduled route at locations not listed as flag stops would violate this rule.

¹⁴ Roman, TR 23:21-24.

¹⁵ Asche, TR 30:22-25.

Fitness

29 At hearing, BKA raised issues related to Rocket's financial fitness to provide the proposed service. WAC 480-30-116(3) provides that:

The adjudication of applications subject to an objection filed under RCW 81.68.040 will be accomplished in the simplest and most expeditious manner consistent with state law. The adjudication will be limited to the question of whether the objecting company holds a certificate to provide the same service in the same territory, whether the objecting company provides the same service, and whether an objecting company will provide the same service to the satisfaction of the commission.

If the objections are overruled, the application proceeds through a Commission staff review of fitness and compliance with the other prerequisites for obtaining a certificate of convenience and public necessity. Given the rule's express limitation, questions of fitness are not properly before the Commission at this juncture. Commission staff will evaluate Rocket's fitness to propose service and may request any additional financial information from the Company necessary to complete its review.

FINDINGS AND CONCLUSIONS

- 30 (1) The Commission is an agency of the state of Washington vested by statute with the authority to regulate the rates, rules, regulations, and practices of auto transportation companies.
- 31 (2) On February 2, 2023, Rocket filed an Application with the Commission to expand its authority to provide auto transportation service subject to the Commission's jurisdiction.
- 32 (3) On March 16, 2023, BKA filed an objection to Rocket's Application on the grounds that it provides the same service the applicant proposes to provide between Poulsbo and SeaTac Airport.
- 33 (4) BKA offers scheduled service between Viking Way in Poulsbo and SeaTac Airport. Rocket proposes to offer scheduled service between two points in Kitsap County and SeaTac Airport, Amtrak Stations, and Seattle Ports, among other locations. Rocket's proposed stops are four and twelve miles north of Viking Way, respectively.

- 34 (5) BKA does not provide the same service that Rocket proposes to provide between points in north Kitsap County and SeaTac Airport.
- 35 (6) Rocket's Application indicates that the Company proposes to provide door-to-door service but describes scheduled service from two points in north Kitsap County.
- 36 (7) Rocket should be required to submit an amended application that accurately describes the service(s) it will offer.
- 37 (8) The Commission should overrule BKA's objection and approve Rocket's Application subject to the condition that Rocket amend its application as described in this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 38 (1) The objection to Rocket Transportation LLC's Application to expand its service is overruled.
- 39 (2) Rocket Transportation LLC must amend its Application as described in this Order within 10 days.
- 40 (3) Once amended, Rocket Transportation LLC's Application is referred to Commission Staff for evaluation of whether Rocket Transportation LLC will provide service in accordance with the Commission's auto transportation rules.

Dated at Lacey, Washington, and effective July 13, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).