

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of)	DOCKET TC-091931
)	
SHUTTLE EXPRESS, INC.)	ORDER 05
)	
For Extension of Authority under)	
Certificate No. C-975, For a Certificate)	FINAL ORDER GRANTING
of Public Convenience and Necessity to)	REQUEST TO REMOVE
Operate Motor Vehicles in Furnishing)	RESTRICTIVE LANGUAGE IN
Passenger and Express Service as an)	CERTIFICATE NO. C-975
Auto Transportation Company)	
)	
.....)	

1 ***Synopsis:** This is a final order of the Commission granting the request of Shuttle Express, Inc., to remove language in its certificate of public convenience and necessity that limits the size of the vehicles the company may use to provide its regulated service*

2 **NATURE OF PROCEEDING.** This proceeding results from a request by Shuttle Express, Inc. (Shuttle Express or Company) to the Washington Utilities and Transportation Commission (Commission) to revise the Company’s Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company No. C-975 (Certificate). Specifically, Shuttle Express seeks to remove the restriction in the Certificate stating that “service may be provided in vehicles no larger than a seven passenger van.”

3 **APPEARANCES.** Brooks E. Harlow, Seattle, Washington, represents Shuttle Express. John Solin and Mike Lauver, Oak Harbor, Washington, are co-owners and represent SeaTac Shuttle *pro se*.

4 **PROCEDURAL HISTORY.** On December 16, 2009, Shuttle Express filed an Application for Extension of Existing Auto Transportation c to remove the restriction in its Certificate on the size of the vehicles the Company can use to provide service, and the Commission published notice of the application in its weekly Docket of

December 22, 2009. On January 20, 2010, Seatac Shuttle, LLC d/b/a Whidbey Seatac Shuttle (Seatac Shuttle) filed a protest to the application.

- 5 Following proceedings to resolve the issue of the timeliness of Seatac Shuttle's protest, the Commission conducted a prehearing conference on September 28, 2010, and established a procedural schedule, including scheduling a hearing for November 30, 2010. The Commission held the evidentiary hearing as scheduled in Seattle before Administrative Law Judge Adam E. Torem.
- 6 On February 25, 2011, the Commission served Order 04, Initial Order Granting Application to Remove Restrictive Language in Certificate No. C-975 (Order 04). The order finds that Shuttle Express is not seeking to expand its established service territory and that a public need exists for the extension of authority the company requested. Order 04 concludes that the public convenience and necessity require that Shuttle Express be granted an extension of authority to operate as an auto transportation company without being restricted to seven passenger vehicles.
- 7 On March 15, 2011, Seatac Shuttle filed a petition for administrative review of Order 04 (Petition). Seatac Shuttle challenges both the factual findings and the legal conclusions in Order 04, and makes the following arguments: The record evidence does not demonstrate a public need for Shuttle Express to use 10 passenger vans. In addition, Shuttle Express is not providing service to the satisfaction of the Commission because the Company has been operating in violation of its Certificate by operating 10 passenger vans for years before seeking authority from the Commission to do so. "By definition if one habitually operates outside the scope of one's authority in contradiction to the rules and regulations of the Commission, one cannot be operating to the satisfaction of the Commission. To find otherwise would render the Commission moot and without authority."¹
- 8 On March 22, 2011, Shuttle Express filed an Answer to the Petition (Answer) in which it supports the findings and conclusions in Order 04 with the following arguments: Shuttle Express' request to remove the restriction on the size of its vans has no impact on Seatac Shuttle's operations and thus its protest is invalid. On the merits, the record evidence more than adequately demonstrates that the Company's

¹ Petition fourth page. We note that the body of the Petition is not set out in numbered paragraphs as required by WAC 480-07-395(1)(c)(ii), nor are the pages numbered. We expect any future filings by SeaTac Shuttle in this or any other adjudicative proceeding to conform to Commission rules.

use of 10 passenger vans is consistent with the public interest, convenience, and necessity, and Seatac Shuttle produced no evidence to the contrary. Whether the Company is providing service to the satisfaction of the Commission is not an issue in this proceeding, but even if it were, lack of compliance with one aspect of a company's certificate is not a sufficient basis on which to refuse to amend the Certificate.

DISCUSSION AND DECISION

9 The governing statute and Commission rules require an auto transportation company to obtain a certificate of public convenience and necessity from the Commission prior to initiating operations.² The Commission issued such a certificate to Shuttle Express over 20 years ago, and the Certificate includes the restriction that the Company's "service may be provided in vehicles no larger than a seven passenger van." Shuttle Express explains the restriction as "an historic anachronism" that was included to differentiate the Company's door-to-door service from traditional bus service to fixed stops that was being provided by protesting parties at the time of the Company's original application.³ Shuttle Express now seeks to remove this restriction from its Certificate.

A. SeaTac Shuttle Failed to Demonstrate a Substantial Interest in What Should Have Been Filed as a Petition to Amend the Certificate.

