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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )

5

)

6

Complainant, ) Docket TC-120323

7

v. )

8

SHUTTLE EXPRESS, INC., )

9

Respondent. )

10

EVIDENTIARY HEARING, VOLUME II

11

Pages 12 - 168

12

ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

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9:31 A.M.

16

AUGUST 1, 2013

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Washington Utilities and Transportation Commission

18

1300 South Evergreen Park Drive Southwest

Olympia, Washington 98504-7250

19

20

REPORTED BY: SHERRILYN SMITH, CCR# 2097

21

Buell Realtime Reporting, LLC

22

1411 Fourth Avenue

Suite 820

23

Seattle, Washington 98101

24

206.287.9066 | Seattle

360.534.9066 | Olympia

25

800.846.6989 | National

www.buellrealtime.com

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A P P E A R A N C E S

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ADMINISTRATIVE LAW JUDGE:

3

ADAM E. TOREM

4

Washington Utilities and  
Transportation Commission

5

1300 South Evergreen Park Drive SW  
P.O. Box 47250

6

Olympia, Washington 98504  
360.664.1136

7

8

FOR COMMISSION STAFF:

9

JENNIFER CAMERON-RULKOWSKI

10

Attorney General's Office of Washington  
PO Box 40128

11

Olympia, Washington 98504  
360.664.1186

12

[jcameron@utc.wa.gov](mailto:jcameron@utc.wa.gov)

13

14

FOR SHUTTLE EXPRESS, INC.:

15

JIMY SHERRELL

16

Shuttle Express, Inc.  
800 Southwest 16th Street  
Renton, Washington 98057.

17

206.930.6057

18

[jimysh@attglobal.net](mailto:jimysh@attglobal.net)

19

20

21

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10 EXHIBIT INDEX

11	EXHIBIT	A	R	DESCRIPTION
12	BY-1	19		Staff Investigation of Shuttle Express
13	BY-2	19		Previous Staff Investigation of Shuttle Express
14	SE-1	20		UTC Certificate
15	SE-2	20		Shuttle Express Vehicle List
16	SE-3	20		Shuttle Express Driver List
17	SE-4	20		Shuttle Express Daily Dispatch Report
18	SE-5	20		WAC 480.30.356
19	SE-6	20		Shuttle Express Independent Contractor Agreement
20	SE-7	20		Shuttle Express Certificate of Liability Insurance Covering Independent Contractors
21	SE-8	20		DriveCam Information

0016

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OLYMPIA, WASHINGTON; AUGUST 1, 2013

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9:31 A.M.

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5

JUDGE TOREM: Good morning. It is

6

Thursday, the 1st of August 2013. It's a little after

7

9:30 in the morning. This is the administrative

8

hearing for Docket TC-120323. This is a complaint by

9

the Washington Utilities and Transportation Commission

10

against Shuttle Express, Incorporated. I'm Adam

11

Torem, the administrative law judge presiding.

12

My understanding is that Commission Staff is

13

going to be putting on evidence to prove up four

14

different causes of action that were pled in a

15

complaint as of May 1st. Shuttle Express filed a

16

response May 28th, and we had a prehearing conference

17

back on June the 18th, setting a date last week for

18

the submission of witness lists, exhibit lists and the

19

actual documents.

20

I understand that exchange occurred to the

21

satisfaction of counsel for both sides, and that

22

there's one additional exhibit, and that counsel have

23

already agreed and stipulated to the admissibility of

24

all of the exhibits, including the extra one that will

25

be presented by Shuttle Express today.

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1                   So I am going to ask for appearances, and then  
2 we will come back to the exhibits, quickly describe on  
3 each side and the numbers we've assigned to them, get  
4 those admitted to the record, and swear our first  
5 witness, and get rolling along.

6                   For Staff?

7                   MS. CAMERON-RULKOWSKI: Present on  
8 behalf of Commission Staff, Jennifer  
9 Cameron-Rulkowski, assistant attorney general. My  
10 address is 1400 South Evergreen Park Drive Southwest,  
11 P.O. Box 40128, Olympia, Washington 98504-7250. My  
12 telephone number is (360) 664-1186 and my fax number  
13 is (360) 586-5522. My e-mail address is  
14 jcameron@utc.wa.gov.

15                   JUDGE TOREM: And for Shuttle Express?

16                   MR. SHERRELL: My name is Jimmy Sherrell.

17                   JUDGE TOREM: Mr. Sherrell, can you  
18 spell your name for the court reporter?

19                   MR. SHERRELL: J-I-M, one M, Y,  
20 S-H-E-R-R-E-L-L, and I reside at 800 Southwest 16th  
21 Street, Renton, Washington 98057. My phone number is  
22 (206) 930-6057. My e-mail is jimysh@attglobal.net.

23                   JUDGE TOREM: Excellent.

24                   So we have one witness listed for Staff,  
25 Ms. Betty Young, and she's here today. Staff will

0018

1 carry the burden of proof on its four causes of  
2 actions. There were about six witnesses, I think,  
3 Mr. Sherrell, and you listed yourself as available as  
4 a seventh witness. It looks like we have a group of  
5 those witnesses here.

6 Is there any objection to witnesses staying in  
7 the room for each other's testimony today?

8 MS. CAMERON-RULKOWSKI: Not from Staff,  
9 Your Honor.

10 MR. SHERRELL: Not from Shuttle.

11 JUDGE TOREM: I'm just making sure that  
12 everybody can get comfortable and stick around.

13 Exhibits. Staff has premarked two different  
14 exhibits, I think BY-1 and BY-2.

15 Ms. Cameron-Rulkowski, if you will give me a  
16 quick description of those for the record.

17 MS. CAMERON-RULKOWSKI: Certainly, Your  
18 Honor.

19 The exhibit marked BY-1, that is the  
20 investigation report from Staff that was the basis of  
21 the complaint, and the -- and BY-2 is a Staff  
22 investigation report from a prior investigation of  
23 Shuttle Express involving one of those same rules.

24 JUDGE TOREM: Mr. Sherrell, I understand  
25 from our previous discussion, you don't have any

0019

1 objection to the entirety of these multipage reports  
2 coming in as evidence?

3 MR. SHERRELL: That's true, I do not  
4 have any objection.

5 JUDGE TOREM: So I will admit BY-1 and  
6 BY-2 at this time. I've got a copy for records  
7 center, as well my own copy.

8 Turning, Mr. Sherrell, to your exhibits. You  
9 had submitted, I think, seven exhibits previously, and  
10 as I mentioned, one new one today. We've just labeled  
11 those as SE-1 through 8. We will add the "SE" onto  
12 your items and that's how we will identify them in the  
13 official exhibit list.

14 Did you want to explain what each of these are  
15 for the record?

16 MR. SHERRELL: Exhibit 1 is just our  
17 Utility and Transportation Commission certificate.

18 JUDGE TOREM: This is C-975.

19 MR. SHERRELL: C-975, yes.

20 JUDGE TOREM: Exhibit 2?

21 MR. SHERRELL: Exhibit 2 is the Shuttle  
22 Express vehicle list. Exhibit 3 is the Shuttle  
23 Express driver list. Exhibit 4 is the Shuttle Express  
24 daily dispatch report. Exhibit 5 is WAC 480-30-356.  
25 Exhibit 6 is Shuttle Express Independent Contractor



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1 Agreement. Exhibit 7 is Shuttle Express Certificate  
2 of Liability Insurance covering independent  
3 contractors while under Shuttle Express dispatch.  
4 Exhibit 8 will be DriveCam.

5 JUDGE TOREM: Okay.

6 Ms. Cameron-Rulkowski, you have had a chance  
7 to review these eight exhibits?

8 MR. SHERRELL: Yes, Your Honor.

9 JUDGE TOREM: If I understand correctly,  
10 you have no objections to these being admitted into  
11 the record?

12 MR. SHERRELL: That's correct, Your  
13 Honor.

14 JUDGE TOREM: Okay. Well, that takes  
15 care of those exhibits. I will admit SE-1 through  
16 SE-8. So we have ten total exhibits admitted.

17 How would you like to proceed, with brief  
18 opening statements or do you want to go straight to  
19 witness testimony?

20 MS. CAMERON-RULKOWSKI: I have a very,  
21 very brief opening statement, and then I am prepared  
22 to call Ms. Young and put on Staff's case.

23 JUDGE TOREM: Okay.

24 Mr. Sherrell, are you prepared with an opening  
25 statement as well today? You don't have to be. I am

0021

1 going to allow Staff to make its brief introduction,  
2 and then if you care to respond as to what you think  
3 the evidence might show, that would be fine, or you  
4 can wait until after Ms. Young's testimony and then  
5 tell me what evidence Shuttle Express wants to put on  
6 in sequence.

7 MR. SHERRELL: Your Honor, I would like  
8 to wait until I hear.

9 JUDGE TOREM: Okay. So we will have  
10 Staff put on its case first. We will start with an  
11 opening from Ms. Cameron-Rulkowski.

12 MS. CAMERON-RULKOWSKI: Thank you, Your  
13 Honor.

14 In this complaint proceeding, there are two  
15 issues. The first issue is whether the violations  
16 alleged in the complaint occurred, and the second  
17 issue is, assuming that violations occurred, what the  
18 appropriate penalty should be.

