DOCKET T-101661

COMMENT OF WHIDBEY SEATAC SHUTTLE C-1077

March 28, 2011

PLEASE DOCKET T-101661

Commissioners:

It is becoming increasingly difficult for this company to continue to comment on this docket which is intertwined and comingled with Docket A-042090. It seems that each time we provide verifiably data, remind the Commission of past statements and testimony of Commission staff, staff proceeds as if there is no history with either of these dockets and their previous positions and statements never existed. It is similar to taking your grandson to Chucky Cheese to play Whack-A-Mole, you smack one down and another pops up, you can't win no matter what you do. Staff makes patently false statements before the Commission and relies of supposition, assumption, and pure fantasy creating positions not supported by any data or reason. Not only the frustration level but the economic impact to this company and all others affected by this docket in attorney's fees and company staff hours and travel are at an all time high. At this point we have lost confidence in the WUTC to regulate our industry in any meaningful way. Adjudicative dockets drag on for 15 months or more, complaints are mishandled and take 9 months for any action and staff is non- responsive. Yet we will respond one more time under this docket.

The Commission's **NOTICE OF STAFF RECOMMENDATION FOR FUEL SURCHARGES, OPPORTUNITY TO FILE WRITTEN COMMENTS, AND OPEN MEETING** dated March 18, 2011 but not received in this office until March 22, 2011, makes three recommendations:

1. Eliminate the current fuel surcharge methodology for auto transportation companies effective May 2, 2011, as scheduled.

2. Allow auto transportation companies to implement deferred accounting for fuel expense. Establish deferred accounting for fuel expense by separate order for each company.

3. Any company can file a proposed rate change using any other methodology. Those filings must comply with the commission's rules and regulations.

STAFF RECOMMENDATION #1

Eliminate the current fuel surcharge methodology for auto transportation companies effective May 2, 2011, as scheduled

When eliminating fuel Surcharges was first proposed by Mr. Eckhart in August of 2010 staff was advised to not notify the autotransportation operators until staff's position was fully developed. The intent to revoke was to be kept from the regulated until the last possible moment. It was further suggested that September was an adequate timeframe to present this to the Commission for resolution which would, of course, minimize any input from the regulated. It was further noted that the autotransportation industry would be the most grievously affected by this proposal and that the Commission could expect a vigorous response from the industry. All of this information is contained in emails and memos generated by WUTC staff.

The initial Open Meeting was actually held on September 30 of 2010. During the intervening period this company tried on numerous occasions to get staff to explain their reasoning for the proposal and to provide us with their recommendations, to no avail. At the meeting, the entire thrust of Mr. Eckhart's testimony before the Commission was that fuel prices were and are stable and that they will remain so into the future. As such there was no reason to continue with fuel surcharges. He provided no supporting data, no surveys, no basis for his statement and assertion that fuel prices would remain stable in the future:

"Fuel prices have remained steady since June 2009 and are predicted to remain so for the foreseeable future, given current economic conditions and weaker demand. Figure 1 illustrates that the steep month-to-month changes that were seen from January 2007 through June 2009 are no longer present. These steep increases were the impetus for creating the simplified process back in 2005. Consequently, the need for a simplified process to grant fuel surcharges by delegating the authority to the secretary no longer exists."

Stakeholders were not permitted to question Mr. Eckhart or challenge his assertions. Comments were made by the autotransportation representatives present providing verifiable facts and data in direct contradiction to Mr. Eckhart. However, the Commission saw fit to accept Mr. Eckhart's testimony in toto to the exclusion of the industry testimony and accept the language submitted by staff for the revocation of fuel surcharges. The Commission issued Order 3 under Docket A-042090. Order 3 revoked fuel surcharges effective January 20, 2011. The Commission's reasoning parroted Mr. Eckhart:

"Fuel prices have remained relatively stable since June 2009, and are predicted to remain so for the foreseeable future, given current economic conditions and a weaker demand. The steep month-to-month changes seen through June of 2009 are no longer present. Consequently, the

need for a simplified, expedited process by which the Commission authorized fuel surcharges no longer exists." The Commission also found by some unfathomable twist of logic that:

"The expedited process by which the Commission authorized fuel surcharges simplified the administrative burden for both the companies and the Commission. The Commission found that, in 2005, rapidly rising and fluctuating fuel prices created an unmet financial burden on the companies." no longer existed. That replacing it with a more burdensome, more costly, less responsive process was in some unexplained fashion in the public's and the state's best interest. If this wasn't such an extreme example of bad regulation it would be humorous.
The Order also found that the regulated companies had availed themselves of the accepted fuel surcharge methodology over the past years of its implementation:

"The companies petitioned for and the Commission granted more than 245 separate fuel surcharges under the expedited process. Auto transportation companies requested ninety-three percent of the surcharges. Commercial ferries requested seven percent. No commercial ferry has requested a fuel surcharge since 2008. No household goods company sought a fuel surcharge."

