

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of)	DOCKET TC-130708
)	
NORTHWEST SMOKING & CURING, INC. d/b/a SEATAC DIRECT)	ORDER 03
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)	
For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company)	FINAL ORDER DISMISSING ADJUDICATION
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.....)	

BACKGROUND

- 1 On May 7, 2013, Northwest Smoking & Curing, Inc. d/b/a SeaTac Direct (SeaTac Direct or Company) filed an application with the Washington Utilities and Transportation Commission (Commission) for a certificate of public convenience and necessity to operate as an auto transportation company. The Company proposes to provide nonstop scheduled passenger service between the Best Western Lakeway hotel in Bellingham and Seattle-Tacoma International Airport (SeaTac Airport).
- 2 On June 4, 2013, Wickkiser International Companies, Inc. (Wickkiser) filed a letter with the Commission protesting SeaTac Direct’s application. On June 6, 2013, Seatac Shuttle, LLC d/b/a Whidbey-Seatac Shuttle (Seatac Shuttle) also filed a letter with the Commission protesting SeaTac Direct’s application. The Commission permitted Wickkiser to participate as a protestant and allowed Seatac Shuttle to intervene. The Commission scheduled an evidentiary hearing on SeaTac Direct’s application for October 2, 2013.
- 3 On September 10, 2013, Commission Staff (Staff)¹ filed a motion requesting that the Commission state which version of the Commission’s auto transportation rules would

¹ In a formal proceeding, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors

apply in this docket because amended auto transportation rules would take effect on September 21, 2013.² On September 12, 2013, the Commission suspended the procedural schedule and issued a notice giving the parties the opportunity to respond to Staff's motion (Notice). Seatac Direct filed a response on September 18, 2013, and Seatac Shuttle and Wickkiser each filed responses on September 19, 2013.

- 4 On November 8, 2013, the Commission entered Order 02, Initial Order Dismissing Adjudication and Referring Application to Commission Staff (Order 02 or Initial Order). The Initial Order dismissed the adjudication, finding that SeaTac Direct's application was governed by the current Commission rules when they became effective, and pursuant to WAC 480-30-116, neither Wickkiser nor Seatac Shuttle may object to that application because neither provided the same service that SeaTac Direct has applied for authority to provide.
- 5 On December 2, 2013, Wickkiser and Seatac Shuttle each filed a petition for administrative review of Order 02. These parties assert that the Initial Order erred by (1) deciding that the current rules apply to SeaTac Direct's application; (2) exceeding the scope of Staff's motion and entering a dispositive decision; (3) denying Wickkiser the opportunity for a hearing to present evidence on Wickkiser, its services, and the impact of the application on the public interest; and (4) concluding without an evidentiary hearing that SeaTac Direct does not propose to offer the same service that Wickkiser is providing to the satisfaction of the Commission.³
- 6 On December 12, Staff filed an answer to both petitions for administrative review. Staff contends that Order 02 correctly construed Staff's motion and concluded that the currently effective rules should apply to SeaTac Direct's application. Staff also maintains that the Initial Order properly found that SeaTac Direct does not propose the same service Wickkiser is providing, consistent with past Commission determinations that nonstop service is different from multiple-stop service and with

do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² *In re Amending and Adopting Rules in WAC 480-30 Relating to Passenger Transportation Companies*, Docket TC-121328, General Order R-572, Order Amending and Adopting Rules Permanently (2013), *codified at* WAC 480-30 (General Order R-572).

³ Seatac Shuttle also states that it should have been permitted to participate in this proceeding as a protestant, rather than as an intervenor, but Seatac Shuttle fails to identify how participating as an intervenor deprived it of any opportunity to participate fully in these proceedings. To the extent that Seatac Shuttle claims this prior decision was erroneous, therefore, we deny that claim.

Wickkiser's September 2013 tariff filing to provide the service SeaTac Direct proposes.