19 Staff's evidence will show that Shuttle  
20 Express committed the violations alleged in the  
21 complaint and that the violations weren't meaningful  
22 penalties [sic]. Staff will make a recommendation  
23 regarding an appropriate penalty. While Staff bears  
24 the burden of proving that the violations occurred,  
25 the Company bears the burden of refuting the basis of

0022

1 Staff's recommendation as to the penalty.

2 That concludes Staff's opening.

3 JUDGE TOREM: Okay.

4 Ms. Young, if you will stand and raise your  
5 right hand, I will swear you in.

6

7 BETTY YOUNG, witness herein, having been  
8 first duly sworn on oath,  
9 was examined and testified  
10 as follows:

11

12 JUDGE TOREM: Thank you.

13 If you can state and spell your first and last  
14 name for the record.

15 THE WITNESS: My first name is Betty,  
16 B-E-T-T-Y, last name Young, Y-O-U-N-G.

17 JUDGE TOREM: Ms. Cameron-Rulkowski.

18

19

20 D I R E C T E X A M I N A T I O N

21 BY MS. CAMERON-RULKOWSKI:

22 Q Good morning, Ms. Young.

23 A Good morning.

24 Q Please state the name of your employer.

25 A The Washington Utilities and Transportation

0023

1 Commission.

2 Q And in what position are you employed by the  
3 Commission?

4 A I'm a compliance investigator.

5 Q Please describe briefly your responsibilities  
6 as they pertain to this matter.

7 A Okay. I conduct compliance investigations  
8 into the operating and safety practices of regulated  
9 transportation companies, as well as companies that  
10 appear to be providing regulated services without the  
11 proper authority. I also recommend enforcement action  
12 against companies that appear to be violating  
13 Commission laws and rules.

14 Q Have you ever investigated Shuttle Express?

15 A Yes.

16 Q How many investigations of Shuttle Express  
17 have you conducted?

18 A Two.

19 Q Approximately when did these investigations  
20 take place?

21 A The first took place in -- between 2007 and  
22 2008, and the most recent was 2012 through 2013.

23 Q What prompted your most recent investigation  
24 of Shuttle Express?

25 A In December 2011, Shuttle Express filed in

0024

1 Docket TC-112072 to increase its rates. As Commission  
2 Staff was reviewing that increase request, it found  
3 revenues and expenses associated with independent  
4 contractors that had been hired by Shuttle Express.  
5 Commission Staff at that time was uncertain whether  
6 the independent contractor program as it appeared  
7 violated Commission rules or not, so the matter was  
8 referred to me and Transportation Safety Enforcement  
9 for investigation.

10 Q Did you document your investigation?

11 A I did.

12 Q And is the documentation of your investigation  
13 in the exhibit marked as BY-1?

14 A Yes. It's titled "STAFF INVESTIGATION OF  
15 SHUTTLE EXPRESS, INC.," and it's dated March 2013.

16 Q And I have a few questions now that relate to  
17 this investigation report. Please turn to the Shuttle  
18 Express exhibit marked as SE-6.

19 A Is that the same as Exhibit 6?

20 Q Yes, it is.

21 A Okay. Yes.

22 Q Can you please identify this exhibit?

23 A Yes, it is the Shuttle Express, Inc.  
24 Independent Contractor Agreement, updated May 22nd,  
25 2009.

0025

1 Q And does the agreement in Shuttle Express's  
2 Exhibit 6 appear to be the same document contained in  
3 your investigation report at Appendix D, which begins  
4 on Page 58?

5 A Yes.

6 Q All right. I would like to ask you some  
7 questions about the rules at issues.

8 With regard to WAC 480-30-213(2), the vehicle  
9 and driver rule, can you please identify where in your  
10 report that you discuss violation of that rule?

11 A Yes, that is discussed on Pages 19 and 20.

12 Q And with regard to WAC 480-30-216(6), can you  
13 please identify where in your report that you discuss  
14 violation of that rule?

15 A Yes, that's on Page 20.

16 Q And with regard to WAC 480-30-456, fair use of  
17 customer information, can you please identify where in  
18 your report you discuss violation of that rule?

19 A That is on Page 20 and 21.

20 Q The complaint also alleges that Shuttle  
21 Express violated a Commission order. Do you discuss  
22 this violation in your investigation report?

23 A Yes.

24 Q Can you please identify where in your report  
25 that you discuss violation of the Commission order?

0026

1           A    It's actually in various places in the report.  
2    I have that noted as Page 3, Page 19, Page 23, Page 24  
3    and Page 25.

4           Q    Can you please summarize the order very  
5    briefly?

6           A    The order in this case or the violation of the  
7    previous order?

8           Q    Can you please summarize the order in  
9    TC-072228?

10          A    Sure. The order in that docket approved a  
11    settlement agreement between Shuttle Express and  
12    Commission Staff and assessed a penalty of \$9,500  
13    against Shuttle Express for violations of Washington  
14    Administrative Code, or WAC 480-30, I believe it was  
15    213(2), and within the settlement agreement, Shuttle  
16    Express committed to complying with Commission rules  
17    and laws going forward.

18          Q    And is that the same rule that you just  
19    identified that you discussed in your investigation  
20    report at Pages 19 to 20?

21          A    Yes.

22          Q    Can you please briefly summarize the  
23    violations of -- can you please briefly summarize the  
24    violations of the order that you identified in the  
25    current investigation?

0027

1           A    In the current investigation, Shuttle Express  
2           violated that previous Commission order by hiring  
3           independent contractor drivers that were not employees  
4           of the company to conduct multistop service on Shuttle  
5           Express's regulated routes. Shuttle also violated the  
6           previous Commission order by violating other  
7           Commission laws and rules that it had committed to  
8           follow.

9           Q    Thank you.

10           In your investigation report, do you discuss  
11           penalizing Shuttle Express?

12           A    Yes.

13           Q    And can you please identify where in your  
14           report you discuss penalties?

15           A    Yes, that's discussed on -- from Pages 21  
16           through 25.

17           Q    With regard to the order that we were just  
18           discussing, was it related to your 2007, 2008  
19           investigation of Shuttle Express?

20           A    Yes, the Commission's order was the outcome of  
21           the proceeding that resulted from the Staff  
22           investigation.

23           Q    And what prompted the investigation of Shuttle  
24           Express that you conducted in 2007 to 2008?

25           A    In June 2007, Shuttle Express staff contacted



0028

1 our motor carrier safety staff with questions  
2 about expanding its charter services at that time to  
3 include independent contractor drivers. So  
4 subsequently, six different companies or independent  
5 contractors applied to the Commission and received  
6 charter and exertion authority. Part of the process  
7 with getting the authority is that our motor carrier  
8 staff goes out and inspects the vehicles. At that  
9 point, motor carrier staff was concerned about the  
10 operating practices of the new charter drivers, or the  
11 independent contractors, and the matter was referred  
12 to me for further investigation.

13 Q And did you document your investigation?

14 A I did.

15 Q And the documentation of your investigation,  
16 is that contained in the exhibit marked BY-2?

17 A Yes.

18 Q And during your recent investigation, did you  
19 consider the 2007 to 2008 investigation?

20 A I did.

21 Q And can you please explain a little bit about  
22 how you did consider that?

23 A Yes. Because the current investigation showed  
24 that Shuttle Express had violated the previous  
25 Commission order, it was important to consider that

0029

1 previous investigation in my analysis. As part of the  
2 enforcement work that I do, I follow the Commission's  
3 enforcement policy. Through its enforcement policy,  
4 the Commission looks at several factors, specific  
5 factors, to determine whether and how to take  
6 enforcement action against particular companies.

7 One of those factors is the Company's history  
8 with violations and penalties and compliance. The  
9 Commission tends to take a much harder line with  
10 companies that have previous violations or histories  
11 of noncompliance or repeat violations or previous  
12 penalties.

13 Q Thank you.

14 A Uh-huh.

15 Q And are you familiar -- I'll ask you to refer  
16 now to Page 30 of your investigation report.

17 A Uh-huh. Okay.

18 Q Are you familiar with RCW 81.68.040, which is  
19 referenced on Page 30 of your investigation report?

20 A Yes.

21 Q In your opinion, do you think that a failure  
22 to comply with rules and statutes enforced by the  
23 Commission could have a bearing on whether an auto  
24 transportation carrier is providing service to the  
25 satisfaction of the Commission?

0030

1           A    I do.

2                         JUDGE TOREM:   For clarity, which Page 30  
3   are we in, BY-1 or 2?

4                         MS. CAMERON-RULKOWSKI:   BY-1.

5                         At this time, Staff would like to reserve its  
6   recommendation until after Shuttle Express has  
7   presented its case.  May I please recall Ms. Young at  
8   that time?

9                         JUDGE TOREM:   That will be fine.

10                        MS. CAMERON-RULKOWSKI:   Thank you, Your  
11   Honor.

12                        JUDGE TOREM:   Any other questions for  
13   Ms. Young at this time from Staff?

14                        MS. CAMERON-RULKOWSKI:   That completes  
15   Staff's direct examination of Ms. Young.

16                        JUDGE TOREM:   Mr. Sherrell, you have a  
17   right to cross-examine this witness about anything she  
18   has testified to, or in fact for the exhibits that she  
19   has put into the record, if you have individual  
20   questions about either of the investigations.

21

22                        C R O S S - E X A M I N A T I O N

23   BY MR. SHERRELL:

24           Q    Ms. Young, I think you did a very nice job  
25   putting these reports together.

0031

1 A Thank you.

2 Q I'll say that right off the top. That was a  
3 lot of work, I recognize that.

4 I guess one of the things that bothered me in  
5 the -- first of all, does Shuttle Express have any  
6 complaints with the Commission?

