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BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

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In re Application TC-111306 of )  
MILLER SCHMER, INC., d/b/a )  
SEATTLE EXPRESS )  
DOCKET TC-111306 )  
For Extension of Authority under )  
Certificate No. C-862, for a )  
Certificate of Public Convenience )  
and Necessity to Operate Motor )  
Vehicles in Furnishing Passenger )  
and Express Service as an Auto )  
Transportation Company )

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STATUS HEARING, VOLUME II

Pages 36 - 47

ADMINISTRATIVE LAW JUDGE MARTIN LOVINGER

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1:48 P.M.

FEBRUARY 23, 2012

Washington Utilities and Transportation Commission  
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Olympia, Washington 98504-7250

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0037

1 A P P E A R A N C E S

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1                   JUDGE LOVINGER:  Let's go on the record.

2                   Good afternoon.  It is approximately 1:48 on  
3 February 23rd, 2012, in the Washington Utilities and  
4 Transportation Commission's Hearing Room 108 in  
5 Olympia, Washington.  This is the time and place set  
6 for a status conference in Docket No. 111306, In re  
7 Application of Miller Schmer, Inc., doing business as  
8 Seattle Express, for the extension of authority  
9 Certificate No. C-1052, a certificate of public  
10 convenience and necessity to operate motor vehicles in  
11 furnishing passenger and express service as an auto  
12 transportation company.  In Docket TC-111306, Seattle  
13 Express, the applicant, filed an application for the  
14 extension of certificate to revise its existing  
15 authority to include passenger service between cruise  
16 line Terminals 66 and 91 and the SeaTac Airport on  
17 July 20th, 2011.  On August 31st, 2011, Shuttle  
18 Express, Inc. filed protest to the application.

19                   This docket and three other dockets,  
20 TC-111446, TC-111619 and TC-111643, were scheduled for  
21 prehearing at the same time as this matter.  The other  
22 three were consolidated by the Commission.

23                   Seattle Express wanted to delay the hearing of  
24 its extension request, and asked that its application  
25 not be consolidated with the other dockets in order to

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1 see if the need for a hearing and the extension of its  
2 certificate could be avoided by the passenger-proposed  
3 legislation that would remove regulation of airport  
4 shuttles from the jurisdiction of the Commission. No  
5 other party objected to this motion. Seattle  
6 Express's request for severance was granted. This  
7 status conference was set up at that time.

8 My name is Martin Lovinger, and I am the  
9 administrative law judge presiding over these matters.

10 Preliminarily, I would like to start off by  
11 asking everyone at least in the room to turn off your  
12 cell phones, if you have them on, or at least turn  
13 them to silence. Some of the parties are  
14 participating or appearing through the Commission's  
15 bridge line and not in person. I would ask you to  
16 identify yourself each time you speak so that all the  
17 parties, and especially the court reporter, Ms. Smith,  
18 will know who is speaking. Also, please speak as  
19 clearly and audibly as possible, to make sure that we  
20 hear you, and because this proceeding is being  
21 transcribed by our court reporter. She may interrupt  
22 you to let you know that she didn't hear what you were  
23 saying. Let's try to avoid the necessity of repeating  
24 what you have already said.

25 Our first order of business is the taking of

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1 appearances. If you have already provided this  
2 information, then all we will need from you is a name  
3 and spelling of your last name for the court reporter.  
4 If you are making a first appearance now, we are going  
5 to need your business, the address, telephone number,  
6 fax number and e-mail address as well.

7 Thank you.

8 I will start with Commission Staff.

9 MS. CAMERON-RULKOWSKI: Appearing on  
10 behalf of Commission Staff, Jennifer  
11 Cameron-Rulkowski, Assistant Attorney General.

12 JUDGE LOVINGER: There are no other  
13 parties in the room. Are there any parties on the  
14 conference bridge?

15 Can we begin with the applicant, please.

16 MR. WILEY: Yes, Your Honor, David W.  
17 Wiley, attorney for the applicant, Miller Schmer, Inc.  
18 d/b/a Seattle Express. With me in the conference room  
19 is our client.

20 JUDGE LOVINGER: And, Mr. Harlow, I  
21 think you are next.

22 MR. HARLOW: Good afternoon. Thank you,  
23 Your Honor. This is Brooks Harlow, representing  
24 protestant, Shuttle Express, and our contact  
25 information is all on file.

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1 JUDGE LOVINGER: Thank you.

2 With that, I believe we have taken care of all  
3 of those particulars. It's time for us to move on to  
4 preliminary matters. Are there any that we need to  
5 take up before we get down to dealing with the  
6 specifics of the status conference?

7 Hearing none, we will move on.

8 We now need to figure out how to proceed from  
9 this point. I was not privy to any conversation. Has  
10 anything been decided about how we should proceed?

11 MR. WILEY: Yes, Your Honor. Should I  
12 go for the applicant first?

13 JUDGE LOVINGER: Yes.

14 And I'm assuming this is Mr. Wiley?

15 MR. WILEY: Yes, it is. Sorry.

16 JUDGE LOVINGER: Thank you.

17 MR. WILEY: My last name spelling for  
18 the court reporter's benefit, it's W-I-L-E-Y. Dave  
19 Wiley for the applicant.

