

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties against:

PUGET EXPRESS LLC D/B/A PUGET
EXPRESS

DOCKET TC-180624

ORDER 02

INITIAL ORDER DETERMINING
THAT RESPONDENT SHOULD
NOT BE CLASSIFIED AS AN
AUTO TRANSPORTATION
CARRIER; DISMISSING
COMPLAINT

BACKGROUND

- 1 The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine if Puget Express LLC d/b/a Puget Express (Puget Express or Company) is operating as an auto transportation carrier for transportation of passengers for compensation over any public highway in the state of Washington, between fixed termini or over a regular route, and not operating exclusively within the incorporated limits or any city or town, without the necessary certificate required for such operations. The Commission, through its regulatory staff (Staff), also complains against the Company, alleging one violation of RCW 81.68.040, and requests that the Commission impose penalties of up to \$1,000 for the violation alleged in the Complaint and order the Company to cease and desist from all activities subject to regulation under Title 81 RCW.
- 2 The Commission convened an evidentiary hearing before Administrative Law Judge Laura Chartoff on October 25, 2018, at 9:30 a.m. At the hearing, Staff presented documentary evidence and testimony from Commission compliance investigation supervisor, Michael Turcott. Isaiah Fikre, owner of Puget Express, testified for the Company.
- 3 Staff explained that it received an email on May 1, 2018, from a regulated company alleging that Puget Express was providing illegal auto transportation services within the regulated company's certificated area. To determine whether the allegation was true or not, Staff posed as a consumer and emailed Puget Express at Puget Express's email address on record with the Commission (info@pugetexpress.com) and requested a quote

for transportation from the Double Tree Hotel in SeaTac to Pier 91 in Seattle on June 24, 2018. The request was for six passengers with luggage. Staff received a response offering to provide the requested transportation at a charge of \$17 per passenger, per direction. The email signature line reads: Isaiah Fikre, operations manager, Sound Express Tours and Transportation, 3800 South 176th Street, Seattle, Washington 98188. Staff explained it then replied, asking if the Company could accommodate a group of eight. Staff received a response from the Company that it would charge a flat rate of \$136 for the entire group, and that the customer could have the whole van.

4 Staff explained that Puget Express does not have a certificate from the Commission authorizing the Company to engage in auto transportation service. The Staff Investigation Report details Puget Express's history with the Commission.¹ On April 25, 2011, the Commission granted Puget Express a charter and excursion service carrier certificate. On October 27, 2017, the Commission imposed penalties, cancelled Puget Express's charter certificate, and directed Puget Express to cease and desist all operations unless or until its certificate is reinstated or it applies for and obtains a new certificate from the Commission. Then on November 28, 2017, the Commission penalized Puget Express for exceeding the authority of its charter and excursion certificate by providing auto transportation services. Puget Express was found to have provided auto transportation services between hotels in SeaTac and the cruise ship terminals in Seattle during the 2017 cruise season while it held a charter and excursion service carrier certificate.

5 Mr. Fikre testified that Puget Express did cease and desist in accordance with the Commission's 2017 Order.² Mr. Fikre explained that Puget Express is working with VATA Safety Training and Compliance and plans submit an application for operating authority with the Commission when he is ready.³

6 Mr. Fikre further explained that he operates a second company, Sound Express LLC, which is a limousine service that offers transportation to small groups at a flat rate.⁴ Mr. Fikre provided evidence to substantiate that Sound Express LLC is licensed and insured

¹ Exh. MT-1, p. 4-5.

² TR 19:15-20.

³ TR 19:21-25, 20:1-3.

⁴ TR 19:7-14.

as a limousine service.⁵ He also stated that Sound Express LLC does not operate big buses or shuttles because the Company is not qualified under his limousine license.⁶ He further stated that Sound Express LLC uses Puget Express's email address, phone number and mailing address, which is his personal residence.⁷

7 With regard to his email exchange with Staff, Mr. Fikre explained that his wife responded to Staff's email, mistakenly offering a "per person" rather than a flat rate.⁸ When Staff replied that the number of people increased to eight, Mr. Fikre explained he offered a flat rate for the group, which is his normal business practice.⁹

8 Harry Fukano, Assistant Attorney General, Olympia, Washington, represents Staff.¹⁰ Isaiah Fikre, SeaTac, Washington, represents Puget Express, *pro se*.

