

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BREMERTON-KITSAP AIRPORTER, INC.

Complainant,

SHUTTLE EXPRESS, INC.

Respondent.

DOCKET NO. TC-110230

AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

1 Bremerton-Kitsap Airporter, Inc. (“BKA”), with address of 5748 Bethel Road, PO Box 1255, Port Orchard, Washington, 98366 (hereinafter “BKA” or “Complainant”), a Washington corporation and holder of Public Convenience and Necessity Certificate No. C-903, by and through its counsel, David W. Wiley of Williams Kastner, 601 Union Street, Suite 4100, Seattle, Washington, 98101 and, pursuant to RCW 81.04.110 and WAC 480-07-370, brings this Amended Complaint against Shuttle Express, Inc., C-975, with an address at 800 SW 16th Street, Renton, Washington, 98057 (hereinafter “Respondent” or “Shuttle Express”). It now specifically asks the Washington Utilities and Transportation Commission to find that Shuttle Express’s recent adoption of Tariffs No. 7 in Docket TC-102067 and predecessor filings exceed or are otherwise contrary to the Commission’s rules including, but not limited to, WAC 480-30-301, WAC 480-30-296, WAC 480-30-306 and WAC 480-30-276(2) and other provisions, by publishing a tariff which, at a minimum, potentially authorizes operations in excess of the scope of the Certificate authority granted to Respondent and by promulgating a tariff rate design that is inconsistent with the uniformity of rates, charges, rules and practices established for the auto transportation by the Commission and which is contrary to the public interest in the auto transporter/airporter field under RCW 81.68 *et al.*

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II. JURISDICTION/STATUTES AND RULES AT ISSUE

2 The Commission has jurisdiction over this Complaint and the Respondent's activities described herein under RCW 81.04.110, 81.68.030, 81.68.040 and WAC 480-30 *et seq.* and various other provisions of law and rule relevant to Respondent's operations as a regulated auto transportation company.

III. STATEMENT OF FACTS AND CONTENTIONS RELIED UPON

3 Complainant, as indicated, is the holder of WUTC Certificate No. 903 which authorizes, *inter alia*, service between Seattle-Tacoma International Airport and various points in Kitsap and Pierce Counties. Certificate C-903 is more traditionally framed as scheduled auto transportation service and existed before Respondent's Certificate C-975, which generally authorizes door-to-door airporter, reservation-only type service in named territories including areas regularly served by Complainant.

4 On information and belief, BKA asserts that the tariff established by Respondent and approved by the Commission in the fall of 2010 features a zip code rate design which actually and/or potentially expands the scope of authority granted to Respondent by implicitly authorizing overlapping service which, through its publication, exceeds the scope of authority granted to Respondent, for instance, by allowing "zip code wide" service in service areas where Respondent has existing stop restrictions. Moreover, that rate design is not expressly or implicitly authorized by the Commission's general rate regulation of the auto transportation industry under WAC 480-30 *et seq.*

5 In addition, revised Section 12 of Shuttle Express's rules and application provision in its current Tariff No. 7 includes express door to door service restrictions unless they are "not being serviced by current operators" and proceeds to identify those restricted hotels and facilities. That item then concludes with the sentence: "Shuttle Express serves all hotels and addresses with Door to door [sic] within Snohomish, King and

Pierce Counties and a 25 mile radius from Paine field into Island and Jefferson Counties and a 25 mile radius from SeaTac.”

6 This type of alternating limitation and territorial-wide service authorization “giving on the one hand, taking with another” reference including vague “catch-alls” about other operators’ service demonstrates the self-contradictory interpretive difficulties in discerning where Shuttle Express is presently authorized to serve and where it has service restrictions.

7 Moreover, many of the tariff filings relative to Tariff No. 7 by Respondent were apparently made pursuant to WAC 480-30-301 and WAC 480-30-306, on one day’s notice to the Commission,¹ and involved numerous withdrawals, corrections, refilings and amendments throughout the year to Tariff No. 7 (*See*, i.e. Docket Nos. TC-100933, 100106, 102067 and 101592).

8 In addition to its review of the tariff publication practices of Respondent relative to its existing certificate, BKA is also asking that the Commission, by this Complaint, issue an Order construing and interpreting the rate design of Respondent so as to resolve the matter of geographic and service restrictions in Respondent’s Certificate. These particularly involve historical references to “commercial zones” established by the now-sunsetted Interstate Commerce Commission and previously adopted by the Washington Utilities and Transportation Commission for motor freight carrier, household movers and auto transportation authority territorial descriptions. By this request, BKA is seeking clarification for the parties of how water boundaries, commercial zones, “25 mile radii,” and previously identified stop restrictions are to be interpreted today in light of varying auto transportation certificates and authorized services that provide door-to-door and/or scheduled stop service under RCW 81.68 *et*

¹ And which consequently would not receive individualized Open Meeting consideration.

seq. and which may have been factors in previous complaints which cumulatively expend significant staff and company resources and which certificate phrasing may tend to cause uncertainty and presumably, confusion, in the eyes of the traveling public.

IV. PRAYER FOR RELIEF

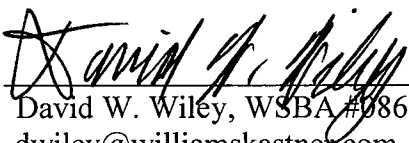
9 Complainant therefore asks, after appropriate notice of hearing, presentation of facts and legal argument in this proceeding, that Tariff No. 7 and the zip code rate design which it promulgated be reformed and revised to conform more specifically with current Commission rules at WAC 480-30 *et seq.* and that any tariff publication found by the Commission to exceed the permissible geographic, interpretive and operational scope of C-975 be suspended pursuant to WAC 480-30-411(1), or otherwise reformed. Further, that Respondent be ordered to comply with the terms of its certificate authority and avoid violation of RCW 81.68.030 and 81.68.040 to the extent that the Commission finds the publication of Tariff No. 7 and the potential rate application practices thereunder exceed certificated authority which the Commission subsequently interprets and regulates pursuant to RCW 81.68.030.

10 For such other just and equitable relief, (including possible alternative dispute resolution under WAC 480-07-700), found to be appropriate by the Commission consistent with the public interest on the record to be adduced herein.

DATED at Seattle, Washington this 7th day of July, 2011.

RESPECTFULLY SUBMITTED,

WILLIAMS, KASTNER & GIBBS PLLC

By 
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dwiley@williamskastner.com
Attorneys for Complainant

CERTIFICATE OF SERVICE


I hereby certify that on July 7, 2011, I caused to be served the original and three (3) copies of the foregoing document to the following address via first class mail, postage prepaid to:

David Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
Attn.: Records Center
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

I certify I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via email to: records@utc.wa.gov;

and an electronic copy via email and first class mail, postage prepaid, to:

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Lyndsay Taylor