DISCUSSION

- 7 We uphold the determinations in the Initial Order. Procedurally, the Administrative Law Judge (ALJ) properly construed Staff's motion as a motion for summary adjudication of the legal issue of whether and how the newly revised Commission rules governing auto transportation service apply to SeaTac Direct's application.⁴ The Commission notified the parties of this construction in the Notice and required each party to "state its position on whether the Commission can and should apply the most current rules in WAC 480-30 when considering the Application, and if so, whether any disputed issues of material fact exist that would require the Commission to conduct an evidentiary hearing." The Notice further provided that "[r]esolution of the Motion may affect which parties may continue to participate in this proceeding, whether an evidentiary hearing is necessary, and what issues the Commission must address in any hearing." Wickkiser and Seatac Shuttle have no basis for their claims that Order 02 expanded Staff's motion and denied them proper notice or due process.
- 8 Wickkiser and Seatac Shuttle also fail to support their substantive allegations. The Initial Order correctly determined that the current Commission rules, particularly revised WAC 480-30-116, govern SeaTac Direct's application, and we adopt the provisions of that order setting forth that determination.⁵
- 9 Seatac Shuttle and Wickkiser appear to argue that they are being denied a "right" to address the issues they identified in the protests they filed pursuant to former WAC 480-30-116. That rule, however, merely specified the contents of a protest to an application for authority and did not grant any entity the right to a hearing on any specific issues. The statute requires only a notice and opportunity for hearing on whether the existing certificate holder is satisfactorily providing the same service the applicant seeks to provide.⁶ The current WAC 480-30-116 incorporates that requirement and limits incumbent providers' objections to that issue. The Initial Order thus prospectively and correctly applied both the statute and the rule to limit the scope of this proceeding accordingly. Seatac Shuttle's and Wickkiser's retroactivity arguments are inapplicable.

⁴ See WAC 480-07-395(4).

⁵ Order 02 ¶¶ 9-12.

⁶ See General Order R-572 ¶¶ 32-35 (quoting and explaining RCW 81.68.040).

- 10 Seatac Shuttle and Wickkiser also ignore the intent of the Commission’s revisions to the rules governing auto transportation companies, including WAC 480-30-116.⁷ Unlike customers of most of the industries the Commission regulates, consumers have a variety of alternatives to using an auto transportation company to travel to and from the airport, such as taxis, limousine services, public transportation, getting a ride from friends or family, or driving their own vehicle.⁸ The Commission’s rules now better reflect this competitive environment, providing companies with pricing flexibility in the fares they charge,⁹ minimizing reporting, tariff, and time schedule requirements,¹⁰ and clarifying and streamlining the process for both new entrants and existing companies to apply for authority to serve new routes.¹¹ Seatac Shuttle and Wickkiser have already benefited from these reduced regulations,¹² and these companies have no legitimate argument to deny SeaTac Direct the same opportunity to take advantage of the revised rules.¹³
- 11 We further conclude that no evidentiary hearing was necessary to determine that neither Wickkiser nor Seatac Shuttle provides the same service that SeaTac Direct proposes to offer. We make that determination and adopt those portions of the Initial Order discussing this issue.¹⁴
- 12 Seatac Shuttle contends, “The ALJ, like some staff members, confused certificated authority with routes. Wickkiser holds authority (a Certificate for Public

⁷ See General Order R-572 ¶ 25 (“the Commission initiated this rulemaking to consider changes to the rules that would give companies flexibility in setting rates and promote competition in the auto transportation industry”).

⁸ *Id.*

⁹ WAC 480-30-420.

¹⁰ WAC 480-30-071, 480-30-261, 480-30-276, and 480-30-286.

¹¹ WAC 480-30-096, 480-30-116, 480-30-126, 480-30-136, and 480-30-140.

¹² Seatac Shuttle received pricing flexibility in Docket TC-131793, and Wickkiser obtained authority on one day’s notice to provide a new nonstop service between Bellingham and Sea-Tac Airport in Docket TC-131809.

¹³ Indeed, Seatac Shuttle contends that if SeaTac Direct withdrew and refiled its application, Seatac Shuttle would “have no standing and [would] not seek to intervene.” Seatac Shuttle Petition ¶ 27. Such a redundant process not only would uselessly elevate form over substance, it would undermine the Commission’s objective of simplifying the process for authorizing companies to make new services available to the public.

¹⁴ *Id.* ¶¶ 13-16.

Convenience and Necessity) for a territory; it is permitted uncontested expansion and an unlimited number of routes for that territory.”¹⁵ The Commission previously rejected this position,¹⁶ and we do so again here. The statute provides,

An auto transportation company shall not *operate* for the transportation of persons and their baggage for compensation *between fixed termini or over a regular route* in this state without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require such *operation*. . . . The commission may, after notice and an opportunity for hearing, when the applicant requests a certificate to *operate* in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies service such territory will not provide the same to the satisfaction of the commission¹⁷

