

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

In re Application TC-110733 of)	DOCKET TC-110733
)	
EXCALIBUR LIMOUSINE LLC)	
d/b/a SEATTLE GREEN LIMO)	ORDER 01
)	
For a Certificate of Public Convenience)	
and Necessity to Operate Motor)	INITIAL ORDER OF DEFAULT AND
Vehicles in Furnishing Passenger and)	DISMISSAL OF APPLICATION
Express Service as an Auto)	
Transportation Company)	
.....)	

1 **NATURE OF PROCEEDING.** Docket TC-110733 involves an application by Excalibur Limousine LLC, d/b/a Seattle Green Limo (Excalibur) filed with the Washington Utilities and Transportation Commission (Commission) for an auto transportation or bus certificate.¹ Excalibur seeks to provide passenger service by reservation only between all hotels in King County and Piers 66 and 91 in Seattle, excluding hotels within the City of Tukwila and within a 3-mile radius of Seattle-Tacoma International Airport. Excalibur filed its application on April 26, 2011.

2 The Commission published Notice of the Application in the Commission’s weekly transportation Docket of June 7, 2011.

3 On July 7, 2011, Shuttle Express, Inc. (Shuttle Express) filed a protest to the Application. Shuttle Express contends that it already provides satisfactory service along the route sought by Excalibur. Shuttle Express also questioned Excalibur’s fitness, willingness, and ability to provide the proposed service. Due solely to the protest filed by Shuttle Express, the Commission scheduled a prehearing conference in this docket.

4 **CONFERENCE:** On July 18, 2011, the Commission provided proper notice of the prehearing conference by serving a copy of a Notice of Prehearing Conference to all

¹ A bus certificate is formally referred to in RCW 81.68 as a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company.

parties via first class mail. The Notice contained a proviso warning that “any party who fails to attend or participate in the prehearing conference . . . may be held in default.”² At 1:30 p.m. on August 3, 2011, Administrative Law Judge (ALJ) Adam E. Torem convened the conference as scheduled in Room 108 of the Commission’s headquarters in Olympia, Washington.

5 **APPEARANCES.** John D. Rowley, Jr., Seattle, Washington, represents Shuttle Express *pro se*. Greg Trautman, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).³

6 Kevin Williams failed to appear at the prehearing conference to represent Excalibur. No other representative appeared on behalf of Excalibur.

7 **STANDING OF PROTESTANT.** Commission Staff raised the issue of Shuttle Express’ standing to bring its protest. According to Commission Staff’s review of Shuttle Express’ existing certificate (C-975), Shuttle Express’ territory does not include the route sought by Excalibur. Commission Staff took the position that Shuttle Express does not have a substantial interest in the proceeding and therefore cannot qualify as a protestant.

8 Shuttle Express disagreed with Commission Staff’s reading and interpretation of certificate C-975. Further, Shuttle Express noted that it has filed a tariff and is already providing service to the cruise ship piers.

9 The Commission determined that it would not take up the factual dispute raised by Commission Staff’s question regarding Shuttle Express having a substantial interest in the proceeding for two reasons: First, the nature of Shuttle Express’ interest in the proceeding need not be limited to the exclusive territory granted in its certificate. Second, and perhaps most important, the applicant failed to appear as required by the Notice of Prehearing Conference, obviating the need to further commit Commission resources to this proceeding.

² Notice of Prehearing Conference ¶ 10.

³ In formal proceedings, 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 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.

- 10 **DEFAULT.** Shuttle Express moved that Excalibur to be held in default for failure to appear at the prehearing conference. Commission Staff did not support the motion for default, arguing that but for Shuttle Express' protest, Excalibur's application might have been processed and evaluated without a hearing.
- 11 RCW 34.05.440(2) allows the presiding officer discretion to enter a "default or other dispositive order" if a party fails to appear at the hearing. Thus, even if Shuttle Express lacks standing in this matter, the Commission can enter a default judgment on its own motion. It is true that absent Shuttle Express's protest, which it may not have had standing to raise, this matter might have been processed without a hearing. However, whether or not necessary, the Commission did set this matter for hearing and gave due notice to Excalibur. Mr. Williams did not make any contact with the Commission to explain his inability to appear on behalf of Excalibur. Therefore, in accordance with RCW 34.05.440 and WAC 480-07-450, Kevin Williams and Excalibur Limousine LLC are in default and the application should be dismissed.
- 12 This determination of default, however, need not be the final word on Excalibur's application. WAC 480-07-450(2) allows a party held in default a period of 10 days to contest the order of dismissal or default after service of the order. A notice appearing at the end of this order provides instructions for filing such a motion with the Commission. If Excalibur wishes to pursue this matter further, the company should file a motion in accordance with these instructions.

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ORDER

THE COMMISSION ORDERS THAT:

- 13 (1) Kevin Williams and Excalibur Limousine LLC are held in default due to failure to appear.
- 14 (2) The application filed by Kevin Williams and Excalibur Limousine LLC is dismissed.

DATED at Olympia, Washington, and effective August 10, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-450(2) states that a party held in default has 10 days after service of a default order to file a written motion requesting the order be vacated and the proceeding reopened for further process. The party held in default must state the grounds relied upon, including its reasons for failing to appear.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **seven (7)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250