10 Before reaching the merits, we must address three procedural issues. First, Shuttle Express sought to remove the restriction from its Certificate by filing an application for an extension of its authority. The relief Shuttle Express requests, however, does not require such a filing. A certificate extension application is required when an applicant seeks "authority to add new or additional regular route or fixed termini service to an existing auto transportation certificate."⁴ Shuttle Express does not seek such authority. Rather, Shuttle Express requests that the Commission remove a

² RCW 81.68.040; WAC 480-30-126.

³ Answer ¶ 2.

⁴ WAC 480-30-091(b). The Commission's application form also is directed toward this type of relief, requiring, for example, that the applicant submit a proposed tariff and time schedule and "[d]escribe the proposed service, including the line, route, or service territory description." Indeed, virtually none of the information required in the application applies to a request to amend an existing certificate to remove a condition on the company's operations within its previously defined service territory.

condition on the Company's existing service within its current service territory. The appropriate procedure for making such a request is through a petition to amend the Certificate. Commission rules authorize us to liberally construe pleadings,⁵ and, accordingly, we will construe Shuttle Express' filing to be such a petition.

- 11 The second procedural issue arises from the first. Seatac Shuttle submitted a protest to the certificate extension application Shuttle Express filed, but as discussed above, the Company should have filed a petition, not an application, to obtain the requested relief. A petition, unlike an application, is not subject to protest, and thus Seatac Shuttle's protest was improper. An interested party, however, may intervene in an adjudicative proceeding initiated in response to a petition. We again will liberally construe the pleadings and consider Seatac Shuttle to be an intervenor in this docket.⁶
- 12 The third procedural issue is whether Seatac Shuttle is entitled to participate on any basis in this proceeding. Shuttle Express contends for the first time in its Answer that Seatac Shuttle lacks sufficient interest in the Company's request to amend its Certificate to protest or otherwise oppose that request. Shuttle Express states, "The restriction to be eliminated by the proposed amendment impacts only Shuttle Express' door-to-door service. Since SeaTac Shuttle admitted that it does not provide any door-to-door service under its permit, its protest goes beyond its own authority and is not a valid protest."⁷ We agree with Shuttle Express that Seatac Shuttle has failed to demonstrate that it has a substantial interest in this docket.
- 13 The Commission's procedural rules limit intervention in an adjudicative proceeding to persons who have "a substantial interest in the subject matter of the hearing or if the [person's] participation is in the public interest."⁸ John Solin testified that Seatac Shuttle objects to modifying the Certificate because Shuttle Express is not complying with the restriction the Company is seeking to remove:

We feel that this just sets a bad precedent among all operators. It sets a precedent within UTC for permitting essentially willy-nilly, if you will, observance of rules and regulations, and we don't think that it's appropriate that this should be permitted by any

⁵ WAC 480-07-395(4).

⁶ *Id.*; WAC 480-07-355.

⁷ Answer ¶ 4.

⁸ WAC 480-07-355(3). Persons filing protests similarly must have a substantial interest in the proceeding. WAC 480-30-116(2)(a)(v).

operator for that matter. And it also sends a signal in my opinion to other operators that are either current or potential operators that if they do get a certificate and have an issue with their certificate or their territory or their vehicles that they can pretty much do what they want to do and not have any consequences, and it just should not occur.⁹

14 Such an interest does not justify intervention in this docket. Seatac Shuttle does not contend that the requested revision to the Certificate will have any impact on Seatac Shuttle's business or operations. To the contrary, Mr. Solin testified that removal of the seven-passenger vehicle limitation would not cause any harm to Seatac Shuttle.¹⁰ Nor does Seatac Shuttle have a comparable limitation in its certificate. Without some demonstration that Commission consideration of the issues in a docket may have some tangible and specific harm or benefit to Seatac Shuttle, its interest in ensuring that another auto transportation company is complying with its legal obligations is not sufficiently substantial to warrant intervention in this Commission adjudicative proceeding.

15 Nor is participation on those grounds in the public interest, at least under the facts of this case. Seatac Shuttle's service territory is adjacent to the area that Shuttle Express serves, and the record reflects a history of conflict between the two companies.¹¹ Allowing one company to attempt to ensure that the other company complies with its certificate solely for the sake of enforcing the law offers too great an opportunity to strategically employ Commission processes in pursuit of personal goals.

16 This issue, however, did not arise until after Seatac Shuttle sought administrative review of the initial order. The Commission may dismiss an intervenor from a proceeding only after notice and a reasonable opportunity to be heard.¹² No such opportunity is available at this late stage in the proceedings unless Seatac Shuttle petitions for reconsideration of this order or makes some other filing in this docket. The Commission, therefore, will not dismiss Seatac Shuttle from the proceeding at

⁹ Solin, TR. 166: 8-18.

¹⁰ *Id.* 170: 1-7.

¹¹ *See, e.g., id.* 170-75 (discussing informal complaint by SeaTac Shuttle against Shuttle Express).

¹² WAC 480-07-355(4).

this point but will address that issue prior to considering any further action Seatac Shuttle requests.¹³

B. The Public Convenience and Necessity Do Not Require Limiting Shuttle Express to Providing Service Using Seven-Passenger Vans.