7 A Consumer complaints?

8 Q Yes.

9 A Not that I'm aware of.

10 MR. SHERRELL: That was one of my  
11 questions that I wanted to ask. For the record, there  
12 is no complaints with the Utility Commission from our  
13 consumers. I just wanted to make that one point.

14 Q On Page 11 --

15 MR. SHERRELL: And that would be the  
16 report that you sent me, the evidence.

17 MS. CAMERON-RULKOWSKI: You are  
18 referring to BY-1?

19 MR. SHERRELL: The exhibit. The only  
20 one I received was Exhibit 1 or 2.

21 MS. CAMERON-RULKOWSKI: That would be  
22 BY-1.

23 MR. SHERRELL: BY-1, okay.

24 MS. CAMERON-RULKOWSKI: I'm sorry, what  
25 was the page number?

0032

1 JUDGE TOREM: 11, I think.

2 MR. SHERRELL: Page 11.

3 Q We were -- stated in there that we were not  
4 responsive to a request from Staff, and I, myself,  
5 replied back that -- a reply and said, If there's any  
6 questions, please give me a call.

7 So would you agree that when we are  
8 communicating with Internet, via e-mail, that there is  
9 no personal interpretation with it and it can be  
10 interpreted different ways and that my intent may have  
11 been not to put Staff off, but to answer --

12 MS. CAMERON-RULKOWSKI: Your Honor, I'm  
13 sorry, I'm going to object.

14 MR. SHERRELL: Okay.

15 MS. CAMERON-RULKOWSKI: This is starting  
16 to sound like testifying.

17 JUDGE TOREM: Mr. Sherrell, if you want  
18 to testify later as to Shuttle Express's conduct,  
19 that's one thing. Is there a question for Ms. Young?

20 MR. SHERRELL: No, that's fine. Okay.

21 (Pause in the proceedings.)

22 JUDGE TOREM: Any other questions that  
23 are on the list there that you think are worth asking  
24 at this time?

25 MR. SHERRELL: A lot of it just covers

0033

1 our testimony.

2 JUDGE TOREM: Okay, and that's fine.

3 This is your opportunity to question her about the  
4 testimony she just gave. I understand Ms. Young will  
5 be called back, and we will reopen Staff's case as to  
6 an ultimate recommendation, once they have heard your  
7 testimony as well, on the penalty amount. So you will  
8 have an additional opportunity to question her on  
9 whatever the recommendation might be toward the end of  
10 today's hearing.

11 MR. SHERRELL: I would like to state  
12 that --

13 JUDGE TOREM: Well, state or question?  
14 We are going to get to your case shortly.

15 MR. SHERRELL: Yeah, okay. I don't have  
16 any questions.

17 JUDGE TOREM: Ms Young, I have a couple  
18 of questions, just so I understand the basis of the  
19 complaint --

20 THE WITNESS: Sure.

21 JUDGE TOREM: -- and how Staff reached  
22 its conclusions.

23

24

25

0034

1 E X A M I N A T I O N

2 BY JUDGE TOREM:

3 Q WAC 480-30-213(2) is the one is that requires  
4 the drivers to be employees of the certificate holder?

5 A Correct.

6 Q And that was the case in the previous  
7 investigation, as well as the current one leading to  
8 this complaint, correct?

9 A Yes.

10 Q How does the Commission define "employee" and  
11 how does the Commission define "independent  
12 contractor"?

13 A I don't know that the Commission defines  
14 "independent contractor" in its rules per se. My -- I  
15 actually don't know how the Commission defines  
16 "employee," but I believe that it would mean someone  
17 that is hired by the Company, on the payroll of the  
18 company, paid by the Company as an employee, not  
19 someone that is self-employed and has their own  
20 separate business. As I understand, these independent  
21 contractors all have their own Unified Business  
22 Identifier number, they are all their own independent  
23 companies.

24 In the contract between the independent  
25 contractors and Shuttle Express, there is a very clear

0035

1 delineation of who the -- that they are not employees  
2 of Shuttle Express, that they are actually their own  
3 employees, the independent contractors.

4           So in terms of how the Commission defines it,  
5 I don't believe it's defined in rule, but that's my  
6 own interpretation.

7           Q    So the basis, though, for your assessment here  
8 and the investigation was the distinction you just  
9 drew, that Shuttle Express has employees and Shuttle  
10 Express has defined folks to be self-employed  
11 independent contractors?

12           A    Correct.

13           Q    And that's also more in evidence in your  
14 report and the -- I think it was Appendix D to your  
15 report, that had the Shuttle Express independent  
16 contractor agreement; is that right?

17           A    Correct. And it's -- the contract in my  
18 current investigation report is substantially similar  
19 to the one in the previous Staff investigation report.  
20 It actually appears in both places, and you can  
21 cross-reference the two. There have been some subtle  
22 changes to it, going from one type of service to the  
23 limo driver/for-hire driver kind of model.

24                    There's some subtle differences, but a lot of  
25 the contract is substantially the same, especially the



0036

1 part about -- it's very clear that these people are  
2 not employees of Shuttle Express.

3 Q So is it Commission Staff's position, then,  
4 that anytime Shuttle Express dispatches somebody for  
5 regulated service, and it's in a vehicle operated by  
6 them under their certificate, it has to be an employee  
7 of the company?

8 A That's what the Commission's rules require,  
9 yes.

10 Q If an independent contractor drives, for  
11 whatever reason, it's a violation of this particular  
12 rule. Is that the Commission's position?

13 A If the independent contractor driver is  
14 providing regulated service, yes. The independent  
15 contractors can provide other service, which is  
16 completely fine under their limo license or under  
17 their for-hire authority. That's regulated through  
18 the Department of Licensing. However, once it  
19 switches over into share ride service on Shuttle  
20 Express's regulated routes, that's where it violates  
21 Commission rules.

22 Q And so for this particular first cause of  
23 action, it's as simple as that from the Commission's  
24 point of view?

25 A That's correct.

0037

1 Q If you are an independent contractor driving  
2 regulated service, it's a violation?

3 A Correct.

4 Q On the second cause of action there's a  
5 description of reserve equipment.

6 A Uh-huh.

7 Q I know your report goes into this in some  
8 detail. WAC 480-30-216(6) just talks about  
9 maintaining sufficient reserve equipment to ensure a  
10 reasonable operation of established routes and fixed  
11 time schedules. Can you, in your own words, tell me,  
12 sum up what does that really mean for a company of  
13 Shuttle Express's size?

14 A In my personal opinion, and through my  
15 investigation, it means that Shuttle Express should  
16 always have enough vehicles available and on hand to  
17 provide any type of regulated service that it is  
18 called to provide. So I believe -- I don't know the  
19 exact rule off the top of my head, but there is an  
20 obligation to serve -- by any auto transportation  
21 company, they are obligated to serve any customer in  
22 their service territory that requires service. This  
23 particular requirement in the rule says they must have  
24 vehicles on hand at all times to provide that service.

25 Q And at peak operating times, whether it's for

0038

1 Shuttle Express or any of the other auto  
2 transportation companies regulated by the Commission,  
3 does that mean they have to have plus or minus a  
4 certain percentage of vehicles that cover that peak,  
5 or how do you measure that?

6 A That is outside my area of my expertise, so I  
7 would not know how to answer that question. I believe  
8 the Commission requires sufficient vehicles. Whatever  
9 that means in the -- in the Commission's  
10 interpretation.

11 I believe in my interpretation, it would mean  
12 you have enough vehicles to serve the public, and you  
13 wouldn't need to call for other vehicles by other  
14 companies, unless you have some sort of  
15 Commission-approved service agreement, which is also  
16 allowed in the rules, or some Commission-approved  
17 lease of your certificate which would allow you to  
18 share that service with another company.

19 Q You mentioned that it would mean not having to  
20 call another company. Is that essentially what's  
21 going on in this case, why the Commission is bringing  
22 the second cause of action?

23 A I'm sorry, could you rephrase the question?

24 Q Sure. In this case, the allegations are that  
25 Shuttle Express is using independent contractors to

0039

1 provide, I think it's termed rescue service, and then  
2 perhaps some other additional upgrade, a luxury  
3 service, which was not the subject of your report.

4 A Uh-huh.

5 Q So when you say they have enough to serve, you  
6 are suggesting that the reason we are here on the  
7 second cause of action is because Shuttle Express is  
8 relying on nonemployees, independent contractors, to  
9 provide this buffer or having enough to serve; is that  
10 correct?

11 A That's how it appears to Staff, yes.

12 Q So when you said not having to call on another  
13 company, that would also mean not having to call on  
14 independent contractors?

15 A Yes.

16 Q And the third cause of action is WAC  
17 480-30-456, and that was the sharing of customer  
18 information. I think it was name, address and  
19 telephone number as specified in the WAC?

20 A Correct.

21 Q If I understood correctly from your report,  
22 that was essentially a de facto violation. By hiring  
23 an independent contractor, the Company had to share  
24 that information, to let them know when they needed to  
25 pick the person up. And so that was added as another

0040

1 violation that just had to happen if you were sharing  
2 information with independent contractors?

3 A Without the customer's approval in writing,  
4 which is what the Commission's rules require. So that  
5 is correct.

6 Again, if Shuttle Express had provided these  
7 services in its own vehicles, this would -- this  
8 violation wouldn't exist, because it can certainly  
9 share customer information among its own employees.  
10 If someone needs a rescue pickup, you send your own  
11 car and driver out. There's no violation there. If  
12 you share that with an outside company, that you don't  
13 have a customer's permission to share that information  
14 with in writing, as the rule requires, creates the  
15 violation.

