

Report on Meeting of NPHA Task Force on Rate Approvals

The NPHA Task Force on Rate Approval met by conference call on February 6, 2009. Chairman John Rutter was unable to participate but had developed an agenda and asked Derrick Crandall to share information on the task force mission and workplan to open the session. A listing of task force members is at the end of this report.

Mr. Crandall advised the group that NPHA Chairman Joe Fassler had asked the task force to help concessioners (1) understand current NPS practices and procedures for rate approvals, (2) be aware of training opportunities available for the NPS for its staff on rate approval and related efforts, (3) discuss the underway SERA process designed to improve the NPS rate approvals process, and (4) discuss task force member views on reforms and changes in the rate approval process that would be fair to all parties (NPS, concessioners and the public), efficient in administration and well understood.

The task force first reviewed NPS Guideline 48, which is commonly seen as the guidance provided to national park units in overseeing rate approvals and related concessioner administration. Several participants noted that the Guideline predates the National Park Service Concessions Management Improvement Act of 1998 and does not include several provisions covered by separate memorandums issued by the NPS Concessions program. Specifically, SEC. 406. "Reasonableness of Rates" of the 1998 act includes the following direction to the agency on rate approvals:

A concessioner's rates and charges to the public shall be subject to approval by the Secretary. The approval process utilized by the Secretary shall be as prompt and as unburdensome to the concessioner as possible and shall rely on market forces to establish reasonableness of rates and charges to the maximum extent practicable. [emphasis added]

The task force discussed the reality that in many cases, rate approvals were not acted upon promptly. Although several participants indicated that there had been instances of action in 30-45 days if the involved concessioner aggressively pursued the submission, normal review was 120 days or more. In some cases, contracts specify response time by the NPS, although NPS does not always abide by these provisions. In 2008, this caused serious consequences for concessioners confronted with rapidly escalating fuel and related costs.

Task force members further noted that the promptness and level of burden varied dramatically from park unit to park unit – even with units in close proximity.

Mr. Crandall reported that a task force member not on the call had reported several instances where comparability was specifically rejected by a park unit with an explanation that the park management objective was to provide a broad range of accommodation pricing. Despite an appeal showing that the NPS determined price would be below the cost of operation by the concessioner, the concessions specialist involved indicated that other operations in the park should be used to subsidize the service provided below-cost.

Other participants indicated that similar conversations had occurred in the parks in which they operate, and the discussion highlights the **lack of inclusion in the 1998 act a provision parallel to that in the precursor 1964 act:**

The Secretary shall exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed.

Any such protection is now contained in the contract between the concession and NPS.

The task force agreed unanimously that the issue of comparability was a major issue and subject to subjectivity. Especially important, the group agreed, was the varying consideration of factors influencing comparability beyond physical structures and pricing, including cost of labor, influence of weather and other natural forces on operations and operational requirements of NPS and other federal entities.

Substantial discussion followed on various efforts to streamline rate approvals, including “core menus” and “competitive market declarations.” Also discussed was the challenge of establishing rates far enough in advance to work with the tourism industry, and to prepare brochures and other materials. In some cases, “comparables” fail to set or hide charges until the last minute. One task force member shared language that they include in promotional materials, indicating that the rates shown are subject to NPS approval and that if a lower rate is determined by NPS, an appropriate reduction will be made in charges to the visitor in advance of approval. Other task force members said that they had been told not to follow this practice.

The task force then turned to existing NPS training and guidance manuals. One of the task force members reported that company staff had attended past training sessions and had both been surprised by some of the information provided and by the indications that many units do not follow all of the provisions. The group agreed unanimously that joint training and workshops at the national and regional levels were vital to improve consistency and predictability of the rate approval process. Interest in the upcoming training session at Mammoth Cave was expressed, and disappointment was indicated that concessioners are able to confirm participation only if openings are not filled by NPS personnel.

The task force then reviewed the SERA (Standards, Evaluation and Rate Approval) process underway by NPS. The group believes that SERA’s purpose is to replace NPS Guideline 48 with a new policy articulation, but noted that communication about the process has been through the NPS Concessions Management Advisory Board and individual concessioners rather than through NPHA. The group agreed unanimously that NPS should actively involve NPHA in this effort. The group also noted that recommendations from the SERA process are projected to be two years away, with implementation still further away. The task force was unanimous in asserting that changes were warranted much more promptly.

In the context of SERA, the group discussed specific modifications to existing policies

that could improve the burden, delay and unpredictability of the current rate review effort. Specific steps are possible, including broader use of tools such as “core menus” and “competitive market declarations,” but the group strongly urged consideration of innovative models that would reduce costs to both NPS and concessioners, using periodic reviews and indexing or even the process now applied to ski areas by the Forest Service.

The task force agreed to review this report and meet again by conference call in advance of the NPHA board meeting on March 8, and to agree on specific recommendations. Among those which will be discussed in the next call:

- 1) improved availability of all guidance information on rate approval to concessioners;
- 2) pilot efforts where rate approval requests would become effective a specified number of days after submission – perhaps 45 days – unless NPS indicated objections;
- 3) discussion with NPS on ways to interject the objective of reasonable opportunity for profit into the rate approval process;
- 4) improved access by concessioners to NPS training programs on rate approval;
- 5) a model disclaimer for listing rates pending approval;
- 6) revamping of rate approval appeals to minimize adversarial situations with local NPS concessions staff; and
- 7) pilot efforts to test out radically simpler rate approval processes.

Task Force Members:

John Rutter
Dan Jensen
Bill Butts
Trina Smith
Ed Wimberly
Dave Woodside
Bob Concienne

Also participating:

Terry Sides
Dominic Canale
Derrick Crandall

February 13, 2009