DISCUSSION AND DECISION

9 RCW 81.04.510 authorizes this special proceeding to determine whether Puget Express is engaging in business or operating as an auto transportation carrier in Washington without the requisite authority. That statute places the burden of proof on the Respondent to demonstrate that its acts or operations are not subject to the provisions of RCW Chapter 81.

10 WAC 480-30-036 defines auto transportation companies as "every corporation or person ... owning, controlling, operating, or managing any motor-propelled vehicle used in the business of transporting persons and their baggage on the vehicles of auto transportation companies carrying passengers, for compensation over any public highway in this state between fixed termini ... and not operating exclusively within the incorporated limits of

⁵ Exh. IF-1, TR 21:5-21.

⁶ TR 24:22-25, 25:1-4.

⁷ TR 22:4-17.

⁸ TR 20:4-25.

⁹ TR 20:4-25, 21:1-4.

¹⁰ In adjudications the Commission's regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

any city or town.” The rule defines “between fixed termini” as the fixed points between which an auto transportation company provides service.

- 11 Whether Puget Express offered to provide auto transportation service as Staff alleges is a question of fact.¹¹ To determine whether passenger carrier service is subject to Commission regulation, we consider, among other factors: 1) the number of passengers and type of vehicle, 2) the origin and destination of the service provided, and 3) the nature of the service; that is, whether a carrier transports unrelated passengers or operates under a single contract.¹² We address each factor in turn.
- 12 **Passengers and vehicle.** Puget Express offered to transport eight passengers by van. Although the vehicle in which Puget Express offered to transport eight passengers may be used to provide auto transportation service,¹³ neither the number of passengers it agreed to transport nor the vehicle in which it proposed to transport those passengers is a dispositive factor in light of the facts presented here.
- 13 WAC 308-83-010(12)(c), which is enforced by the Department of Licensing, defines “executive van limousine” service as a “van or minivan having a seating capacity behind the driver of not less than seven passengers and not more than fourteen passengers.” As such, the service Staff requested fits within the definition of an “executive van limousine” used to provide limousine carrier service.
- 14 **Origin and Destination of Requested Service.** Staff bases its claim that Puget Express offered to provide auto transportation service, in part, on the fact that it requested, and received an offer for, passenger transportation between the Doubletree Hotel in SeaTac and Pier 91 in Seattle, which are fixed termini currently served by a certificated auto transportation company.¹⁴ Mr. Fikre testified that he offered to provide transportation as a limousine carrier. RCW 46.04.276 defines “limousine carrier” as “a person engaged in the transportation of a person or group of persons, who, under a single contract, acquires,

¹¹ RCW 81.04.510.

¹² WAC 480-30-016.

¹³ WAC 480-30-036 defines “auto transportation company” as any company that transports passengers and their baggage between fixed termini or over a regular route regardless of the type of vehicle used or number of passengers transported.

¹⁴ Beeline Tours, LTD d/b/a Seattle Express is certificated to provide service between hotels in SeaTac and Pier 91.

on a prearranged basis, the use of a limousine to travel to a specified destination or for a particular itinerary.”

15 The undisputed evidence shows that Staff requested service under a single contract on a prearranged basis. Accordingly, the fact that Puget Express offered to provide passenger service between fixed termini is not dispositive here because the solicited service falls within the definition of “limousine carrier” service.

16 **Nature of Service.** Rather than inquiring about scheduled routes or shared rides – neither of which fits within the definition of service that limousine carriers are authorized to provide – Staff requested non-stop, door-to-door service for a group of people on a prearranged basis for an agreed upon fare. Staff nevertheless contends that Puget Express’s price quote of \$17 per person establishes that Puget Express extended an offer to provide auto transportation service.¹⁵

17 Whether Puget Express offered to transport persons for a flat rate or quoted a “per passenger” charge is not relevant to our determination of whether the Company’s conduct falls within the definition of “auto transportation” service. Regardless of Staff’s intent when it solicited a quote from Puget Express, it managed only to obtain an offer for passenger transportation service provided under a single contract. Neither Chapter 308-83 WAC nor Chapter 46.72A RCW require limousine carriers to charge a flat, rather than a per-person, rate for service. The rules are silent with respect to how fares must be assessed, and the statute provides only that “the fare for service must be agreed upon prior to departure.”¹⁶ So long as the service is provided under a single contract and the fare is agreed to in advance, it falls within the definition of “limousine carrier” service.