17 The governing statute authorizes the Commission to grant certificates of public convenience and necessity to auto transportation companies and to “attach to the exercise of the rights granted by the certificate . . . such terms and conditions as, in its judgment, the public convenience and necessity may require.”¹⁴ In granting the Certificate, the Commission conditioned the Company’s authority on the restriction that it could provide service “in vehicles no larger than a seven passenger van,” based on a finding that the public convenience and necessity required that limitation. Shuttle Express now seeks to remove this condition from the Certificate. The Company, therefore, must demonstrate that the public convenience and necessity no longer require that the Certificate include a limitation on the size of the vehicles Shuttle Express uses to provide its certificated service.

18 We find that Shuttle Express has made the requisite demonstration. The seven-passenger van limitation resulted from the perceived need to distinguish the service Shuttle Express provides from the bus service that Gray Line, a protestant in the original application proceeding, offers from established locations to and from the Seattle-Tacoma International Airport.¹⁵ The Certificate restricts Shuttle Express to using seven-passenger vehicles because that was the capacity of the vans at that time.¹⁶ The undisputed evidence in the record is that such a restriction no longer serves a useful purpose.¹⁷ Indeed, no party introduced any evidence to support a finding that the public convenience and necessity require that Shuttle Express be limited to using seven-passenger vehicles to provide its service. Gray Line, the

¹³ We provide notice to Seatac Shuttle that any future filing it makes in this docket must be accompanied by a written demonstration that Seatac Shuttle has a substantial interest in this proceeding other than its previously stated interest of enforcing the law. We will then determine whether to dismiss Seatac Shuttle as a party prior to ruling on the filing.

¹⁴ RCW 81.68.040.

¹⁵ Rowley, TR. 87:7-11.

¹⁶ *Id.* 87:12-15.

¹⁷ Order 04 summarizes the testimony provided at the evidentiary hearing, Order 04 ¶¶ 11-20, and we adopt that summary for purposes of this Order.

original proponent of the limitation, did not seek to participate in this proceeding or otherwise comment on Shuttle Express' filing.¹⁸

- 19 Seatac Shuttle contends that the record evidence does not support the conclusion in Order 04 that there is a public need for Shuttle Express to provide service using 10-passenger vans. Shuttle Express, however, does not seek to revise the condition in its Certificate to increase the size of its vehicles. The Company seeks to remove the condition entirely. As we have explained, such a request requires a demonstration that the public convenience and necessity no longer requires that limitation on the Company's operations. Seatac Shuttle's contentions do not address the applicable standard for evaluating Shuttle Express' requested relief and thus are irrelevant.
- 20 We also reject Seatac Shuttle's proposal that the Commission refuse to amend the Certificate because Shuttle Express has been providing service with 10-passenger vans for years in violation of the very provision the Company seeks to remove. We are troubled that Shuttle Express has been exceeding the limitation in its Certificate, but this is not an enforcement proceeding.¹⁹ The Commission, moreover, has consistently stressed that its primary goal is to ensure compliance with the statutes and rules the Commission administers.²⁰ Shuttle Express has voluntarily requested an amendment to its Certificate to remove a restriction that the public convenience and necessity does not require. Granting that request best serves the public interest and the Commission's compliance objectives.
- 21 Denying Shuttle Express' requested relief, on the other hand, would not further the Commission's goals. To the contrary, continuing to impose a restriction that the public convenience and necessity does not require would be purely punitive and inconsistent with the public interest. The Commission does not engage in such actions, and we refuse to do so now.

¹⁸ Rowley, TR. 87:16-19.

¹⁹ Whether Shuttle Express violated Commission rules or orders, therefore, is not an issue that is properly before us in this docket, and we reach no conclusions on that issue, including whether and how the Company should be penalized for any violations.

²⁰ *E.g., In re Determining the Proper Carrier Classification of, and Complaint for Penalties against: Lilliann M. & Damon A. Hampton d/b/a Lillianns Moving Service*, Docket TV-100282, Order 03, Final Order Modifying Initial Order ¶ 6 (Jan. 20, 2011).

FINDINGS OF FACT

22 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:

- 23 (1) The Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company No. C-975 of Shuttle Express, Inc., d/b/a Shuttle Express includes a condition that restricts the company to providing service using vehicles no larger than seven-passenger vans.
- 24 (2) The record evidence demonstrates that the public convenience and necessity do not require the seven-passenger van restriction in Certificate No. C-975.

CONCLUSIONS OF LAW

25 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:

- 26 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties to, and the subject matter of, this docket.
- 27 (2) The Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company No. C-975 of Shuttle Express, Inc., d/b/a Shuttle Express should be amended to remove the condition restricting the company to providing service using vehicles no larger than seven-passenger vans.

ORDER

28 **THE COMMISSION ORDERS** that the Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company No. C-975 of Shuttle Express, Inc., d/b/a Shuttle Express is amended to remove the condition restricting the company to providing service using vehicles no larger than seven-passenger vans.

Dated at Olympia, Washington, and effective April 14, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. 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 and WAC 480-07-870.