16 Q Now, what's, in your mind, the general  
17 intention of that particular rule?

18 A It's privacy of customer information, it's  
19 protection of customer information. It's making sure  
20 that the customer is aware that their personal  
21 information, including name, address, phone number,  
22 flight information, is all kept protected and safe by  
23 the Company that they are originally transacting  
24 business with. And a customer has to give informed  
25 consent, which I believe in writing is -- is probably

0041

1 the most reliable way of ensuring that the customers  
2 had informed consent. I think that's the Commission's  
3 intent behind this rule. That would be my guess.

4 Q In your mind, then, it's not only for customer  
5 privacy and safety, it's not just an antimarketing or  
6 sale of information sort of regulation?

7 A I think that's true, yes.

8 Q Okay.

9 And the Commission order I think speaks for  
10 itself, so I don't have any questions on that part of  
11 the investigation or this complaint.

12 A Okay.

13 Q And we will get into the recommendation for  
14 penalty later, so I will hold my questions in that  
15 regard.

16 A Okay.

17 JUDGE TOREM: Mr. Sherrell, does that  
18 raise any additional questions that you might have in  
19 cross-examination for this witness?

20 MR. SHERRELL: No, I just thank you for  
21 your input.

22 JUDGE TOREM: Let me go back to  
23 Ms. Cameron-Rulkowski and see if my questions raise  
24 anything that require redirect examination.

25 MS. CAMERON-RULKOWSKI: Thank you for

0042

1 the opportunity, Your Honor. No.

2 JUDGE TOREM: Okay.

3 Ms. Young, thank you for your testimony. We  
4 will recall you shortly, or at some point this  
5 afternoon, I imagine.

6 THE WITNESS: Okay.

7 JUDGE TOREM: Mr. Sherrell, you have a  
8 number of witnesses listed. Some of them are  
9 scheduled to call in at the eleven o'clock hour.

10 MR. SHERRELL: That's true, yes.

11 JUDGE TOREM: So we have about an hour  
12 until then. My recommendation is that we take a break  
13 before 11:00 and see what kind of testimony we can put  
14 on between now and then.

15 Who would you like to call as your first  
16 witness?

17 MR. SHERRELL: May I make a statement  
18 before we --

19 JUDGE TOREM: Sure, if you want to do  
20 your opening now that would be fine too.

21 MR. SHERRELL: Yes.

22 JUDGE TOREM: Go ahead, sir. And this  
23 will be in the form not of testimony, but just what  
24 you think the evidence will show that you are going to  
25 put on.

0043

1 MR. SHERRELL: Yes.

2 JUDGE TOREM: And then if you want to  
3 give sworn testimony, I will swear you in to do that  
4 at any time.

5 MR. SHERRELL: Okay.

6 I do not feel that Staff understands, or the  
7 Commission understands door-to-door service, as  
8 opposed to scheduled service, and that the violations  
9 that have been imposed, there's three that are  
10 definitely not violations, and one is a violation that  
11 we were forced into, to provide public-needed --  
12 necessity. And I believe that because we are such a  
13 young company within the Commission, that the  
14 Commission really doesn't understand door-to-door  
15 service and what it implies and what it takes to serve  
16 the public. So because we are forced to violate part  
17 of the Commission rules, which we've been doing for 25  
18 years, I think it's an oversight of the Commission, of  
19 not knowing how to regulate us.

20 And my testimony today will -- the people  
21 testifying today will substantiate Shuttle Express's  
22 position, and briefly go over the differences, and  
23 address all four counts of the violation.

24 JUDGE TOREM: Okay. Thank you.

25 MR. SHERRELL: Okay.



0044

1 MS. CAMERON-RULKOWSKI: Who would you  
2 like to call as your first witness?

3 MR. SHERRELL: I would like to call  
4 George Nelson.

5 JUDGE TOREM: Mr. Nelson, if you could  
6 sit and pull that little microphone extension, the  
7 phone, close enough so anybody on the bridge line can  
8 hear you.

9 THE WITNESS: Okay.

10 JUDGE TOREM: And then we will see if we  
11 can get the court reporter to be able to see you, that  
12 will make it easier on her. I will ask you in just a  
13 moment to stand and I will swear you in.

14

15 GEORGE NELSON, witness herein, having been  
16 first duly sworn on oath,  
17 was examined and testified  
18 as follows:

19

20 JUDGE TOREM: If you can state your  
21 first and last name and spell both for the record.

22 THE WITNESS: George Nelson,  
23 G-E-O-R-G-E, N-E-L-S-O-N.

24 JUDGE TOREM: Mr. Sherrell will direct  
25 questions your way.

0045

1 THE WITNESS: Okay.

2

3 DIRECT EXAMINATION

4 BY MR. SHERRELL:

5 Q Okay if I call you George?

6 A That's okay, Mr. Sherrell.

7 Q How long have you been at Shuttle Express?

8 A I've been at Shuttle Express since 2005, so  
9 eight years.

10 Q Were you here in 2008, when we were running  
11 independent contractors in vans?

12 A Yes, I was.

13 Q And what is your job at Shuttle Express?

14 A Right now I'm a dispatch supervisor.

15 Q And what does that entail?

16 A A lot. Organizing the dispatch office, making  
17 sure all the routes are put together efficiently,  
18 making sure we have the dispatching staff to cover all  
19 of our duties, making sure -- working with John Hagen,  
20 making sure we have enough drivers and vans on the  
21 road, and dispatching all of our reservations for  
22 guests.

23 Q Would you describe for the Commission routes  
24 and trips, what that means?

25 A Okay. What we do is we get the reservations

0046

1 on our grid, and then we route them together into  
2 trips geographically, efficiently, so we can get the  
3 most people on each vehicle possible, to make our  
4 operation run more efficient and to ensure that the  
5 guests will get to the airport or at home in a timely  
6 manner.

7 Q Are these routes and trips different every day  
8 or are they same?

9 A Oh, they are different every day.

10 Q Every hour?

11 A Yes.

12 Q When you were here in 2008, did you -- were  
13 you routing and dispatching at that time?

14 A Yes, I was.

15 Q At that time were we using independent  
16 contractors and vans with charter licenses to provide  
17 the same service as the Shuttle Express employee  
18 drivers?

19 A Yes, we were.

20 Q When you planned the day, routed the day, did  
21 you use the independent contractors and employees the  
22 same?

23 A Yes, we did. Yes.

24 Q Explain that a little bit to me.

25 A How we start our day or our shift is you look

0047

1 at the inbounds, that is to the airport, that are  
2 coming up, and you match them up with the vehicles  
3 that are available at that time at the airport or that  
4 are available in that geographical area, where the  
5 pickup begins.

6 Q Did you make any distinction between using an  
7 IC in a van with a charter license or a --

8 A No, no, it was whoever was up next and where  
9 they were at, where they were vacant at to do the next  
10 job.

11 Q Just to help the reporter, let me finish the  
12 question.

13 Do you currently route reservations?

14 A Yes, I do.

15 Q Since 2008, have you routed or planned to use  
16 an independent contractor in our operation?

17 A You're talking about the current -- the town  
18 car/limousine independent contractors, right?

19 Q Yes, since 2008 --

20 A Okay.

21 Q -- going forward to --

22 A Yeah, I just want to make sure I understood.

23 No, we do not. They are set up to do their --  
24 the IC work, the limousines, town cars and SUVs.

25 Q So do you totally separate independent

0048

1 contractor operations and business from Shuttle

2 Express --

3 A Yes. Actually, we have two --

4 Q -- door-to-door --

5 A -- different stations in the dispatch office.

6 One station does the ICs, the other station does the

7 employee van drivers.

8 Q So independent contractors are dispatched

9 totally separate from regulated share ride --

10 A Yes.

11 Q -- patrons?

12 Do you use any independent contractors today

13 for Shuttle Express work?

14 A Yes.

15 Q How do you use them?

16 A We use them in that rescue situation for

17 inbound to the airport, if we have a van that's

18 assigned a three- or four-stop, if the vehicle breaks

19 down. Or if it's a reservation error on the second or

20 third stop and the fourth stop is going to be in

21 jeopardy of not getting to the airport in time to make

22 the flight, and if we have an IC in the area who is

23 vacant, we will assign that vehicle, ask him to do

24 that.

25 Q Talk about your expertise in dispatch for just

0049

1 a second. Were you recently promoted in dispatch?

2 A Yes, I was.

3 Q What's your position?

4 A Dispatcher supervisor.

5 Q So it could be said that you have excellent  
6 knowledge of Shuttle Express operations in dispatching  
7 and routing?

8 A Absolutely.

9 Q In your opinion, is using the ICs' limos/town  
10 cars today similar, or even anything like using the  
11 ICs that were in vans with a charter license in 2008?

12 A For -- no, because the IC charters were doing  
13 door-to-door work, and they would be assigned just  
14 like the employees were, wherever they were vacant and  
15 next up to go.

16 Q In your opinion, and from your past  
17 experience, is rescue service a necessity to serve the  
18 public?

19 A Absolutely.

20 MR. SHERRELL: Your Honor, I have  
21 another witness that will go into more detail on some  
22 of this. This was mainly to point out the difference  
23 of what happened in 2008 and what's occurring today.  
24 I would like to end my questions at this time on that.