20 Ever since the hearing on the other three  
21 consolidated applications concluded, well, we have  
22 been talking -- meaning the protestant, protestant's  
23 counsel and myself -- about a restrictive amendment  
24 that might satisfy the protestant's interests in this  
25 proceeding. We have tentatively arrived, or as

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1 Mr. Harlow termed it, preliminarily arrived at  
2 language that would appear to satisfy the interest of  
3 the protestant. There is an issue as presently  
4 configured as to whether the Staff believes from a  
5 policy standpoint that the verbiage should be  
6 approved.

7 I would suggest that we hold in abeyance  
8 further adjudicative proceedings, at least in order to  
9 allow an interval for the parties to hopefully arrive  
10 at final language that the Staff can sign off on and  
11 we can submit to the Commission and yourself for  
12 review and approval.

13 JUDGE LOVINGER: Can I hear from  
14 Commission Staff on this, please?

15 MS. CAMERON-RULKOWSKI: Certainly, Your  
16 Honor.

17 JUDGE LOVINGER: Is this acceptable to  
18 Commission Staff as a procedure?

19 MS. CAMERON-RULKOWSKI: It is acceptable  
20 to Commission Staff. It sounds as though the  
21 protestant and the applicant have been negotiating.  
22 If they have reached agreement and Staff is  
23 comfortable with the agreement and the language, we  
24 would certainly support resolving this by way of a  
25 settlement.

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1                   JUDGE LOVINGER: The applicant is asking  
2 for this at this point, so I am certainly not going to  
3 raise any objections to them. The delay will be  
4 something that they will have to be concerned with.  
5 Do we want to set a date, however, so that if  
6 something doesn't get resolved, the applicant will at  
7 least get a chance for a hearing?

8                   MR. WILEY: Your Honor, speaking for the  
9 applicant, I would say yes for another status  
10 conference/prehearing conference because of the  
11 upcoming cruise season that we heard about off record.  
12 We are concerned that we be timely with respect to  
13 that issue. Yes, we would. I think maybe a two- or  
14 three-week period should be sufficient to come back  
15 onto the record. If we should resolve that before  
16 that, we will of course correspond with the Commission  
17 on copying all parties. You will be notified of the  
18 tentative agreement, and then I assume could decide  
19 whether to strike any status conference that you now  
20 schedule.

21                   JUDGE LOVINGER: Okay. That would be  
22 helpful. I need to --

23                   You don't have a calendar with you, do you,  
24 Ms. Cameron-Rulkowski?

25                   MS. CAMERON-RULKOWSKI: I don't believe



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1 I do. Here is --

2 JUDGE LOVINGER: No, I was actually  
3 talking about the Commission calendar.

4 I am going to need to leave the room for a few  
5 minutes. We are going to go off the record. I am  
6 going to be getting the calendar so we can see what  
7 things look like, because we need to schedule a room,  
8 and we have limited facilities. I will be back in a  
9 few minutes.

10 MR. HARLOW: Your Honor, are we  
11 scheduling an evidentiary hearing or just another  
12 status conference?

13 JUDGE LOVINGER: It would be my  
14 suggestion, based on what you have indicated to me,  
15 that we schedule a status conference. If we are going  
16 to schedule an evidentiary hearing, we are also going  
17 to have to schedule a date for exchange of exhibits  
18 and witness lists, and people are going to have to  
19 start doing preparation. That's okay with me, but...

20 MR. HARLOW: I would prefer just to  
21 schedule the status conference as well.

22 JUDGE LOVINGER: That's what I was  
23 proposing to do.

24 MR. HARLOW: Okay. I just needed  
25 clarity. Thank you.

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1 JUDGE LOVINGER: Now we are off the  
2 record. Thank you.

3 (A brief recess.)

4 JUDGE LOVINGER: We were setting the  
5 time for 1:30 on March 15th for a status conference in  
6 Docket TC-111306. I want to know if anybody at this  
7 time wants to set any other procedural matters in the  
8 possible anticipation of a settlement hearing not  
9 working. What I heard, it sounds like everyone seems  
10 optimistic that this is going to work. If you could,  
11 for the record, say your name and then indicate that,  
12 it would be appreciated.

13 Starting with the applicant, I guess, if we  
14 are looking for somebody.

15 MR. HARLOW: This is Brooks Harlow for  
16 Shuttle Express. No, we don't see a need to develop a  
17 contingency plan. I think the parties should -- I am  
18 optimistic that we will conclude a resolution.

19 JUDGE LOVINGER: Is that your  
20 understanding as well, Mr. Wiley?

21 MR. WILEY: That sounds good to me, Your  
22 Honor. This is Dave Wiley. Yes, I am happily  
23 optimistic on this, okay?

24 JUDGE LOVINGER: Then at this point, I  
25 guess, if there's nothing else left to do, we will

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1 just adjourn.

2 (Status hearing adjourned 2:04 p.m.)

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C E R T I F I C A T E

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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I, Sherrilyn Smith, a Certified

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Shorthand Reporter and Notary Public in and for the

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State of Washington, do hereby certify that the

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foregoing transcript is true and accurate to the best

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of my knowledge, skill and ability.

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IN WITNESS WHEREOF, I have hereunto

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set my hand and seal this 1st day of March, 2012.

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SHERRILYN SMITH

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22 MY COMMISSION EXPIRES:

23

JUNE 2012

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