

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application of	I	DOCKET TC-130708
	I	
NORTHWEST SMOKING & CURING, INC. d/b/a SEATAC DIRECT	I	ANSWER OF WICKKISER INTERNATIONL TO STAFF
	I	
MOTION CLARIFICATION		FOR
For Permanent Auto Transportation Authority	I	
	I	

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Wickkiser submits this answer in response to the motion by staff for clarification with regard to the application of rules for TC-130708.

Auto Transportation providers are obliged to follow the operating rules that are described in WAC 480-30. WUTC staff and the existing Airporter providers worked for 2 years to update these rules. Staff then suggested amendments to these rules. These were approved by the commission on August 21, 2013. Upon signature the rules were forwarded to the Code Revisor's office. This forwarding meant that the amendments would become effective on September 21, 2013 and then be implemented by the Auto Transportation providers on October 24, 2013.

On May 7, 2013 Northwest Smoking and Curing, Inc. (NW Smoking) filed an incomplete application to provide scheduled Airporter Service. Subsequently, NWSmoking submitted substitute or additional pages to the commission so that the application could be closer to being completed. At the prehearing conference both ourselves and Seatac Shuttle, LLC., requested a hearing date in November of 2013 because between running our companies during the busiest time of year, and already planned business and personal trips, we would not have time to fully prepare. Assistant Attorney General Mr. Fassio, on behalf of the commission staff, argued that the applicant should be granted an earlier date. The hearing was

subsequently set for October 2, 2013. This hearing has now been postponed because of this late motion.

## **DISCUSSION**

1. The rules of RCW 480-30 that were in effect as of the date of the application are the rules that the application must be adjudicated under. The amended rules were not in effect as of the date of the application filing, they were not in effect as of the pre-hearing conference, and could not have been taken into account by any party to the docket at any point during the process. No question of clarity was raised by any party at the prehearing conference despite its impending effective date.

Additionally at the time of the application and at the time of the pre-hearing there could be no expectation by Wickkiser, Seatac Shuttle or NW Smoking that any rules would be revised by the Commission. Further discussion of what the intent of the not yet implemented rules are, can have no place in the matter of TC -130708.

2. The motion also attempts to define new service or same service without the benefits of a hearing. Mr. Fassio states that based on his “review of the existing certificates and published tariffs and time schedules, he and staff believes it is unlikely that under the amended 2013 rule either Wickkiser or Seatac Shuttle would be found to have the same service as SeaTac direct and therefore a valid objection that would require only a brief adjudicative process.”

We are certain that the position put forward by staff during the 2 years of rule process did not include them (staff) making decisions on new service or same service in a vacuum and without the benefit of a hearing.

Wickkiser has provided service to the satisfaction of the commission for more than 27 years. Mr. Fassio is attempting to both question and answer about “the satisfaction of the commission” in this motion and force a brief adjudicative process in place of the required process. Through this motion the Assistant AG Fassio and staff are attempting to remove Airporter operator’s rights under current and valid WAC. Satisfaction must be determined in a hearing not in this motion. Clarification

on which set of RCW 480-30 rules to use , should be the only question addressed in this motion.

3. Airporter and Seatac both argued that an early October date would place an unfair burden on them, in that the preparation for that matter would have to take place during the busiest portion of their business season. Now comes this late motion. We wonder why Mr. Fassio and staff has engaged in this timing to place yet a further burden to our company and to Seatac Shuttle. I approached our transportation attorney to research some of the cases that were cited and without an extraordinary fee he declined, due to lack of time. Eventually I was able to read Mr. Fassio's reference to the Mackenzie case. His citation is misplaced. Mackenzie spoke to "a valid emergency" (involving public safety about drunk drivers) as the reason to apply rules retroactively. We are not considering an emergency. Mr. Fassio's use of this case is trickery and has no merit.

**Concluding Request:**

On May 7, 2013 NW Smoking made application to provide Airporter service. It made application understanding that the existing rules of RCW 480-30 would apply to its application. On August 21, 2013, the Commission issued Order R-572 (updating the rules of RCW 480-30) after more than two years of work, preparation and participation by the existing Airporter providers. NW smoking was not aware of any of the amendments that staff made to RCW 480-30. NW Smoking did not participate in, nor were they aware of the process. The issuance of order R-572 was one hundred and four (104) days after the filing of NW Smoking's application and its effective date is one hundred thirty-five days (135) after their filing.

Wickkiser requests that the Commission find that both precedent and rule support that the adjudication of Docket # TC-130708 be under the RCW 480-30 that was in effect as of the filing of the application.

Submitted: September 19, 2013

Richard Johnson – President

Wickkiser International Companies, Inc