

0001

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In re Application TC-090118 of)
)
 4 SEATAC SHUTTLE, LLC d/b/a) DOCKET NO. TC-090118
 WHIDBEY SEATAC SHUTTLE) Volume I
 5) Pages 1 - 10
 For Extension of Authority)
 6 under Certificate No. C-1077,)
 For a Certificate of Public)
 7 Convenience and Necessity to)
 Operate Motor Vehicles in)
 8 Furnishing Passenger and)
 Express Service as an Auto)
 9 Transportation Company.)

10

11 A prehearing conference in the above matter
 12 was held on April 20, 2009, at 10:02 a.m., at 1300
 13 South Evergreen Park Drive Southwest, Olympia,
 14 Washington, before Administrative Law Judge MARGUERITE
 15 E. FRIEDLANDER.

16

The parties were present as follows:

17

18 SEATAC SHUTTLE, LLC, by MICHAEL LAUVER,
 Co-owner, Post Office Box 2895, Oak Harbor, Washington
 98277; telephone, (360) 679-4003.

19

20 EVERGREEN TRAILS, INC., and SHUTTLE EXPRESS,
 INC., by DAVID L. RICE (via bridge line), Attorney at
 Law, Miller Nash, 601 Union Street, Two Union Square,
 21 Suite 4400, Seattle, Washington 98101; telephone,
 (206) 622-8484.

22

23

24 Kathryn T. Wilson, CCR

25 Court Reporter

0002

1 P R O C E E D I N G S

2 JUDGE FRIEDLANDER: Good morning. Let's be
3 on the record in TC-090118, an application filed by
4 SeaTac Shuttle, LLC, doing business as Whidbey SeaTac
5 Shuttle for extension of the company's existing auto
6 transportation authority under Certificate C-1077.

7 I am Marguerite Friedlander, the
8 administrative law judge presiding over this
9 proceeding. We are here before the Washington
10 Utilities and Transportation Commission on Monday,
11 April 20th, 2009.

12 The purpose of the prehearing conference this
13 morning is to take appearances of the parties and to
14 discuss the schedule for the Commission's consideration
15 of the Application and any other procedural matters
16 that may arise.

17 So let's begin by taking appearances. Please
18 state your full name, the party you represent, your
19 business address, telephone number, fax number, and
20 e-mail address, and I may stop you or ask you to go
21 slower because I can't write that fast. So let's go
22 ahead and begin with the Applicant, SeaTac Shuttle.

23 MR. LAUVER: My name is Mike Lauver,
24 L-a-u-v-e-r. I'm co-owner of Whidbey SeaTac Shuttle.
25 Our address is PO Box 2895, Oak Harbor, Washington,

0003

1 98277. Phone is (360) 679-4003. The fax number is
2 (360) 323-8894; e-mail, mike@seatacshuttle.com.

3 JUDGE FRIEDLANDER: Is that SeaTac no space
4 or dash?

5 MR. LAUVER: That's right. It's all one
6 word, seatacshuttle.

7 JUDGE FRIEDLANDER: Thank you. We also have
8 two protestants in this matter. Appearing on behalf of
9 Evergreen Trails, Inc., doing business as Gray Line of
10 Seattle?

11 MR. RICE: This is David Rice with Miller
12 Nash, LLP, appearing on behalf of Gray Line. I'm also
13 appearing on behalf of Shuttle Express. My business
14 address is 4400 Two Union Square, 601 Union Street,
15 98101. My phone is (206) 777-7424. My fax is (206)
16 622-7485. My e-mail address is
17 david.rice@millernash.com.

18 JUDGE FRIEDLANDER: Again, Miller Nash is all
19 one word, no dash and no space?

20 MR. RICE: Yes.

21 JUDGE FRIEDLANDER: Staff has not appeared
22 today and looks like will not be participating. Let's
23 go into discovery. I need to ask whether the parties
24 anticipate they will be seeking discovery in this
25 proceeding. Is there any reason why the discovery

0004

1 rules should be invoked by the parties?