25 JUDGE TOREM: Okay.

0050

1           Let me ask Ms. Cameron-Rulkowski if she has  
2 cross-examination questions.

3           Mr. Nelson, if you will direct your attention  
4 to Ms. Cameron-Rulkowski.

5           THE WITNESS: Absolutely.

6           MS. CAMERON-RULKOWSKI: I do, Your  
7 Honor. Thank you.

8

9           C R O S S - E X A M I N A T I O N

10 BY MS. CAMERON-RULKOWSKI:

11         Q    Good morning, Mr. Nelson.

12         A    Good morning.

13         Q    Have you read Staff's investigation report  
14 which is marked as BY-1?

15         A    No, I haven't.

16         Q    Are you familiar with the independent  
17 contractor agreement that is Shuttle Express's  
18 Exhibit 6?

19         A    I don't know the full details to the  
20 agreement. I understand that they are independent  
21 from Shuttle Express and not employees.

22         Q    All right. I may be able to ask this question  
23 of another witness or I may call Mr. Sherrell at a  
24 later time. Thank you.

25           JUDGE TOREM: Mr. Nelson, let me ask

0051

1 just a couple questions so I understand the purpose of  
2 your testimony.

3

4 E X A M I N A T I O N

5 BY JUDGE TOREM:

6 Q If I understand correctly, in 2008 you had  
7 limos available and just worked them like any of the  
8 other vans in the schedule?

9 A The limo vans, yes, that's correct.

10 Q So these independent contractors and  
11 employees, if they were driving vans that you would  
12 use for the multistop service, you scheduled them just  
13 based on next up?

14 A That's correct.

15 Q And since 2008, you have taken a different  
16 approach with them?

17 A For the --

18 Q For the --

19 A -- charter or the ICs that are currently  
20 working for us now?

21 Q Yes, the independent contractors. What's your  
22 approach since 2008?

23 A Well, the independent contractors we have now,  
24 the limos, they are in a total different workstation,  
25 all of their reservations are separated from the



0052

1 door-to-door stuff, and we basically assign them the  
2 same way as we do with door-to-door, just for their  
3 independent contract work.

4 Q They don't get into your basic regulated  
5 service day to day, they are not preplanned into your  
6 schedule?

7 A No.

8 Q Before 2008, they were preplanned as a part of  
9 the regulated fleet?

10 A That's correct.

11 Q So the distinction that I'm supposed to get  
12 from your testimony is in 2008, you learned what the  
13 Commission -- thought the Commission wanted was to  
14 separate those two out in the schedule; is that  
15 correct?

16 A For the ICs that we are currently dealing  
17 with? Yes, we do not preplan any door-to-door  
18 scheduled stuff. We just mainly use them for rescue  
19 situations.

20 Q I think I understand the distinction of the  
21 before 2008 and now.

22 A Okay.

23 JUDGE TOREM: Mr. Sherrell, any  
24 follow-up questions?

25 MR. SHERRELL: I have none, Your Honor.

0053

1 JUDGE TOREM: Ms. Cameron-Rulkowski, any  
2 follow-up?

3 MS. CAMERON-RULKOWSKI: No, Your Honor.

4 JUDGE TOREM: Thank you, Mr. Nelson.

5 THE WITNESS: All right. Thank you.

6 MR. SHERRELL: Go run our business.

7 JUDGE TOREM: So it's now about 10:15.

8 I think we have time to do at least one more witness.

9 MR. SHERRELL: It will be short, Your  
10 Honor. It will be Dean Deangelo.

11 JUDGE TOREM: Mr. Deangelo, will you  
12 just stay standing and I will swear you in.

13

14 DEAN DEANGELO, witness herein, having been  
15 first duly sworn on oath,  
16 was examined and testified  
17 as follows:

18

19 JUDGE TOREM: If you will spell your  
20 first and your last name for the court reporter.

21 THE WITNESS: My name is Dean, D-E-A-N,  
22 Deangelo, D-E-A-N-G-E-L-O.

23 JUDGE TOREM: Mr. Sherrell.

24

25

0054

1                   D I R E C T   E X A M I N A T I O N

2   BY MR. SHERRELL:

3       Q   Dean, how -- can I call you Dean?

4       A   Sure.

5       Q   How long have you been with Shuttle Express?

6       A   I've been here since the beginning of Shuttle  
7   Express, in 1987, so another week it will be 26 years.

8       Q   I think I need to adopt you.

9                   In your tenure at Shuttle Express, what have  
10   you done; what have been your job responsibilities?

11       A   I ran the maintenance department for 22 years,  
12   and I've been on the office side the last four, and  
13   currently I am director of operations.

14       Q   Under director of operations, do you deal with  
15   independent contractors?

16       A   I do.

17       Q   What do you do with them?

18       A   I interact with them in many different ways.  
19   Issues that come up, I'll get statements from them, I  
20   talk to them out in the field, see how things are  
21   going. Kind of PR-type stuff between Shuttle Express  
22   and the individual contractors.

23       Q   Do you ever inspect the vehicles?

24       A   I do, as -- I see them downtown all the time,  
25   I see them at the piers. We gather and we talk about

0055

1 stuff when I look at their cars. I even saw one drive  
2 by and called them up and said, Hey, you've got a  
3 headlight out. You know, things like that.

4 So -- and I -- back when the state patrol used  
5 to do the town car inspections for the licensing, I  
6 worked closely with the officers. They would come to  
7 our building, and I would fix anything that needed to  
8 be fixed with the vehicles that came up during the  
9 inspections, and actually did the licensing on them  
10 and all that stuff. I know exactly what the  
11 inspection consisted of, so I can do that same thing,  
12 just out in the street.

13 Q Background for independent contractors coming  
14 into the company. Can you tell what the requirements  
15 are for us entering into a contract with an  
16 independent person?

17 A Basically, they have to have a business  
18 license, UBI number, L&I insurance, current driving  
19 abstract, driver's license, insurance certificate, all  
20 of which is monitored yearly. Expiration dates, when  
21 they come up, we actually pull referrals from drivers  
22 if the paperwork is not all up to date and current.  
23 That's been more of an issue since the change in  
24 Department of Revenue taking over from the state  
25 patrol and the Department of Licensing. It happens

0056

1 almost every month, where we have to actually stop  
2 referrals to an independent contractor due to whatever  
3 the reason may be.

4 Drug testing, they are all enrolled in a --  
5 they have to have a current clean test when they come  
6 in, and then they have to all be enrolled in random  
7 group testing also.

8 Q Are these vehicles licensed and inspected?

9 A They are. Yes, they are.

10 Q Actually not by the state, they are by the --

11 A Department of Revenue now, basically. It's  
12 still the state.

13 Q That would be by the state, then. Okay.

14 A Yes.

15 Q And do you establish the number of IC, or  
16 contracts that we will have in the company?

17 A I work closely with -- with Mr. Hagen in the  
18 need. The need varies from time of year. Summertime  
19 is busier. In the off-season it gets a little slower,  
20 so we might not carry as many.

21 Q Do you ever adjust the number of cars upward  
22 or ask for more cars to do rescue service, do you plan  
23 on that?

24 A No.

25 Q Your answer was "no"?

0057

1           A    No.

2                         MR. SHERRELL:  I would like to offer our  
3 Exhibit No. 8, SE-8.

4                         JUDGE TOREM:  I'm sure that's already  
5 been admitted.  You want to hand a copy to the  
6 witness, is that what you are asking?

7                         MR. SHERRELL:  Yes.

8           Q    Just briefly, Dean, if you would, just tell us  
9 about DriveCam and how you use it and how you monitor  
10 the drivers.

11           A    DriveCam is a -- it's a digital camera that is  
12 installed in every vehicle that we have on the road.  
13 It constantly records.  It's only -- it only saves  
14 if -- side to side or backward/forward, G-forces  
15 exceed a certain limit.  Then they -- we have two  
16 different types, DriveCam and iDrive.  DriveCam has to  
17 be downloaded by the driver, and then iDrive  
18 automatically downloads through Wi-Fi when they come  
19 into the lot.  Then they are -- the video is reviewed.  
20 You have an inside view and an outside view.  The  
21 videos are all reviewed.

22                         If it's an issue of distracted driving, you  
23 can see if they don't wear their seatbelts, hard  
24 cornering, what have you, hard braking, the following  
25 distance.  All of that stuff is determined by watching

0058

1 the video and put in an employee's file and the  
2 employee is coached or the IC is coached.

3 Q Have you ever discontinued a contract with an  
4 independent contractor for driving safety?

5 A Yes, we have.

6 Q Do you conduct safety meetings with the  
7 drivers, the independent contractors?

8 A We do.

9 Q How many?

10 A Once a quarter.

11 Q The independent contractors, when they are out  
12 in the field and they do a rescue service, are they  
13 monitored by dispatch?

14 A They are.

15 Q Do you know of any independent contractor that  
16 has ever used guest information for marketing?

17 A They are not to contact the guest unless they  
18 are -- information from us is given to them on a trip.

19 Q Have we ever dismissed anybody for trying to  
20 move somebody from Shuttle Express reservations, using  
21 town car service, to just their own independent  
22 service?

23 A Yes, we have.

24 Q Did you mention we were a PSC member?

25 A I didn't. Yes, we are a member. Actually,

0059

1 Steve Salens [phonetic] was one of the founding  
2 members of the Puget Sound Limo Association and was  
3 quite instrumental in rewriting the limo law.