An interesting observation, the Commission provided relief from escalating fuel prices and the regulated used that avenue of relief. Now because it has been used staff would have the Commission accepted that it is a bad thing. If the companies had not exercised their right for relief, would Mr. Eckhart and the Commission find it to be good? We really have tried to make sense of all of this but can find no logical framework for it.

At the September meeting staff was directed to hold a workshop (this was under A-042090) to get the regulated company's input on staff's position. No such workshop under the Docket in question was held, rather, two weeks later Mr. Gomez filed a CR-101 to formalize the proceeding and create another docket, T-101661. One meeting was held in December of 2010 but rather that an open discussion it was run according to an agenda established by staff. Specific question asked of staff relative to methodology, data, forecasts or need were met with "moving on to the next item…".

Order 3 was set to become effective on January 30, 2011 and an additional meeting was to be held prior to that date to try and come to some sort of consensus. A meeting was held on January 20, just 10 days before the effective date of Order 3. No agenda reflecting the last meeting discussion was provided prior to the meeting. To the consternation of the attendees we were told upon arrival that the meeting was to be an official Open Meeting and that we needed to sign up in order to present arguments. No prior notice of the Open Meeting was given.

At that meeting, Mr. Eckhart, changed his reason for eliminating fuel surcharges from one of stable fuel prices to one of "no confidence" in the fares charged by the operators. It seems that in the few months since Mr. Eckhardt advanced his position of current and future price stability, the county experienced one of the worst oil/fuel price increases in its history. To this date oil continues to climb in price due in part to the mid-east political upheaval and wars and the devastating earthquake in Japan. Since there was no longer any possible defense for his position, which the Commission relied upon to issue Order 3, he took a complete different tack. When

Order 2 was issued a company had to have aged its last rate case by a minimum of two years in order to qualify for treatment under Order 2. No ceiling was put on the age of a rate case just a minimum. Now Mr. Eckhart insists that rate cases over three years of maturity present a significant danger to the public. A complete switch in reasoning.

Once again the logic is impossible to find. Common sense would tell any prudent person that the older the rates case the lower the base fare. Fuel surcharges come and go as fuel prices fluctuate. A high fuel surcharge on a low base fare still results in the best possible fare to the consumer. That fuel surcharge goes away when ever fuel prices drop. Additionally, companies are required to absorb approximately 14% of their fuel costs with no possibility of recovery. Staff would have the public pay fixed higher prices at all times, regardless of possible lower fuel costs by requiring companies to file for a general rate increase to account for temporary conditions. Staff has provided no information as to how companies are to pass on the increased cost of continuing rate cases or how staff would be able to handle this huge increase in work load in any fashion let alone a timely one. Once again, staff is proposing to replace an "expedited process by which the Commission authorized fuel surcharges simplified the administrative burden for both the companies and the Commission" with this travesty on the public, tax payers and regulated.

RECOMMENDATION OF SEATAC SHUTTLE, LLC #1

Order 2 was put in place by the Commission to expedite and reduce the administrative burden for both the regulated and the regulators. They recognized the market conditions directly affecting the operators, these conditions were completely out of the company's control. Fuel surcharges were not authorized by Order 2, they had been a recognized necessary practice, by the Commission, since 2000. The Order just followed the guidelines of good government by reducing costs and administrative burden to on both the regulated and the regulators. The conditions that lead to the authorization of fuel surcharges in 2000 and Order 2 in 2005 exist in an even more exacerbated form today. While staff seeks to revoke Order 2 they have managed to propose to the Commission at the same time the elimination of fuel surcharges altogether, which was not the purpose of the inquiry.

Seatac Shuttle recommends in the strongest possible fashion that fuel surcharges remain in place as they have been for more than ten years. Further, that Order 2 is reinstated. That the Commission abides by the letter and intent of the Governor's Executive Order 10-06 and instructs staff to do the same. No cogent argument can be made for revoking the ability of any company from recovering ordinary expenses in the normal course of business.

In separate documents this company has proposed various changes to the current methodology, all intended to better address the situation in a more streamlined and efficient way. Staff is aware of all of our proposals and we will only lightly revisit them here.

1. Use the most recent surcharge calculation as the base surcharge.

Staff's response does not address the issue but falls back on the specter of increased revenue. Of course it means increased revenue; a ten year old could tell you that. How are we supposed to

recover our expenses without increasing revenue? There is a fetish among staff about revenue. Companies grow, costs go up (in this case fuel) and down. Staff fails to mention that no surcharges were sought by this company from December 2008 through June of 2009 (by staff's logic the Order 2 was necessary then because we didn't use it). Staff is so isolated from the real world by its entrenched death-grip on an arcane formula never meant for transportation that it fails to see what is happening outside its window. The emperor has new clothes!!