2 MR. LAUVER: We don't see at this time a need
3 for discovery.

4 MR. RICE: Pardon me. Actually, Shuttle
5 Express would like to see the discovery rule invoked
6 with regard to itself. However, Gray Line would not
7 like to see the discovery rule invoked with regard to
8 it, and one of the things I was hoping to do was to see
9 whether it would be possible to bifurcate it in that
10 matter, where discovery could be conducted with regard
11 to one party but not with regard to another.

12 JUDGE FRIEDLANDER: I can honestly say that's
13 a first for me. I've not heard a request like that
14 before. It's my understanding that when the discovery
15 rules get invoked, it's an all or nothing bag, but I'll
16 definitely go back and look into that. So if one of
17 your clients wants to invoke it, it's my understanding,
18 unless somebody can tell me different, that it's an all
19 or nothing prospect.

20 MR. LAUVER: Presuming it's bifurcated, then
21 it reciprocal on our part for discovery for Shuttle
22 Express.

23 MR. RICE: Right. So Shuttle Express and
24 SeaTac Shuttle would conduct discovery with regard to
25 each other. Gray Line and SeaTac would not conduct

0005

1 discovery with regard to each other.

2 JUDGE FRIEDLANDER: That's fine then. I will
3 go ahead and check into that and put something in the
4 prehearing conference order reflecting the request.

5 MR. LAUVER: I would have some concerns about
6 that at this point, and I haven't had a chance to look
7 at that as to whether we are providing information to
8 one party but not the other are limited from receiving
9 information from one party but not the other. I guess
10 if it's proper at this point, I think I would object to
11 splitting it.

12 JUDGE FRIEDLANDER: Okay. Duly noted, and
13 Mr. Rice, did you have anything to add to that?

14 MR. RICE: Well, I do know that if we do
15 invoke this with regard to Shuttle Express, obviously,
16 SeaTac would have the same, or rights for that company
17 would be mutual. Shuttle could ask questions of SeaTac
18 and vice versa, and we do think in a situation like
19 this, discovery is appropriate just to evaluate some of
20 the claims, and SeaTac might feel that it has some
21 issues on which it wants to see discovery. Certainly
22 it burdens each party equally.

23 MR. LAUVER: My concerns are that both the
24 protestants are represented by the same entity and
25 person and therefore, discovery taken under Shuttle

0006

1 Express could easily be shared or certainly that
2 knowledge taken into account in any protest actions
3 that Mr. Rice might take on behalf of Gray Line.
4 Therefore, I think it's only legitimate that should he
5 have discovery privileges under Shuttle Express that we
6 must have them under Gray Line too.

7 JUDGE FRIEDLANDER: Mr. Rice, did you have a
8 response to that?

9 MR. RICE: You know, we could set up some
10 kind of procedure where we would not provide anything
11 turned over to Gray Line. I suppose we could do that.
12 Gray Line would not be able to dictate what discovery
13 was served, so it only be discovery that Shuttle
14 Express was seeking. I'm not sure there would be a
15 particular advantage to them.

16 MR. LAUVER: Simply that Mr. Rice then has
17 that knowledge to apply to the protest of Gray Line I
18 think is enough to cause concern for us.

19 JUDGE FRIEDLANDER: I see. Mr. Rice, why
20 don't you go ahead and file something in writing so
21 that I have this before me and am not relying on the
22 transcript, and then SeaTac will have an opportunity to
23 respond to the motion.

24 MR. RICE: Okay. So we should file a motion
25 as to the appropriateness of the discovery rule?

0007

1 JUDGE FRIEDLANDER: A motion to invoke
2 discovery rule and a bifurcation. I think that would
3 be the best way to handle this, and I will address it
4 at that time when I receive both the motion and
5 response.

6 MR. RICE: Thank you.

7 JUDGE FRIEDLANDER: Sure. That gets us to
8 the protective order. Does anyone see the need for
9 creation of a protective order, either confidential or
10 highly confidential in this matter?

