

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

In re Application of)	DOCKET TC-090118
)	
SEATAC SHUTTLE, LLC d/b/a)	ORDER 04
WHIDBEY-SEATAC SHUTTLE)	
)	
For Extension of Authority under)	FINAL ORDER APPROVING AND
Certificate No. C-1077, For a)	ADOPTING STIPULATIONS;
Certificate of Public Convenience and)	GRANTING EXTENSION OF
Necessity to Operate Motor Vehicles in)	AUTHORITY BETWEEN WHIDBEY
Furnishing Passenger and Express)	ISLAND AND SEATTLE; DENYING
Service as an Auto Transportation)	PETITION FOR ADMINISTRATIVE
Company)	REVIEW
)	
.....)	

1 *Synopsis: In this Order, the Commission approves the stipulations SeaTac Shuttle entered into with Gray Line and Shuttle Express. Together the two stipulations resolve all disputed issues in this proceeding, and result in the extension of SeaTac Shuttle’s authority to serve between Whidbey Island and Seattle, with a limitation that the company will not carry passengers between Seattle and the Seattle-Tacoma International Airport. The Order also denies SeaTac Shuttle’s petition for administrative review, finding consideration of the petition unnecessary after approving the stipulations.*

- 2 **NATURE OF PROCEEDING.** This proceeding involves an application submitted by SeaTac Shuttle, LLC, d/b/a Whidbey-SeaTac Shuttle (SeaTac Shuttle), for an extension of authority under Certificate No. C-1077¹ to operate motor vehicles in furnishing passenger and express service as an auto transportation company. In its application, SeaTac Shuttle requested additional authority to operate airporter passenger service between Whidbey Island and Paine Field, Paine Field and the Seattle-Tacoma International Airport (SeaTac Airport), and Seattle and Paine Field; auto transportation service by reservation only between Whidbey Island and Seattle and between hotels and motels within a 1-mile radius of Paine Field; with closed-door service between Seattle and the Seattle Tacoma International Airport.²
- 3 **APPEARANCES.** Mike Lauver and John Solin, members and co-owners of SeaTac Shuttle, Oak Harbor, Washington, appeared *pro se* on behalf of the company. Jimmy Sherrell, owner and President of Shuttle Express, Inc., d/b/a Shuttle Express (Shuttle

¹Pursuant to Certificate No. C-1077, SeaTac Shuttle is currently authorized to provide:

PASSENGER SERVICE by reservation only:

AIRPORTER PASSENGER SERVICE BETWEEN: Whidbey Island and Seattle Tacoma International Airport via Deception Pass or the Clinton Ferry; Door to door service in conjunction with the above route; Oak Harbor and Lupien Field.

AUTO TRANSPORTATION SERVICE by reservation only BETWEEN: Oak Harbor and Coupeville; Coupeville and the Keystone Ferry; Langley and Clinton.

BETWEEN: Oak Harbor and hotels and motels within a 1-mile radius and hotels and motels within a 1-mile radius of the Seattle Tacoma International Airport.

CLOSED DOOR SERVICE BETWEEN: Deception Pass and Seattle Tacoma International Airport; and BETWEEN the Clinton Ferry and the Seattle Tacoma International Airport.

NOTE: Nothing in this certificate authorizes transportation between the Seattle Tacoma International Airport and hotels and motels within a 1-mile radius of the Seattle Tacoma International Airport.

Commission's weekly Docket of February 2, 2009, at 2.

²*Id.*, at 1.

Express), and John Rowley, General Manager and Chief Operating Officer of Shuttle Express, Renton, Washington, appeared *pro se* on behalf of Shuttle Express. David L. Rice, attorney, Miller Nash LLP, appeared on behalf of Evergreen Trails, Inc., d/b/a Gray Line of Seattle (Gray Line).

- 4 **PROCEDURAL HISTORY.** On January 16, 2009, SeaTac Shuttle filed an application with the Washington Utilities and Transportation Commission (Commission) requesting an extension of its authority under Certificate No. C-1077 to operate as an auto transportation service provider.
- 5 On February 17 and 23, 2009, respectively, Shuttle Express and Gray Line filed protests to the application. Both Shuttle Express and Gray Line asserted that each already serves a portion of the territory SeaTac Shuttle seeks and there is no reason for the Commission to grant SeaTac Shuttle's proposed service, which they argue would be duplicative.
- 6 On May 14, 2009, Gray Line and SeaTac Shuttle filed a partial stipulation (Gray Line Stipulation) that clarifies SeaTac Shuttle's request for closed-door service between Seattle and SeaTac Airport to state that SeaTac Shuttle will not transport passengers between Seattle and SeaTac Airport.³ Gray Line stated that it has no objection to SeaTac Shuttle's application as long as the Commission approves the stipulated language. Shuttle Express did not join in the stipulation.
- 7 As Shuttle Express continued to protest the application, the Commission held an evidentiary hearing on June 10, 2009, before Administrative Law Judge Marguerite Friedlander to address SeaTac Shuttle's application, and a settlement hearing to address the Gray Line Stipulation.