- 13 The Commission grants auto transportation companies certificates of public convenience and necessity for *operations*, which the legislature has defined as providing transportation service “between fixed termini or over a regular route.” Contrary to Seatac Shuttle’s contention, the Commission does not grant such companies exclusive rights to serve any and all routes within an entire territory regardless of whether that company is actually providing service on those routes. We construe this statute narrowly, and, as our rules currently reflect, we will authorize an otherwise qualified company to serve a route that the existing certificated companies do not serve at the time the applicant files for that authority.
- 14 Wickkiser and Seatac Shuttle argue that the term “same service” is inherently unclear and that whether two services are the same is a factual issue that should be determined only after an evidentiary hearing. The Commission has established criteria for determining whether a certificate holder is providing the same service an applicant seeks to offer,¹⁸ and the Commission may examine the applicable criteria in an evidentiary hearing if necessary. A hearing, however, is not necessary in this case.
- 15 As the Initial Order correctly observes, the Commission has previously determined that a transportation service with multiple stops between the beginning and end of the

¹⁵ Seatac Shuttle Petition ¶ 12.

¹⁶ *Id.* ¶¶ 37-39.

¹⁷ RCW 81.68.040 (emphasis added).

¹⁸ WAC 480-30-140(2).

route is not the same as a service without any such stops.¹⁹ SeaTac Direct seeks authority to provide nonstop service between Bellingham and Sea-Tac Airport. Neither Wickkiser nor Seatac Shuttle offered that service when SeaTac Direct filed its application. Wickkiser implicitly conceded that fact by filing a rate table and time schedule for nonstop service between Bellingham and Sea-Tac Airport on September 20, 2013, the day after the revised rules in WAC 480-30 became effective and several months after SeaTac Direct filed its application.²⁰ No genuine issues of material fact exist, and thus an evidentiary hearing is unnecessary.

- 16 Wickkiser nevertheless offers information on the type and quality of auto transportation services it provides and alleges damage to consumers and the company if the Commission approves SeaTac Direct's application. These issues, however, are beyond the scope of this adjudication. In evaluating this or any other application to serve a new route, the Commission will "consider whether increased competition will benefit the traveling public, including its possible impact on sustainability of service,"²¹ but the Commission will not do so in the context of an evidentiary hearing in this case.²²

FINDINGS AND CONCLUSIONS

- 17 (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.

¹⁹ Order 02 ¶ 15 (citing *In re Application of McNamara, Sean d/b/a Bellingham Water Taxi*, Dockets TS-121253, *et al.*, Order 04, Final Order Denying Petition for Administrative Review ¶¶ 14-17 (July 17, 2013)). Wickkiser and Seatac Shuttle claim that both SeaTac Direct's proposed service and Wickkiser's service are "direct service" or "express service" as defined in WAC 480-30-036. Those terms, however, are not the exclusive types of service for determining whether a service is the "same service" under WAC 480-30-116. Nonstop service is distinct from multiple stop service, even though both of those types of service may be included in the definitions of "direct service" or "express service."

²⁰ Docket TC-131809.

²¹ WAC 480-30-140(1)(b).

²² Wickkiser made no claims in its protest that the operations SeaTac Direct proposes would harm consumers or have an adverse financial impact on Wickkiser's operations, and the new allegations to that effect that Wickkiser makes in its petition for administrative review are conclusory and lack even the offer of supporting evidence. Whether considered under former or current WAC 480-30-116, these allegations are neither timely nor sufficient to justify an evidentiary hearing.

- 18 (2) On May 7, 2013, SeaTac Direct filed an application with the Commission to operate as an auto transportation company subject to the Commission's jurisdiction.
- 19 (3) Seatac Shuttle does not provide the same service SeaTac Direct proposes to offer.
- 20 (4) Wickkiser did not provide the same service SeaTac Direct proposes to offer when SeaTac Direct filed its application.
- 21 (5) On September 23, 2013, Wickkiser filed a "rate table and time schedule for new one-way Express Passenger Service between Bellingham and Sea-Tac International Airport." That rate table and time schedule became effective by operation of law on September 25, 2013.
- 22 (6) Because no party provides the same service that SeaTac Direct proposes to offer, there are no grounds for further adjudication regarding SeaTac Direct's application, and the protests or objections filed by Wickkiser and Seatac Shuttle should be denied.

ORDER

THE COMMISSION ORDERS THAT:

- 23 (1) The petition for administrative review filed by Wickkiser International Companies, Inc., is DENIED.
- 24 (2) The petition for administrative review filed by Seatac Shuttle, LLC d/b/a Whidbey-Seatac Shuttle is DENIED.
- 25 (3) The protest or objection filed by Wickkiser International Companies, Inc., is DENIED.
- 26 (4) The protest or objection filed by Seatac Shuttle, LLC d/b/a Whidbey-Seatac Shuttle is DENIED.

27 (5) The adjudication in this proceeding is DISMISSED.

Dated at Olympia, Washington, and effective February 19, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.