18 **Evidence.** Staff’s entire case rests on one email quote obtained from Puget Express for service that meets the definition of a “limousine carrier,” as discussed above. Mr. Fikre testified that he offered to provide limousine service, and provided undisputed evidence that he offers and provides limousine carrier service through Sound Express LLC, which is a properly licensed limousine company.

19 Mr. Fikre also testified credibly that Puget Express ceased operating in accordance with Commission Order 01 in Docket TE 170950 and TE-170951. Although Staff offered

¹⁵ In response to Staff’s testimony, Mr. Fikre explained that the original offer to transport six passengers at a rate of \$17 per person was made in error, a claim that is substantiated by his subsequent reply in which he quoted a flat rate of \$136 to transport eight passengers.

¹⁶ See RCW 46.72A.020(1).

evidence that Mr. Fikre has been subject to previous enforcement action by the Commission that included penalties for unlicensed operations as an auto transportation carrier, Mr. Fikre explained that Puget Express has engaged a third party advisor to assist the Company with understanding and complying with Commission rules. He testified that Puget Express intends to submit an application to the Commission to provide regulated service once he understands his obligations and responsibilities and has systems in place to ensure compliance.

- 20 Staff also declined to follow up on the specific allegations contained in the email it received from a certificated carrier. According to the complaining carrier, Mr. Fikre provides scheduled service between hotels in SeaTac and cruise terminals in Seattle. Without verifying that these allegations were true by contacting the hotels and inquiring about scheduled service – either via email or in person – or otherwise obtaining its own corroborating evidence, the allegations made by the certificated carrier alone are insufficient to support a finding that Puget Express is providing auto transportation service.
- 21 Overall, the record evidence does not support Staff’s claim that Puget Express offered to provide, or is currently providing, auto transportation service. Rather, we find that Mr. Fikre’s testimony rebuts Staff’s evidence, and that Mr. Fikre satisfactorily demonstrated that he operates as a limousine carrier and not as an auto transportation company. Although Mr. Fikre has previously received penalties for violating Commission rules, his history of noncompliance does not, in and of itself, provide a basis for making a factual finding that he currently operates as an auto transportation carrier without the requisite authority.
- 22 Accordingly, the Commission finds that Puget Express is not conducting business that requires Commission approval without the necessary operating authority. However, the Commission cautions Mr. Fikre and Puget Express that the cease and desist order imposed in Dockets TE-170950 and TE-170951 remains in effect. Consistent with the terms of that order, as well as applicable statutes and rules, Puget Express may not engage in any regulated passenger transportation operations without Commission approval.
- 23 Finally, nothing in this Order prevents Staff from further investigating the operations of Puget Express or Sound Express LLC to determine if Mr. Fikre is engaging in activities that require a permit from the Commission. If additional evidence of illegal conduct is discovered, Staff may bring a new complaint.

24 **Penalty.** Staff recommended the Commission impose a \$1,000 penalty for the one
violation alleged in the Complaint. Because the allegations in the Complaint are not
supported by the evidence in the record, the Commission denies Staff's request to impose
a penalty.

FINDINGS AND CONCLUSIONS

- 25 (1) The Commission is an agency of the state of Washington vested by statute with
authority to regulate persons engaged in the business of providing auto
transportation services, including charter party and excursion carrier services,
over public roads in Washington.
- 26 (2) The Commission has jurisdiction over the subject matter of this proceeding and
over Puget Express.
- 27 (3) The evidence establishes it is more likely than not that Puget Express is not
conducting auto transportation carrier services within the state of Washington, in
violation of RCW 81.68.040.
- 28 (4) The Commission should dismiss Staff's complaint without prejudice.
- 29 (5) The cease and desist order issued against Puget Express in Dockets TE-170950
and TE-170951 remains in effect.

ORDER

THE COMMISSION ORDERS:

- 30 (1) Puget Express LLC d/b/a Puget Express is not classified as an auto transportation
company within the state of Washington.
- 31 (2) Staff's Complaint for penalties is dismissed without prejudice.
- 32 (3) Puget Express LLC d/b/a Puget Express must continue to comply with the
Commission's directive in Order 01 Dockets TE-170915 and TE-170951 that
Puget Express LLC d/b/a Puget Express must cease and desist all operations

unless or until its certificate is reinstated or it applies for and obtains a new certificate from the Commission.

DATED at Olympia, Washington, and effective November 16, 2018.

Laura Chartoff
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 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) 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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).