³Gray Line and SeaTac Shuttle request that the following language be included in SeaTac Shuttle's certificate:

CLOSED DOOR SERVICE BETWEEN: Seattle and Seattle Tacoma International Airport. *No passengers may be transported between points in Seattle and the Seattle Tacoma International Airport.*

(Italics represent the stipulated language.)

8 After Shuttle Express and SeaTac Shuttle filed post-hearing briefs, Judge Friedlander entered an initial order, Order 03, on August 12, 2009, denying SeaTac Shuttle's application, finding that the evidence did not demonstrate public need for the requested authority. As a result, the Initial Order finds the Gray Line Stipulation to be moot.

9 On August 28, 2009, after the Initial Order had been entered and prior to the deadline for filing petitions for administrative review, Shuttle Express and SeaTac Shuttle filed a partial stipulation (Shuttle Express Stipulation) agreeing to narrow the request for extension of authority to:

- Auto Transportation Service by reservation only between Whidbey Island and Seattle;
- Closed-door service between Seattle and SeaTac Airport, with the caveat that no passengers may be transported between points in Seattle and SeaTac Airport.

10 On August 31, 2009, SeaTac Shuttle filed a petition for administrative review, asserting, among other claims, that the Initial Order failed to distinguish between door-to-door and scheduled service, concluded that Shuttle Express provides service to the satisfaction of the Commission, and disregarded testimony about the need for service.

11 No other party filed a petition for review or filed an answer to SeaTac Shuttle's petition. Commission staff did not participate as a party in this proceeding.

12 **INITIAL ORDER.** The Initial Order denied SeaTac Shuttle's application for an extension of authority, finding the evidence did not demonstrate a public need for the requested authority. The Initial Order did not address the Gray Line Stipulation, finding the agreement moot.

13 **COMMISSION DECISION.** The Commission approves and adopts the two settlement stipulations between SeaTac Shuttle and the protestants. The Commission finds the stipulations lawful, consistent with the public interest and supported by the evidence in the record. The Commission also finds the evidence supports public need for the grant of additional authority between Whidbey Island and Seattle. By

accepting the stipulations and resolving the disputed issues in the proceeding, the Commission denies SeaTac Shuttle's petition for administrative review as unnecessary.

MEMORANDUM

- 14 In this proceeding, we must decide whether to accept the settlements that SeaTac Shuttle has entered into with its competitors or address the issues the company raises in its petition for administrative review. The Initial Order did not address the merits of the Gray Line Stipulation, as the decision to deny the application rendered the question moot.⁴ Further, the parties filed the Shuttle Express Stipulation after Judge Friedlander entered the Initial Order, requiring the full Commission, not the administrative law judge, to consider the settlement. Both settlements are attached to and made a part of this Order by this reference.
- 15 SeaTac Shuttle requests that the Commission adopt the settlement agreement that it entered into with Shuttle Express after the Initial Order was entered, together with the Gray Line Stipulation.⁵ SeaTac Shuttle argues that the two agreements resolve all territorial disputes in the application. It also argues that the public will be served best by accepting the agreements: If the Commission were to accept the settlements, there would be no need to address the issues the company raises in its petition for administrative review.
- 16 Gray Line and the applicant provided testimony at hearing concerning the Gray Line Stipulation, in addition to filing the stipulation and a statement in support.⁶ The statement provides that the stipulated language, "No passengers may be transported between points in Seattle and the Seattle Tacoma International Airport," clarifies that by providing closed-door service between Seattle and SeaTac Airport, SeaTac Shuttle does not intend to provide service between points in Seattle and SeaTac Airport.⁷

⁴ Order 03, ¶ 39.

⁵ Petition at 4.

⁶ Butzlaff, TR 83:13-25 through 84:1-9; Rowley, TR 115:18-25 through 117:1-2.

⁷ Statement in Support of Gray Line Stipulation, Exh. JB-1, ¶¶ 2, 4-5.

- 17 In the Shuttle Express Stipulation, the parties agree to remove from the requested extension of authority any service to or from Paine Field, leaving the language agreed to in the Gray Line Stipulation, and retaining the request to provide service between Whidbey Island and Seattle, by reservation only. Shuttle Express and the applicant also filed a short statement in support. In the statement, the parties assert that the agreement is in the public interest, as it resolves a dispute between the parties without requiring them to address the issues in the petition for administrative review before the Commission, and because SeaTac Shuttle no longer seeks to provide service between Paine Field, Whidbey Island, Seattle and SeaTac Airport.
- 18 The Commission must determine whether a proposed settlement meets the requirements for accepting settlements: “The commission will approve settlements when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”⁸ In this case, where approving the Shuttle Express Stipulation would result in the grant of new authority, the Commission must also determine whether the application meets the requirements of RCW 81.68.040.⁹ Under this statute, the Commission must find there is a public need for the proposed service before granting the new authority.

⁸ WAC 480-07-750(1).

⁹ RCW 81.68.040 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 a 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 serving such territory will not provide the same to the satisfaction of the commission, or when the existing auto transportation company does not object, and in all other cases with or without hearing, issue the certificate as prayed for; or for good cause shown, may refuse to issue same, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require.

(Emphasis added).