4 Q Are the ICs covered by their own insurance and  
5 company insurance, and if so, what is that?

6 A They all have their own insurance, and then  
7 Shuttle Express carries a \$5 million rider on top of  
8 that.

9 Q Is that only for when they are under dispatch  
10 doing Shuttle Express work?

11 A Yes.

12 MR. SHERRELL: Thank you, Dean.

13 JUDGE TOREM: Cross-exam?

14 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

15

16 C R O S S - E X A M I N A T I O N

17 BY MS. CAMERON-RULKOWSKI:

18 Q Good morning, Mr. Deangelo.

19 A Good morning.

20 Q I have a couple clarifying questions.

21 You testified about licensing of independent  
22 contractor vehicles. Could you please clarify who the  
23 licensing authority is?

24 A They go through the Department of Revenue, if  
25 I'm not mistaken, now. They used to be the Department



0060

1 of Licensing. And they get issued their -- they have  
2 to have their vehicle inspected, and then -- which the  
3 City of Seattle has taken that responsibility over  
4 from the state patrol.

5 Q I'm sorry, I'm going to stop you. Did I just  
6 hear the City of Seattle?

7 A Well, the City of Seattle regulatory agency  
8 now, who also inspects the cabs, actually does limo  
9 inspections, where it used to be the state patrol.

10 Q Thank you.

11 And are you familiar with the independent  
12 contractor agreement that is Shuttle Express's  
13 Exhibit 6?

14 A Somewhat, yes. Not totally.

15 Q And were you here in the room when Mr. Nelson  
16 was testifying about dispatch activities?

17 A I was.

18 Q When he was describing how the dispatch of  
19 independent contractor drivers currently works, is  
20 that consistent with the independent contractor  
21 agreement that is Exhibit 6?

22 A Correct.

23 Q What I want to be sure about is that we are  
24 talking about one program.

25 A Sure, yes.

0061

1 Q And so his testimony was describing the  
2 program that is also described in the independent  
3 contractor agreement; is that right?

4 A Correct.

5 Q Thank you.

6 And I understand that you are familiar with  
7 independent contractor operations from your position?

8 A Correct.

9 Q And are you generally familiar with the types  
10 of trips that the independent contractors are  
11 providing?

12 A Yes. I don't dispatch them or assign them or  
13 any of that kind of stuff, but just in the  
14 interactions. And again, if there's any issues with  
15 any reservation, I can -- I actually do the follow-up  
16 on most of those, so whether it be van drivers,  
17 independent contractors, whatever.

18 Q And these trips that the independent  
19 contractor drivers are providing, our understanding is  
20 that they are multistop. Is that also your  
21 understanding?

22 A Can you restate that?

23 Q Certainly. Is it your understanding that the  
24 trips that the independent contractors are performing  
25 are multistop?

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1           A    Not -- no, no, they are not assigned, like I  
2           said, unless it's a rescue.  In the case of a rescue  
3           maybe, but most of the rescues are just single stops.  
4           As George stated, if it's a three- or four-stop pickup  
5           and they have some issues, they will assign the town  
6           car maybe the last stop, you know, if their flight  
7           times are in jeopardy or they can't get another van to  
8           the person.

9           Q    Okay.

10          A    But they are not assigned -- they are not  
11          assigned more than one stop at all.  It's -- they are  
12          assigned independent contractor limo work.

13          Q    Let's talk about just rescue trips.

14          A    Okay.

15          Q    When a vehicle is dispatched on a rescue, they  
16          could, however, be dispatched on a multistop trip,  
17          correct?

18          A    They could, yes.

19                        MS. CAMERON-RULKOWSKI:  Thank you.  I  
20          have no further -- one moment, please.

21                        (Pause in the proceedings.)

22                        MS. CAMERON-RULKOWSKI:  Thank you.  I  
23          have no further questions for Mr. Deangelo.

24                        JUDGE TOREM:  Mr. Sherrell, follow-up?

25                        MR. SHERRELL:  Yes.

0063

1 R E D I R E C T E X A M I N A T I O N

2 BY MR. SHERRELL:

3 Q When the independent contractors' vehicles get  
4 their license, are they inspected mechanically?

5 A Not -- not to the extent that I performed  
6 inspections in -- in the shop on our vehicles. Is  
7 that -- I think that's the direction we are going.  
8 They don't take tires off, they don't check brakes,  
9 they don't necessarily do a detailed multipoint  
10 inspection.

11 Q Does the airport inspect the vehicles?

12 A They do, when they -- when they go to get  
13 their airport sticker, they will do a walk-around and  
14 they will check them as they come in to do their  
15 trips.

16 Q Have you ever -- have you found any  
17 independent contractor vehicles unsafe in your  
18 inspections?

19 A No.

20 Q If you were to find one unsafe when you were  
21 in the field, would you cancel the contract with them?

22 A Yes, they will automatically be taken off the  
23 referral list and will not be offered any more work.

24 MR. SHERRELL: That's all I have, Your  
25 Honor.

0064

1 JUDGE TOREM: Okay.

2 Any further cross?

3 MS. CAMERON-RULKOWSKI: No, Your Honor.

4 JUDGE TOREM: I don't have any questions  
5 for you, Mr. Deangelo. Thanks.

6 It's now a little after 10:30. Your next  
7 scheduled witness will be at 11:00. I think you have  
8 Mr. Hagen and you figured it would be about an hour?

9 MR. SHERRELL: Your Honor, I will  
10 separate it into basically four different sections, so  
11 we could do one section and see how our time goes, and  
12 then do another, in the interest of getting done.  
13 However you would like.

14 JUDGE TOREM: Let's do this. Let's go  
15 ahead and use the time we have and press on between a  
16 quarter till and 10 of, try and schedule our break  
17 then so we are back, and you hopefully have your  
18 witness on the phone at 11:00.

19 We will swear in Mr. John Hagen at this time.  
20 Wherever we get to we will try to pause or break.

21 MR. SHERRELL: There will be some good  
22 pauses.

23 JUDGE TOREM: And we will just reserve  
24 all cross-examination until afterward.

25 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

0065

1

2 JOHN HAGEN, witness herein, having been  
3 first duly sworn on oath,  
4 was examined and testified  
5 as follows:

6

7 JUDGE TOREM: If you can spell your  
8 first and last name for the court reporter.

9 THE WITNESS: It's John Hagen, J-O-H-N,  
10 H-A-G-E-N.

11 I'm a quiet speaker, so don't be shy, just to  
12 ask me to speak up.

13

14 D I R E C T E X A M I N A T I O N

15 BY MR. SHERRELL:

16 Q Is it okay if I call you John?

17 A Yes.

18 Q How long have you been at Shuttle Express?

19 A Well, I, as with Dean, helped start the  
20 Company in 1987. I worked -- I started as reservation  
21 agent, and I chose to leave the Company in December of  
22 2007. I took a position -- a general manager position  
23 at DART, which was a contract from Community Transit  
24 to provide paratransit service. And then in -- I was  
25 there for three and a half years. Public funding ran

0066

1 out, so I was laid off there. In May of last year, I  
2 got a call from Shuttle Express and I came back to  
3 Shuttle Express. I've been there since -- so 22 years  
4 overall.

5 Q And what is your main expertise with Shuttle  
6 Express, current and what you developed into over the  
7 years?

8 A Well, I think first is I -- you know, I've  
9 done everything at Shuttle Express, expert dispatcher.  
10 Even Community Transit, that is the same service, it's  
11 a share ride service. The only difference is, is  
12 clientele, and there is not an ending point, like an  
13 airport, so it's the same kind of deal.

14 I -- I know more about share ride than anybody  
15 else does in the state of Washington. I think it  
16 would be hard to find somebody in the United States  
17 who knows more about share ride because I've done it  
18 for so long.

19 Did that answer your question?

20 Q Yes, it does.

21 Your duty -- are you privy to the financial  
22 statements at Shuttle Express?

23 A Yes, I am.

24 Q Profit and loss?

25 A Yes, I am.

0067

1 Q And do you evaluate those statements every  
2 month?

3 A Yes, I do.

4 Q And currently what is your main job with  
5 Shuttle Express?

6 A My main job is to match our drivers to the  
7 business. That's my main job.

8 Q So do you oversee routing and -- do you  
9 oversee the routing of Shuttle Express?

10 A Yes, absolutely. When -- my title is revenue  
11 manager at Shuttle Express. In matching business  
12 to -- matching the drivers to the business -- not the  
13 other way around, matching the drivers to the business  
14 requires me to reach out and pretty much touch every  
15 area of the operation, whether it's dispatch or the  
16 independent contractors or whatever. It -- I have to  
17 be involved in the routing, the planning, the  
18 forecasting, the reviewing. Pretty much everything.

19 Q Are you aware of the number of vans that  
20 Shuttle Express has -- I'm going to put this in the  
21 same thing -- and the number of drivers?

22 A Yes.

23 Q Do you take part in the number of drivers that  
24 Shuttle Express has?

25 A Yes, I do, in the hiring process, as well as



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1 the day-to-day process.

2 Q Is there seasonality with Shuttle Express?

3 A Absolutely.

4 Q Can you talk about the seasonality a little  
5 bit and what you do with the driver hiring?

6 A Sure. Shuttle Express is very seasonal and  
7 it's -- it's very extreme. I guess we will start in  
8 the winter. It's -- it's slow. We struggle every  
9 January, February and March just to -- those are very,  
10 very lean months. We have laid off drivers in that  
11 period of time. And we're talking about drivers, not  
12 independent contractors. So we have laid off drivers.  
13 And then you have holidays which pop up and spring  
14 breaks that pop up. For instance, spring break in  
15 February for the grade school-type deal, we are at a  
16 very low point of drivers at that point because it is  
17 very slow and we can't keep the drivers on the  
18 payroll. And then spring break -- winter break pops  
19 up there and that's a big jump, families take off for  
20 the week, and then it drops back down. And then we  
21 start -- we start to slowly increase.