2. Effective for a calendar month.

This was the accepted method until a Commission staff member took it upon himself to unilaterally change it to a thirty day period. No input from any of us, he just did it. It has caused problems for both the regulated and the regulators. Months vary from 28 to 31 days, going to a 30 day period meant that effective dates were now all over the map and errors in filing occurred. Someone woke up at the UTC and realized what was going on, now staff supports our and the original position.

3. Use the EIA western Index instead of actual invoice prices.

The use of indexes has been the industry standard for years. Staff has clung to its own arcane formula and format for fuel surcharges. It's time to join the twenty-first century, reduce work load and costs through the use of an index. We suggest the EIA but are open to suggestion.

4. Use a six-month average for passenger count.

Yes, different companies have differences between different period averages. Staff has been forcing one size to fit all for years and now decries the individuality of operators. Which is it? At out last rate case staff forced us to use less than a 12-month average to skew our numbers to a less favorable treatment. Rules and policy really don't matter here; staff does what it can to limit the companies in spite of them.

5. For each company, calculate the applicable surcharge for a range of price increases and prepare a table that shows a range of fuel prices and the applicable surcharges.

Staff agrees with this simplified process, but points out that an LSN would still be required. What concerns us is that staff agrees with four out of five of our proposals, disagreeing with our suggestion (fact) that recovering through fuel surcharges necessarily means more revenue. In spite of this, they still campaign vigorously for the elimination of fuel surcharges or the elimination of the current expedited process.

Staff also now defends the "1% factor" as **sharing the risk** between the company and customers. This is a brand new argument never before heard. There is no risk to share; the companies bear all of the expense, period. The customer is always protected by the holdback; there is no risk on the customer's part. Over the past few years, I have heard from staff that the 1% was at the instigation of the companies, that is false and staff has never been able to back that assertion up with any documentation. Lately it has been stated, repetitively, that the companies are to "**eat**"

the 1% with no explanation as to why other that it should be a cost of doing business for us. Now comes this disingenuous argument of shared risk; this is how staff has responded to virtually all of the company's assertions and comments. If staff's reasoning is flawed, just state something else, no need to defend the position, just move on to a new position.

This company agrees with many of the other proposals put forth by the other companies, but will deal in this comment primarily with those of staff and our own.

STAFF RECOMMENDATION #2

Allow auto transportation companies to implement deferred accounting for fuel expense. Establish deferred accounting for fuel expense by separate order for each company.

This company does not believe that staff means "**allow**" in its recommendation, for if it did, no company would implement it. We believe that staff means to implement this as a way of further regulating the companies to their and the public's detriment. For anyone to believe that we could operate six months in arrears based upon an average with a holdback of 14% of fuel costs is to display a complete lack of any business experience or expertise. A situation could very easily, and very likely arise where because of transient spikes followed by a reduction and a float of fuel costs above the "dead band" but below the trigger point no fuel surcharge would be granted with a resulting loss of tens of thousands of dollars to the companies with no avenue of recovery. Even if after this deferred period, recovery was allowed, some companies might not be able to weather the loss of revenue (there's that bad word again) over such an extended period of time.

The deferred method is not responsive to the market or global conditions; it seeks to average a very dynamic situation for the sake of averaging. The current method allows us to be responsive to the changes in the petro-climate as they occur, not in some artificial way six months after the fact. How does staff suggest we respond to our customers when we raise prices because of a situation six months ago when costs are down at the current time? Do we give them your phone number and tell them to ask you how you are helping them?

Deferred accounting does not work. Staff and the Commission are charged with gathering and incorporating stakeholder input to build a consensus in rule making. No regulated entity supports deferred accounting. Is that clear enough?

SEATAC SHUTTLE RECOMMENDATION #2

Deferred Accounting has no place in the implementation of fuel surcharges for autotransportation. Perhaps it works with utilities, we don't know as we have no experience as a utility. We do, however, have experience as a transportation provider; it has no application in this instance. As a methodology for the implementation of fuel surcharges for transportation, Seatac Shuttle recommends that it be removed from consideration.

STAFF RECOMMENDATION #3

Any company can file a proposed rate change using any other methodology. Those filings must comply with the commission's rules and regulations.

