

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application of	)	DOCKET TC-130708
	)	
NORTHWEST SMOKING & CURING, INC. d/b/a SEATAC DIRECT	)	Wickkiser International
	)	
PETITION FOR ADMINISTRATIVE REVIEW OF ORDER NO. 2 DISMISSING ADJUDICATION For Permanent Auto Transportation Authority	) ) ) ) )	

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**SUMMARY OF PETITION**

Wickkiser International (*WIC*) submits this petition for administrative review of Order No. 2 of TC-130708 initial order dismissing adjudication and referring application to commission staff.

We believe that this order is in error. The motion for clarification was unilaterally converted to a decision without notice and a hearing

Order No. 2 was issued in response to a motion for clarification that was submitted by UTC staff AAG Michael A. Fassio (AAG) on September 10, 2013. This motion sought clarification of whether the Commission would apply the rules in WAC 480-30 as they existed when SeaTac Direct (SeaTac) filed its application, or if the rules that became effective on September 21st would be used to adjudicate SeaTac's application.

The question of the motion was to clarify which set of WAC 480-30 would be used to adjudicate SeaTac's application. The motion did not request that a decision be made on SeaTac's application.

WIC holds a certificate of convenience and necessity to provide service with the Territory that SeaTac is proposing to also serve. SeaTac has not shown that it is providing different or better customer service to this Territory.

Furthermore RCW 81.68.040 does provide for the existing carrier in the territory to have a hearing in which they can address the new applicant's request. We are the existing carrier that has served this territory very well over the past three decades and are requesting a hearing.

## **INTRODUCTION**

On May 7, 2013 Northwest Smoking and Curing, Inc. (SeaTac) filed an application under docket TC-130708. Wickkiser International Companies, Inc. (WIC) has been operating Airporter Shuttle in the territory that SeaTac is requesting to operate in for 27 years. Seatac Shuttle is also an Airporter business that serves Whidbey Island. Ourselves and Seatac Shuttle (SSH) filed protests to this application. All parties attended a pre-hearing conference on August 5, 2013. At that conference WIC and SSH requested a hearing date in November of 2013 due to business scheduling concerns. The AAG, on behalf of the commission staff, argued that the applicant should be granted an earlier hearing date. Hearing was subsequently set for October 2, 2013.

On September 10, 2013, the AAG submitted a Motion for Clarification. This motion looked for clarification on which set of RCW 480-30 rules to use in adjudicating Smoking's application. This request was made because RCW 480-30 had been re-written. The Commission had issued an effective date of October 23, 2013 for the new rules. Until such date the effective rules in WAC 480-30 were those described in Order R-533, TC-020497.

Timeline:

May 7, 2013 Smoking Application filed TC -130708

August 5, 2013 Prehearing conference

September 10, 2013 AAG submits motion for clarification

September 12, 2013 ALJ suspends October 2<sup>nd</sup> hearing date (originally scheduled in August 5<sup>th</sup> prehearing conference)

September 21, 2013 Commission sends new rules to codifier

November 8, 2013 ALJ issues order 2 that we are disputing in this document.

## **DISCUSSION**

A Motion for Clarification was filed by the AAG on September 10, 2013. In his motion the AAG presents two scenarios. One is to apply the rules in WAC 480-30 (those described in Order R-533) that were in effect at the time of SeaTac's application. The other is to look forward and apply the rules that come into effect on September 21, 2013. The motion asked for a decision on these two options. It did not ask the ALJ to rule nor did it ask the ALJ to make a decision that effectively prevents our company from presenting its opinion (at a hearing in front of the commission) on how our customers will be damaged,.

WIC has provided service in the same territory that SeaTac is requesting to operate in for almost thirty years. It has provided this service to the satisfaction of the Commission and has improved from a single van operating a daily round trip along the I-5 corridor, to now providing 12 daily round trips along I-5 and highway 20. We run our equipment 24 hours, have agents available that our customers can talk to for 24 hours each day and have a website that also provides 24 hour information and booking capabilities. These services are available to customers throughout our entire territory. This large population will be damaged if SeaTac's application is allowed, as any reduction in Bellingham customers will cause a loss in the revenue that is needed to cover the costs we have in our territory.

A decision on the public good must be based on the good that is afforded to the entire territory in which we operate. Our ticket prices are the lowest per mile of all Airporter Operators and our customer service and schedule is clearly amongst the highest of our piers. We strongly disagree with the notion that additional service to one segment should be allowed when it is known that this new service will disrupt or cancel the service to another less populous segment of the territory.

The definition of "same service" should be supported by rule or definition with the WAC and not within this order. In fact this "same service" issue was the point of many discussions between staff and the operators during rule making, as we identified that the lack of clarity would be a

contentious point in the new rules. Same service must be discussed in hearing and not arbitrarily designed by the ALJ.

The ALJ discusses her interpretation of direct services in her ruling. Direct and Express service however, both have definitions within WAC 480-30 that our Airporter services meet. Using these definitions one clearly would conclude that SeaTac is requesting to provide service that we already are providing. SeaTac is offering nothing new.

Furthermore the ALJ's interpretation (within this order) that SeaTac is providing a new / improved service, falls flat when

1. their pickup location is scarcely one mile from one of our TWO Bellingham locations
2. WIC has more trips and only half of SeaTac's times can be considered different the WIC. WIC has 12 daily departures south and 12 daily departures north. SeaTac has 8 trips north and south, and 4 of their trips are within 30 minutes of WIC's departures and the other 4 are within 1 hour.
3. SeaTac is not improving customer service to Bellingham residents. WIC's service is mostly provided in motorcoaches that are comfortable and built for long distance travel with upholstered reclining seats, climate controls and rest rooms. SeaTac is proposing to use 15 year old Ford Cutaway 15 passenger vehicles that are appointed for local travel.

## **CONCLUSION**

WAC 480-30 (those described in Order R-533) were the rules that existed at the time of SeaTac's application. These should be the rules that SeaTac's applications is adjudicated under.

1. AAG submitted a motion for clarification. Instead a declatory order was issued that in several areas of law has faults
2. WIC has provided service to Commission's satisfaction for almost 30 years in a territory that runs along I-5 and highway 20. Service to all customers throughout this territory will be damaged if Bellingham customers are shared with SeaTac.

3. WAC 480-30 (those described in Order R-533) were the rules that existed at the time of SeaTac's application. Under those rules it is SeaTac's burden to provide evidence at hearing that it is providing a new service to ours. SeaTac can not demonstrate that its service is an improvement over WIC's 12 daily round trips, over-the-road motorcoaches and 24 hour customer service.

4. WIC holds a valid Certificate of Public Convenience and Necessity for the territory in which SeaTac has made an application to provide service. When an application is made to provide service within our territory we have a right to a hearing. This opportunity for hearing has been denied thus abrogating the rights of both WIC and SSH.

**RELIEF SOUGHT**

We call upon the Commission for the above causes to rescind Order No. 2, TC-130708 and allow WIC a hearing.

Submitted December 2, 2013

Richard Johnson – President

Wickkiser International Companies, Inc