22 I want to say that this last January we -- we  
23 ran under 1,000 people a day in our vans. And -- so  
24 that's our low point, under 1,000 people. There are  
25 days that we run 800 people, which is pretty low for

0069

1 us. So it slowly climbs up and we start hiring. We  
2 have to start planning and hiring in late March/April,  
3 and continue that hiring process even through today.  
4 Our last class is going on this week. So we go from  
5 1,000 people there to days over 3,000 people in July  
6 and August, and sometimes June. So June, July and  
7 August we go up to 3,000 people. September is also  
8 very busy. The second half of September it starts to  
9 drop off and we start into the fall scenario, and  
10 that's where it starts to slow back down again.

11 And then the holidays are just the holidays.  
12 Anybody that has flown during the holidays know what  
13 that's about. It's extremely busy on Thanksgiving and  
14 at Christmas. In between those it's the slowest time  
15 of the year.

16 So we are really doing this. We go up, down,  
17 balance here. That's how our business goes. It's  
18 very common.

19 Q So how do you handle a spike, say, during  
20 Christmastime when we don't have a lot of drivers on  
21 hand?

22 A We do -- well, we'll use overtime, extra  
23 shifts. I am constantly -- what we do with driver  
24 shifts is, is drivers have a shift, but I will move  
25 that around according to business. I think that's

0070

1 important to recognize, that that's how we handle a  
2 lot of the spikes, because it's even spiky during the  
3 day, not only seasonal. But I will move them around,  
4 I will -- it's a daily, constant daily shift of needs,  
5 our drivers to cover -- to cover the business.

6 Q Does Shuttle Express turn down any requests  
7 for business from the traveling public?

8 A No.

9 Q Do you look at past years and try to figure  
10 out some of the needs that might be coming up,  
11 forecasting?

12 A Yeah, I do. I actually use -- especially  
13 right now, we're very similar to last year. I am  
14 always looking back at last year, and to the day, the  
15 day and -- day of. Week, I guess you could say.  
16 Monday to Monday kind of a thing to the last year to  
17 forecast what's going to happen this year. And the  
18 holidays, the days around the holidays, they can be  
19 different. If the Fourth of July falls on a  
20 Wednesday, people aren't really going to travel, but  
21 if it falls on Friday, they are going to travel.

22 MS. CAMERON-RULKOWSKI: Your Honor, I  
23 would like to make an objection at this point. I am  
24 not hearing testimony that's relevant to the  
25 allegations that Staff has presented in its complaint.

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1 I see that this witness is scheduled for an hour, and  
2 I haven't heard any testimony yet that is responsive  
3 to the three causes of action that Shuttle Express has  
4 listed him as a witness for. I would like to -- I  
5 have some concern about staying within the scope of  
6 this proceeding.

7 JUDGE TOREM: Mr. Sherrell.

8 MR. SHERRELL: Yeah, this is actually in  
9 the scope because we have -- been alleged that we do  
10 not have enough drivers, enough equipment to handle  
11 the business. If we don't understand the parameters  
12 of the business and what happens, then you can't  
13 understand how much equipment you do need and whether  
14 Shuttle does have or does not have enough equipment  
15 and drivers. It actually speaks very strongly to the  
16 case.

17 JUDGE TOREM: Ms. Cameron, anything  
18 further on the objection?

19 MS. CAMERON-RULKOWSKI: One moment, Your  
20 Honor.

21 (Pause in the proceedings.)

22 MS. CAMERON-RULKOWSKI: Your Honor, the  
23 rule that Staff has alleged that Shuttle Express  
24 violated is the reserve equipment rule, which is WAC  
25 480-30-216(6). It states, All auto transportation

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1 companies must maintain sufficient reserve equipment  
2 to ensure the reasonable operation of established  
3 routes and fixed time schedules. It doesn't say  
4 anything about drivers.

5 JUDGE TOREM: I'm going to overrule the  
6 objection and allow the testimony so that I can, based  
7 on Mr. Sherrell's earlier opening, understand the  
8 context of the business. I am also sensitive that we  
9 have scheduled just one day for the hearing. I will  
10 allow some use of our time. It looks like we will be  
11 able to finish in plenty of time today.

12 I do understand that if it's not relevant to  
13 the ultimate items, Mr. Sherrell, then I won't be able  
14 to consider it as a direct defense to the complaint.

15 So let's go back. You were saying, Mr. Hagen,  
16 about your forecasting, you go back to individual  
17 weeks, Monday to Monday. I think that's where we left  
18 off.

19 A Jim had asked me if I looked at last year's  
20 and years past. Yes, I looked at -- I do look at  
21 year's and years past to forecast.

22 MR. SHERRELL: Your Honor, I will cut to  
23 the chase on this and we will talk just about  
24 equipment.

25 Q Does Shuttle Express have enough equipment to

0073

1 handle the peaks at all times?

2 A Yes.

3 Q Is there a difference in the equipment  
4 required for a scheduled service and door-to-door, in  
5 other words, in numbers?

6 A Yes.

7 Q Is it easier to forecast scheduled service?

8 A Absolutely.

9 Q And door-to-door, you have to have a lot of  
10 equipment? Do you have to have a lot of equipment for  
11 door-to-door to cover the service?

12 A You have to have a lot of equipment for  
13 door-to-door to cover the service. Scheduled service  
14 is exactly what it is. There's a big difference  
15 between the two. Scheduled service runs on a  
16 schedule. It's going to do this all the time, the  
17 same place. It's pretty easy to determine that I  
18 can -- I can put a bus on that if I have the people,  
19 or I can put a van on it. That can't be done with  
20 share ride, door-to-door. You can't -- even if I  
21 wanted to, that would be way too many stops and you  
22 can't negotiate buses into people's homes very easily.

23 Q So your statement is that Shuttle Express does  
24 have enough equipment to cover both its scheduled  
25 service and its door-to-door service?

0074

1 A Yes.

2 Q You have to answer.

3 A Yes. I'm sorry, I need to speak louder.

4 MR. SHERRELL: I'm through. Thank you,  
5 John.

6 JUDGE TOREM: Let's take a break here.  
7 We will come back at 11:00. I think we will take our  
8 15-minute break. Let's be back in the room a little  
9 bit before 11:00. If somebody calls in, if you will  
10 just speak to them, if we are not on the record, let  
11 them know, then I will swear them in.

12 I think you are anticipating on David Gray,  
13 and so if you want to be in touch with him between now  
14 and 11:00, great. The number to call in you have,  
15 correct?

16 MR. SHERRELL: Yes, I do, Your Honor.

17 JUDGE TOREM: Anything else procedurally  
18 before we take 10 or 12 minutes?

19 MR. SHERRELL: Just off the record.

20 JUDGE TOREM: We will go off the record  
21 and we will come back a little bit before 11:00.

22 (A brief recess.)

23 JUDGE TOREM: We are going to go back on  
24 the record. We now have the next witness for Shuttle  
25 Express, Mr. David Ray is on the line.





0076

1 hear any of the questions. There is a court reporter  
2 taking things down, so if you will wait for  
3 Mr. Sherrell to finish his question and then give your  
4 answer.

5 THE WITNESS: Okay.

6 JUDGE TOREM: Go ahead, Mr. Sherrell.

7

8 DIRECT EXAMINATION

9 BY MR. SHERRELL:

10 Q Hi, Mr. Ray. This is Jim Sherrell with  
11 Shuttle Express. Thank you for testifying today.

12 Have you used Shuttle Express in the past?

13 A Yes, fairly often.

14 Q And have you ever been served with anything  
15 other than a van?

16 A Yes, we've -- we were provided with a town car  
17 one time when the van was unavailable.

18 Q Did we notify you prior to picking you up that  
19 it would be a town car?

20 A Yes, you did.

21 Q And did you pay the same fare for the town car  
22 that you would have paid for a share ride van?

23 A Yes, we did.

24 Q Did you feel your ride was safe?

25 A Oh, yes.

0077

1 MR. SHERRELL: I really don't have any  
2 other questions, Your Honor, other than that.

3 JUDGE TOREM: Ms. Cameron, do you have  
4 any cross-examination for this witness?

5 MS. CAMERON-RULKOWSKI: Yes, Your Honor,  
6 I do.

7 JUDGE TOREM: If you can speak up to  
8 make sure he can hear you.

9 MS. CAMERON-RULKOWSKI: Certainly.

10

11 C R O S S - E X A M I N A T I O N

12 BY MS. CAMERON-RULKOWSKI:

13 Q Good morning, Mr. Ray. This is Jennifer  
14 Cameron-Rulkowski, I am an assistant attorney general  
15 and I am representing Staff in this proceeding. I  
16 have a couple of questions for you.

17 When you did ride in the town car on that one  
18 occasion that you just spoke about, were there other  
19 passengers in the car with you?

20 A Yes, they did another pickup before they took  
21 us to the airport.

22 Q And at that time, were you aware that Shuttle  
23 Express is regulated by the Washington Utilities and  
24 Transportation Commission?

25 A Yeah, because of the problem that led to see

0078

1 that. You know, so that taxis from Seattle can't go  
2 onto the airport, so I was aware of that.