This recommendation is curious in light of Recommendations 1 and 2. On the surface it seems that staff is saying "just file according to the rule and regulations", which is exactly what we have been doing all of these years and wish to continue to do. By reinstating Order 2 under Docket A- 042090 we can get on with the business of providing airport transportation to the public. We will write off the wasted man hours spent on this exercise and try to figure out how to recover the money we have lost in defending against it. However, we must have a clear cut avenue to follow and for now that avenue is Order 2. We are concerned that because of past history there is another interpretation here, we need only look to the example of Mr. Eckhart telling the Commission that Order 2 need be rescinded because fuel prices are stable while at the same time a staff memo declaimed how this docket will be used "to force" operators into general rate cases. Our level of confidence and trust is very low at this time.

SEATACSHUTTLE RECOMMENDATION #3

Once again, Seatac Shuttle recommends that Order 2 be reinstated. We need a definitive statement from the Commission of how we are to proceed and that the WUTC recognizes the extraordinary economic climate that we small businesses exist in. Full compliance with the Governor's Executive Order 10-06 is demanded here. It is our interpretation that through this language, staff seeks "to force" to use their words, all of us into general rate cases whether one is warranted or wanted. We do not seek to change the fuel surcharge methodology from that described in Order 2 at this time, to do so would be detrimental to all. We need to focus on our businesses without the distraction of unnecessary regulation. When the economic climate stabilizes, we would like to examine streamlining and expediting the surcharge methodology, but at this time, the time, dollars and effort required outweigh the benefits. Order 2 isn't broken, don't "fix" it.

SUMMARY

Businesses in this state and in fact every individual in this state as well as the county are experiencing the worst recession in 80 years. The Governor has directed agencies and commissions to not create more regulation or policy affecting business that is not of a critical nature as a response to the current conditions. Staff has chosen to ignore this directive and the Commission has allowed this to continue. Whether or not the Commission can find a loop hole that they feel allows them to proceed, there can be no ethical justification for defying the intent of the Order and destroying the small safety net provided by the Governor. One can only see a

malicious intent on the part of individuals or as a policy of the WUTC exhibited by the dogged insistence of this course of action.

Your Notice takes issue with the fact that our **revenues** have grown 190% since our last rate case. Why not go back a year or two further and show that we have grown 300%? That is the nature of a well run and well received business. We started business with 2 vans and six employees, now we have a small fleet of 12 vans and buses and 30 employees. Is it the expectation of the Commission that we grow, buy vehicles, employ staff and increase frequency on the same revenue we had six years ago? Our profit margin is a function of good management and staff, not our fuel surcharges. Every time fuel goes up and we have to invoke a fuel surcharge, we lose money; you do not allow us to recover the increases in full. Any profits are exclusive of fuel surcharges. By staff's argument, the more efficient we get the greater we are to be penalized. This is the most absurd position that any regulatory body has ever espoused.

There was a time when we came to the staff for assistance with regulatory questions and we received pleasant, professional assistance. Now we only view the staff in an adversarial way, they are not there to assist us; the role is one of hindrance. We too are the public, as businesses we bear a significantly higher proportion of the tax burden in this state than do individuals. We don't expect to be constantly "at war" with our state; that is not the role of the government.

It is our expectation, given the State Economist's latest report, that the Governor's Executive Order will be extended beyond December 31, 2011. Whether it is or isn't however, we expect the Commission to take cognizance of the economic climate at the time and evaluate whether or not another protracted exercise regarding this issue is warranted. At the proper time we would welcome an opportunity to make meaningful and warranted changes to fuel surcharge methodology. But at that time, staff must be receptive to real world conditions and divorce itself from a forty year old artificial formula based on utility monopolies with totally dissimilar requirements and operating procedures. Recognize that the Airport Shuttle Operators provide their services at the lowest prices in the country and stop trying to micro-manage our businesses. On our base fare, our first tier surcharge of 25 cents represents 0.006 of our base fare. Two of the sitting Commissioners sat in hearing room 206 a few years back and proclaimed "we will never micro-manage your business" yet here we are.

The Commissioners are appointed by the Governor to do the people's business and carry out her policies, we are the people; carry out Executive Order 10-06. We close with:

Finding – Short title – intent -- 1995 c 403 of RCW 34.05.328

Essential to this mission is the delegation of authority to state agencies to implement the policies established by the legislature; and that the adoption of administrative rules by these agencies helps assure **that these policies are clearly understood, fairly applied, and uniformly enforced;……..**

Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens…….

When an agency is authorized to adopt rules imposing obligations on the public, that it do so **responsibly**: **The rules it adopts should be justified and reasonable, with the agency having determined, based on common sense** criteria established by the legislature, **that the obligations imposed are truly in the public interest;**

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- *All assertions as to staff's statements and positions are fully documented in documents and recordings received from the WUTC under a Public Information Request. They are not attached here as staff is in full possession of all of them.*

Seatac Shuttle, LLC
d/b/a Whidbey Seatac Shuttle

Michael Lauver