

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

Docket No. TC-091931

In re: Application of  
SHUTTLE EXPRESS, INC.,  
For Extension of Certificate No. C-975  
Shuttle Express, Inc. d/b/a Shuttle  
Express

SEATAC SHUTTLE, LLC C-1077  
RESPONSE TO INTERLOCUTORY  
ORDER GRANTING MOTION TO  
STRIKE PROTEST AND TERMINATE  
ADJUDICATIVE PROCEEDING

**INTRODUCTION**

1 On December 22, 2009 Shuttle Express, Inc. (Express) filed an Application for Extension of Authority. Seatac Shuttle (Seatac) filed a protest to that application on January 20, 2010. Shuttle Express submitted a Motion to Strike on February 4, 2010. An INTERLOCUTORY ORDER GRANTING MOTION TO STRIKE PROTEST AND TERMINATE ADJUDICATIVE PROCEEDING (Order) was issued on February 25, 2010.

**DISCUSSION**

2 The Order bases its sole argument for granting the Motion to Strike on an untimely filing of the Protest without regard to the content of that filing. Improper weight is given to process and administrative rule without regard for the nature of the protest or the fact that ALL parties were notified of the nature and exact text of the protest in a timely fashion via electronic

communications. The Order did note that all parties were informed of the Protest prior to the thirty day time frame. Interlocutory Order pg 3 para 11

3 Express cited Orders M. V. 138131, M. V. 135089 and M. V. 140715 as basis for not accepting the electronic filing of Seatac. The Interlocutory Order failed to note that all three Orders cited were more than twenty (20) years old and predated any electronic filing methodologies that exist today. In addition, in M. V. 135089 it was not that there was a late filing but that there was *no* filing. The order went on to state "...The rule reads as follows:

No person who fails to file a protest as provided herein will be permitted to intervene at the hearing. Failure **reasonably** to file a protest as provided herein will be construed as a waiver of opposition and participation in this hearing. (emphasis added)

It is more than reasonable when all parties are served electronically and acknowledge that service.

4 The Order itself cites previous Commission Orders M. V. No. 147856 and M. V. No 153089, these Orders are 22 and 24 years old respectively and again predate any electronic submission process now in place. They do not address the issue of factual receipt of documents. In point of fact neither the Order nor Express cited a single precedent or Order where a filing has been deemed late or denied when filed electronically within the timeframe, for none exist. The total argument of Express and the Order must rest with administrative procedure.

5 The Order refers to the Response of Seatac to the Motion to Strike as not providing information as to how the public would be harmed by its not participating. *“SeaTac Shuttle claims that striking the protest will result in damage to the public but provides no further explanation of how the public might be harmed”* Inter Order at pg 7-8 para 19 Seatac felt that the argument of the Protest was to be the subject of the hearing process, not in an argument about procedure in response to the Motion. However, as the Order raises the issue, Seatac believes that Applicant is and has been in violation of its authority for more than 15 years. This is an ongoing and conscious decision by applicant to ignore the rule of law and the Commission in the furtherance of its business. The Commission has been aware of this violation for at least 9 months now Transcript Vol II Docket # TC-090118 pg 148 ln 17 – pg 149 lin 11 and as the body constituted to regulate the industry should have known years ago of this violation and taken appropriate action. The Commission has either ignored the situation or staff has failed to properly conduct inspections and report its findings to the Commission. The whole purpose of this application is to, after all of these years, bring not Applicant’s operations into compliance but to modify its authority to give the appearance that its current operation is compliant. Seatac speculates that the impetus for this application was its acknowledgement of its noncompliant operation under questioning during hearings under Docket # TC-090118.

6 Express has been operating vehicles with a capacity in excess of authorized capacity in territory where such operation was and has been prohibited. Express now, after years of violation, seeks to modify the language of its authority to permit its non-compliant operations. The blatant

disregard of Express for the Commission's authority brings into question the integrity Express and its willingness to properly serve the public and obey the rule of law. One must also question where the Commission itself has been all these years; it is charged with enforcing its rules and regulations and has apparently failed to do so in the case of this certificate holder.

7 In answering the question posed by the Order, "how would the public be harmed?" Inter Order at pg 7-8 para 19 it would be harmed by permitting Express to sweep under the rug with this Expansion of Authority its violation of many years. It will present to the public a false sense that this company has a history of following the rules. If they are willing to ignore their operating authority and the Commission, what other regulations have they ignored? Where is the guarantee of safe operations?

8 The question is still, does a paper filing that was not filed strictly according to administrative code but was electronically filed with all parties within the timeframe Inter Order at pg 1 para 3 out weigh 15 or more years of violation of RCW (81.68) and state law? If in fact the Commission feels that an administrative error (WAC 480-07) carries more weight than a violation of law and enforces the Motion to Strike then they can no longer plead ignorance as to the alleged violations and have an obligation to deny the application pending resolution of the violations. To do otherwise would be to deny the public the protection that they are charted to provide.

9 Despite the assertions that the deadlines in WAC 480-07-145 are absolute we again point to WAC 480-07-395(4)... “ The commission will liberally construe pleadings and motions with a view to effect justice among the parties. **The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties.**” (emphasis added)

### CONCLUSION AND RELIEF REQUESTED

10 Express is and has not been compliant with either RCW 81.68 or WAC 480-30 for years. It has a history of not complying with filed tariffs Transcript Vol II Docket # TC-090118 pg 108 ln 23 – pg 112 lin 08. The Commission for what ever reason has never investigated to level of compliance of Express. Express now seeks to put a stamp of approval on its operation via a language change in its authority to permit its non-compliant operations. For the reasons stated above this is not in the interest of the public or other certificated operators. Should this be permitted then there is no cause for any other operator to follow the rule of the Commission.

11 Seatac requests that the Interlocutory Order be denied and that the pre-hearing conference be rescheduled. The Commission must hear the protest of Seatac and judgment of the application take into consideration the information supplied at hearing.

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DATED this 12<sup>th</sup> day of March, 2010

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John Solin

President

Seatac Shuttle, LLC.