11 MR. LAUVER: Mr. Rice?

12 MR. RICE: Your Honor, if the discovery rule
13 is invoked, there is a chance, I suppose, that some
14 confidential information could be produced during that
15 process, but that is an issue that is still to be
16 determined. Is it something that perhaps it might be
17 difficult to make a decision on at this point? That's
18 kind of what I'm wondering.

19 JUDGE FRIEDLANDER: So you are asking if a
20 protective order can be issued at a later date?

21 MR. RICE: Yes; depending on where we go with
22 this discovery rule. It really only becomes an issue
23 if the discovery rule is invoked.

24 JUDGE FRIEDLANDER: Right. That can always
25 be decided at a later date keeping in mind that once

0008

1 the information is out there in discovery that it may
2 be too late to invoke it, so just that caveat.

3 MR. RICE: If it's not too much trouble,
4 would it be a good idea to go ahead and invoke it at
5 this time?

6 JUDGE FRIEDLANDER: That's fine. Then if
7 it's not needed, it was still issued under the theory
8 that it may be. That's fine.

9 MR. LAUVER: I think we can concur with that.

10 JUDGE FRIEDLANDER: That's only confidential,
11 not highly confidential, I take it?

12 MR. RICE: That's fine with me.

13 MR. LAUVER: Yes.

14 JUDGE FRIEDLANDER: SeaTac has indicated
15 that's also fine with them. Before we go into the
16 procedural schedule, I would ask just a brief question,
17 because having read the protestant's filings, both
18 protestants indicate a willingness to agree to a
19 settlement of sorts in the form of a restrictive
20 amendment that eliminates allegedly duplicative
21 services. Has anything come of that?

22 MR. LAUVER: No.

23 MR. RICE: Not to this point, Your Honor.

24 MR. LAUVER: SeaTac Shuttle has not been
25 approached by Gray Line or Mr. Rice, and Shuttle

0009

1 Express has placed one brief call that actually did not
2 discuss any settlement but was really a question of why
3 we were applying for this, and that was the extent of
4 it.

5 We would welcome a settlement conference on
6 this with both parties. We are quite confused as to
7 what their issues truly are given the protest that they
8 have filed, so if either the principles of Shuttle
9 Express and/or Gray Line would like to meet with us, we
10 would be more than happy to do so.

11 MR. RICE: Mike, I will forward your comments
12 to the companies and let them know about that.

13 MR. LAUVER: Very good.

14 JUDGE FRIEDLANDER: With that then, why don't
15 we go into formulating a procedural schedule. So first
16 of all before we go off the record to discuss the
17 procedural schedule, I would like for all three of you
18 to file witness lists and cross-examination estimates
19 of time before the evidentiary hearing, and I will also
20 assume that we are not going to be using prefiled
21 testimony in this case. It will just be on the stand.
22 So let's go ahead and be off the record for
23 approximately 15 minutes, I guess. That should
24 probably do it. We will be off the record.

25 (Discussion off the record.)

0010

1 JUDGE FRIEDLANDER: We'll be back on the
2 record. While we were off the record, we discussed a
3 procedural schedule, and the parties have agreed to the
4 following dates: The parties will be filing witness
5 lists on Wednesday, June 3rd, 2009. The Commission
6 will hold an evidentiary hearing in this matter on June
7 10th and 11th, beginning on June 10th at ten a.m. The
8 parties will file simultaneous posthearing briefs on
9 July 8th, and I look to get an initial order out in
10 this matter on or by August 12th.

11 With that, the Commission's procedural rules
12 in Chapter 480-07 of the Washington Administrative Code
13 govern the guidelines of appearing and filing any
14 documents before the Commission, and in this
15 proceeding, the parties must file an original and four
16 paper copies in addition to the electronic version. Do
17 the parties have anything else they want to discuss at
18 this prehearing conference?

19 MR. RICE: No, Your Honor.

20 MR. LAUVER: No, I guess not.

21 JUDGE FRIEDLANDER: With that, this
22 prehearing conference is adjourned.

23 (Prehearing adjourned at 10:34 a.m.)

24

25