

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

SHUTTLE EXPRESS, INC.,

Respondent.

DOCKET TC-120323

COMPLAINT

1 The Washington Utilities and Transportation Commission on its own motion, and through its Staff, alleges as follows:

PARTIES

2 Complainant, the Washington Utilities and Transportation Commission (Commission), is an agency of the State of Washington, with authority under state law to regulate auto transportation companies operating within the state of Washington.

3 Respondent, Shuttle Express, Inc. (Shuttle Express) is an auto transportation company that operates within the state of Washington and holds a certificate of public convenience and need from the Commission.

JURISDICTION

4 The Commission has jurisdiction over the subject matter of this Complaint pursuant to RCW 80.01.040, RCW 81.01.010, RCW 81.04.110, RCW 81.04.160, RCW 81.04.380, RCW 81.04.460, and RCW Chapter 81.68. The Commission has jurisdiction over Shuttle Express because it is a public service company under RCW Chapter 81.04.

BACKGROUND

- 5 The following facts, set forth in a Staff Investigation Report of this matter, establish probable cause for the Commission to complain against the activities of Shuttle Express and to seek penalties in accordance with applicable law.
- 6 In April 2008, in Docket TC-072228, Commission Staff completed an investigation into allegations that Shuttle Express was violating one or more Commission rules by operating an independent contractor program. Following the investigation, the Commission issued a penalty assessment to Shuttle Express for violating WAC 480-30-213(2), which requires the driver of a vehicle operated by a passenger transportation company to be the certificate holder or an employee of the certificate holder. Shuttle Express violated the rule when it used drivers who were not employees to provide auto transportation services authorized under Shuttle Express's Commission certificate. The independent contractor drivers in Shuttle Express's program were charter bus carriers holding charter and excursion authority from the Commission. In July 2008 the Commission approved a settlement agreement between Shuttle Express and Commission Staff and imposed a \$9,500 penalty on Shuttle Express for using independent contractor drivers. Within the settlement agreement, Shuttle Express admitted the violations and agreed to comply with all applicable rules and statutes enforced by the Commission.
- 7 In December 2011, Shuttle Express filed a request for a tariff revision with the Commission to increase its rates for auto transportation service in Docket TC-112072. In order to determine if the increased rates were reasonable, Commission Staff reviewed the company's operations, including its revenues and expenses from October 2010 to September 2011. During that review, Commission Staff discovered revenues and expenses associated with services contracted by Shuttle Express to be provided by non-regulated independent contractor-owners. Commission Staff assigned to the rate case reported that Shuttle Express considered the service to be regulated door-to-door service, charged customers the company's published tariff rate for door-to-door service, and contracted to provide the service using non-regulated owner-operator drivers and vehicles such as limousines. At the time of the rate case, Commission Staff did not have enough information to determine if the independent contractor program was appropriate under the Commission's rules. The matter was referred to the Commission's Transportation Safety Enforcement Staff for investigation.

8 Commission Staff’s investigation confirmed that Shuttle Express has been operating an independent contractor program under which the company contracts with owner-operators of limousines or for-hire vehicles to transport Shuttle Express passengers. The independent contractor owner-operators are not regulated by the Commission and provide multi-stop transportation service over Shuttle Express’s regulated routes. Shuttle Express terms this transportation “rescue service,” which Shuttle Express employs when a Shuttle Express vehicle is delayed or otherwise unavailable to provide timely transportation. According to Shuttle Express, it used independent contractor drivers to provide “rescue services” at least 5,715 times between October 2010 and September 2011.

APPLICABLE LAW AND REGULATIONS

9 Under state law, a common carrier includes auto transportation companies. RCW 81.04.010(11).

10 The term “public service company” includes every common carrier. RCW 81.04.010(16).

11 By law, every public service company that violates any order or rule of the Commission or any provision of RCW Title 81 is subject to a penalty of up to one thousand dollars for every such violation. RCW 81.04.380. In the case of a continuing violation, every day’s continuance thereof shall be a separate and distinct offense. *Id.*

12 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. RCW 81.04.110.

COMPLAINT

1. FIRST CAUSE OF ACTION

(Violation of WAC 480-30-213(2), Vehicles and Drivers)

13 The Commission, through its Staff, realleges the allegations contained in paragraphs 2 through 8 above.

- 14 WAC 480-30-213(2) requires the driver of a vehicle operated by a passenger transportation company to be the certificate holder or an employee of the certificate holder.
- 15 Shuttle Express violated WAC 480-30-213(2) by using independent contractor drivers to provide multi-stop service along its regulated routes at least 5,715 times between October 2010 and September 2011.

2. SECOND CAUSE OF ACTION

(Violation of WAC 480-30-216(6), Reserve Equipment)

- 16 The Commission, through its Staff, realleges the allegations contained in paragraphs 2 through 8 above.
- 17 WAC 480-30-216(6) requires all auto transportation companies to maintain sufficient reserve equipment to insure the reasonable operation of established routes and fixed time schedules.
- 18 Shuttle Express violated WAC 480-30-216(6) by failing to maintain sufficient reserve equipment to meet its transportation commitments when it used independent contractors to provide “rescue” transportation at least 5,715 times between October 2010 and September 2011.

3. THIRD CAUSE OF ACTION

(Violation of WAC 480-30-456, Fair Use of Customer Information)

- 19 The Commission, through its Staff, realleges the allegations contained in paragraphs 2 through 8 above.
- 20 WAC 480-30-456 prohibits the release of customer information (that is, the customer’s name, address, and telephone number) without the written permission of the customer.
- 21 Shuttle Express violated WAC 480-30-456 when, in the course of arranging “rescue” transportation of its customers, it shared customer information, without written customer permission, with independent contractors at least 5,715 times between October 2010 and September 2011.

4. FOURTH CAUSE OF ACTION

(Violation of Commission Order)

22 The Commission, through its Staff, realleges the allegations contained in paragraphs 2 through 8 above.

23 In an enforcement proceeding, Docket TC-072228, Shuttle Express committed in a settlement with Commission Staff not to violate WAC 480-30-213(2) or any other applicable laws and rules enforced by the Commission. The Commission adopted the settlement in Order 01 on July 11, 2008.

24 Shuttle Express violated Order 01 in Docket TC-072228 by violating the rule that was at issue in that proceeding, WAC 480-30-213(2), each time the company used independent contractor drivers to provide multi-stop service along its regulated routes between October 2010 and September 2011.

REQUEST FOR RELIEF

25 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380, impose appropriate monetary penalties on Shuttle Express for the violations alleged above.

PROBABLE CAUSE

26 Based on a review of the Staff Investigation Report of this matter, and consistent with RCW 80.01.060, RCW 81.01.010, and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

DATED at Olympia, Washington, and effective May 1, 2013.

GREGORY J. KOPTA
Director, Administrative Law Division