- 19 By removing the request to serve Paine Field in the Shuttle Express Stipulation and clarifying the terms of SeaTac Shuttle's service between Seattle and SeaTac Airport, the parties have resolved all disputed issues in the application for extension of authority. By rule, the Commission supports parties' efforts to resolve and settle disputes informally. Although the final resolution in this case occurred after a contested hearing, and did not save the time and resources of preparing briefs and an initial order, the settlements do result in a solution mutually agreeable to the parties.
- 20 Both partial settlements are lawful: They do not further an improper purpose and are intended to resolve disputed issues. The settlements are consistent with the public interest: There will be no adverse effect on the public, and the settlements allow the parties to mutually resolve a dispute instead of requiring the Commission to resolve the multiple issues in the petition for administrative review. In addition, SeaTac Shuttle will be able to provide additional service to the residents of Whidbey Island. Finally, we find that the parties have provided sufficient information supporting the settlements and the need for service to satisfy the condition that the settlements be supported by the record. The application and testimony by a travel agent at hearing address the need for service along the proposed route between Whidbey Island and Seattle.¹⁰
- 21 In sum, the settlements, as a whole, produce a reasonable resolution to the disputed application for additional authority. We conclude that the settlements are lawful and consistent with public policy. The evidence supports the terms of the settlements as being reasonable resolutions of the issues. Considering all of the information available in the record, we find and conclude that our approval and adoption of the settlements is in the public interest, and that SeaTac Shuttle should be granted additional authority to provide service between Whidbey Island and Seattle, with closed-door service between Seattle and SeaTac Airport. Within five days of the effective date of this Order, the Secretary shall issue a certificate to SeaTac Shuttle to include the additional authority we grant in this Order.

¹⁰ Exh. JS-2 at 3; Kamb, TR 76:23 through 77:19.

22 After approving and adopting the two settlements, we find it unnecessary to reach the
issues SeaTac Shuttle raises in its petition for administrative review, and deny the
petition.

FINDINGS OF FACT

23 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:

- 24 (1) On January 16, 2009, SeaTac Shuttle, LLC, d/b/a Whidbey-SeaTac Shuttle
filed an application with the Commission requesting an extension of its
authority under Certificate No. C-1077
- 25 (2) On February 17, 2009, Shuttle Express, Inc., d/b/a Shuttle Express, filed a
protest to the application.
- 26 (3) On February 23, 2009, Evergreen Trails, Inc., d/b/a Gray Line of Seattle, filed
a protest to the Application.
- 27 (4) On May 14, 2009, Gray Line and SeaTac Shuttle filed a partial stipulation
clarifying SeaTac Shuttle's request for closed-door service between Seattle
and SeaTac Airport.
- 28 (5) On August 12, 2009, Judge Friedlander entered an initial order, Order 03 in
this proceeding, denying the application.
- 29 (6) On August 28, 2009, Shuttle Express and SeaTac Shuttle filed a partial
stipulation agreeing to narrow the request for extension of authority to include
service between Whidbey Island and Seattle.
- 30 (7) On August 31, 2009, SeaTac Shuttle filed a petition for administrative review
of the Initial Order.

- 31 (8) The record as a whole supports accepting the two stipulations, and the
application and testimony at hearing support a finding of public need for the
service between Whidbey Island and Seattle.

CONCLUSIONS OF LAW

32 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:

- 33 (1) The Washington Utilities and Transportation Commission has jurisdiction over
the parties to and the subject matter of this application.
- 34 (2) The Gray Line and Shuttle Express Stipulations are lawful: They do not
support an improper purpose.
- 35 (3) The stipulations reasonably resolve any remaining disputes over the
application without requiring Commission consideration of the issues pending
in the petition for administrative review.
- 36 (4) The Commission's approval and adoption of the two settlement agreements
attached to, and discussed in, the body of this Order are in the public interest.
- 37 (5) After approving and adopting the two stipulations between the parties, there is
no need for the Commission to address the issues in SeaTac Shuttle's petition
for administrative review.
- 38 (6) The Commission should retain jurisdiction over the subject matters and the
parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS:

- 39 (1) The stipulation between SeaTac Shuttle, LLC, d/b/a Whidbey-SeaTac Shuttle,
and Evergreen Trails, Inc., d/b/a Gray Line of Seattle, which is attached and
incorporated into this Order as Appendix A, is approved.
- 40 (2) The stipulation between SeaTac Shuttle, LLC, d/b/a Whidbey-SeaTac Shuttle,
and Shuttle Express, Inc., d/b/a Shuttle Express, which is attached and
incorporated into this Order as Appendix B, is approved.
- 41 (3) SeaTac Shuttle, LLC, d/b/a Whidbey-SeaTac Shuttle, is granted an extension
of authority to provide service between Whidbey Island and Seattle, with
closed door service between Seattle and SeaTac Airport. Within five days
after the effective date of this Order, the Secretary shall issue a certificate to
SeaTac Shuttle to include the additional authority granted in this Order.
- 42 (4) The petition for administrative review filed by SeaTac Shuttle is denied.
- 43 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective December 10, 2009.

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.

Appendix A

Appendix B