3 Does that make sense?

4 Q About when was that, that you became aware of  
5 Commission regulation?

6 A It's been quite a while. A long, long time  
7 ago, when I was much younger, any taxi from Seattle  
8 could go onto the SeaTac airport. It became a problem  
9 because a lot of times you couldn't get a taxi in  
10 town. They changed the way taxis are handled at the  
11 airport, and that was all handled through the process  
12 you just mentioned.

13 Q And when Shuttle Express informed you about  
14 the town car or sent the town car, did they at any  
15 time receive written permission from you concerning  
16 the change in transportation?

17 A It was verbal permission over the phone.

18 Q I understand.

19 And are you aware that if you have any issues  
20 with Shuttle Express, that you can file an informal or  
21 formal complaint with the Washington Utilities and  
22 Transportation Commission?

23 A Yes, I was. I was aware of that.

24 MS. CAMERON-RULKOWSKI: Thank you. I  
25 have no further questions for Mr. Ray.

0079

1                   JUDGE TOREM: Mr. Ray, this is Judge  
2 Torem.

3

4                   E X A M I N A T I O N

5 BY JUDGE TOREM:

6           Q    Is it just one time that you have been picked  
7 up not in a Shuttle Express van but in a town car?

8           A    Only one time that I can remember, but, you  
9 know, I'm -- you know, my memory is imperfect.

10          Q    All right.

11                So tell me what happened that day, what your  
12 general plans were, and how you made your reservation,  
13 and how you ultimately got to the airport.

14           A    When we go fly out of town, we try to make our  
15 reservations up to a week in advance. We generally --  
16 we generally make them over the phone, but sometimes  
17 we use the website.

18          Q    Okay.

19           A    So I can't remember how we did it in this  
20 particular case. But I think a full day before -- as  
21 I remember, a full day before we were actually able to  
22 leave they told us that -- I can't remember whether it  
23 was a day before or earlier that same day, but you  
24 know, within the 24-hour period before we left, they  
25 called and said there was a problem with the van and

0080

1 they would be sending a town car instead, if that was  
2 okay with us. We said that it was and they sent a  
3 town car out.

4 Q So it was just that simple, you got a call in  
5 advance and they changed the --

6 A Yeah, yeah, it was not a surprise to us. You  
7 know, we knew what was happening.

8 Q Okay.

9 JUDGE TOREM: That's the only --

10 MS. CAMERON-RULKOWSKI: Your Honor.

11 JUDGE TOREM: -- question I have. Let  
12 me see if Mr. Sherrell and Ms. Cameron-Rulkowski have  
13 additional questions.

14 Mr. Sherrell?

15

16 R E D I R E C T E X A M I N A T I O N

17 BY MR. SHERRELL:

18 Q Mr. Ray, part of the hearing is whether we  
19 preplan a pickup days in advance to use a town car or  
20 not. My question to you would be if you could think  
21 of when we contacted you, that might be very important  
22 in this case.

23 A What I remember is it was the day before, you  
24 know, but my memory of this is not perfect.

25 Q Okay. All right.

0081

1 MR. SHERRELL: Thank you, Mr. Ray.

2 JUDGE TOREM: Ms. Cameron?

3 MS. CAMERON-RULKOWSKI: Thank you.

4

5 R E C R O S S - E X A M I N A T I O N

6 BY MS. CAMERON-RULKOWSKI:

7 Q Mr. Ray, I did think of one other question.

8 Do you remember approximately when it was that  
9 you were transported in the town car?

10 A Yeah, it was very early in the morning. It  
11 was still dark, so I would say it was around  
12 four o'clock.

13 Q I'm sorry, I meant the approximate date.

14 A Oh, no, I would have to go back through my  
15 calendar. It would take a long time to figure that  
16 out.

17 Q It wouldn't have to be exact. Was it this  
18 past year or was it before then? Do you remember the  
19 season, perhaps?

20 A I'm thinking it was a year ago, but it seems  
21 to me it was -- yeah, I would say it was about a year  
22 ago. Maybe later in the year, maybe in the fall. I  
23 think that was the time when we went to Peru.

24 MS. CAMERON-RULKOWSKI: Well, thank you.

25 I have no further questions.

0082

1                   MR. SHERRELL: I have no further  
2 questions, Your Honor.

3                   JUDGE TOREM: Mr. Ray, anything else you  
4 want to share with me about your experiences with  
5 Shuttle Express?

6                   THE WITNESS: No. Other than that we  
7 are a regular customer. You know, we've never been  
8 disappointed. You know, they always show up on time  
9 and we've always made our flight.

10                  JUDGE TOREM: All right. Well, a  
11 regular customer is a satisfied customer, I imagine.

12                  Mr. Sherrell, anything else for this  
13 gentleman?

14                  MR. SHERRELL: Mr. Ray, thank you very  
15 much for your time.

16                  THE WITNESS: No problem.

17                  JUDGE TOREM: Thank you, sir. You can  
18 hang up on your end of the phone. We are expecting  
19 another caller to come in on the same line.  
20 Thank you, Mr. Ray.

21                  THE WITNESS: Okay. I'm hanging up now.  
22 Thank you very much.

23                  JUDGE TOREM: So our next witness  
24 scheduled is going to be Ms. Ester Miller. I have the  
25 spelling as you have provided it, as E-S-T-E-R for her

0083

1 first name.

2 MS. CAMERON-RULKOWSKI: Didn't you say  
3 that you were going to provide a different witness?

4 MR. DEVIN SHERRELL: Ester Miller will  
5 not be testifying, actually.

6 JUDGE TOREM: I did not get that  
7 information.

8 MR. DEVIN SHERRELL: Sorry, Your Honor.  
9 Cheryl Hendrickson, S-H-E-R-Y-L [sic], Hendrickson,  
10 H-E-N-D-R-I-E-K-S-O-N.

11 MR. SHERRELL: C-K.

12 MR. DEVIN SHERRELL: C-K-S-O-N.

13 JUDGE TOREM: All right. So Cheryl  
14 Hendrickson is who we expect here for the 11:15 slot?

15 MR. DEVIN SHERRELL: Yes.

16 MR. SHERRELL: Yes.

17 (Pause in the proceedings.)

18 JUDGE TOREM: We have a couple minutes,  
19 so we will just stay on the record, sit at recess I  
20 guess until she calls in, and then we will be ready to  
21 get her sworn in and introduced.

22 (Pause in the proceedings.)

23 JUDGE TOREM: Good morning. Is that  
24 Ms. Hendrickson calling in?

25 THE WITNESS: Yes, it is.



0084

1                   JUDGE TOREM: Hi, this is Judge Torem.  
2 We are in a hearing room in Olympia. We are on our  
3 record here, about ready to take your testimony.

4                   Let me explain who is in the room and then I  
5 will give you an oath of witness and we will get  
6 started.

7                   THE WITNESS: Okay.

8                   JUDGE TOREM: Ms. Hendrickson, I am Adam  
9 Torem, I'm the administrative law judge for the  
10 Washington Utilities and Transportation Commission.  
11 My job really is to listen and see if I have any  
12 questions. Mr. Jimmy Sherrell is here representing  
13 Shuttle Express. After I give you the oath of  
14 witness, he will ask you the first bunch of questions.  
15 And an assistant attorney general, Jennifer  
16 Cameron-Rulkowski, will then have the right to ask you  
17 questions in cross-examination. That's our procedure  
18 here this morning.

19                   Do you have any questions?

20                   THE WITNESS: No.

21                   JUDGE TOREM: All right.

22                   Well, thank you very much for calling in.  
23 Wherever you are, if you will raise your right hand,  
24 I'm doing so here in Olympia.

25                   THE WITNESS: Okay.

0085

1

2 CHERYL HENDRICKSON, witness herein, having been  
3 first duly sworn on oath,  
4 was examined and testified  
5 as follows:

6

7 JUDGE TOREM: Can you spell and state  
8 your first and last name for the court reporter?

9 THE WITNESS: Yes, it is C-H-E-R-Y-L,  
10 last name Hendrickson, H-E-N-D-R-I-C-K-S-O-N.

11 JUDGE TOREM: Thank you.

12 Mr. Sherrell, go ahead.

13

14 D I R E C T E X A M I N A T I O N

15 BY MR. SHERRELL:

16 Q Hi, Ms. Hendrickson. This is Jim Sherrell  
17 with Shuttle Express. Thank you for calling in today  
18 on this.

19 We are talking about using Shuttle Express.  
20 Have you used Shuttle Express in the past?

21 A Yes.

22 Q And have you been served with other than a van  
23 during that time?

24 A Once, yes.

25 Q And can you describe how that happened or...

0086

1           A    Well, basically, yeah, I was watching for him  
2           and I guess a town car, I'm not that familiar with  
3           cars, came into the driveway. I kind of figured it  
4           was somebody from Shuttle, and I think he had a little  
5           sign in the window. Then I went out. He explained  
6           that I guess there was heavy use and that he would be  
7           driving me directly to the airport in a town car. It  
8           was very luxurious and a very nice trip. I got to the  
9           airport just on time.

10          Q    Did the town car make any other stops en route  
11          to the airport?

12          A    It did not.

13          Q    It went directly?

14          A    Yes.

15                       MR. SHERRELL: I have no further  
16          questions.

17                       JUDGE TOREM: Ms. Cameron-Rulkowski, any  
18          follow-up questions?

19

20                       C R O S S - E X A M I N A T I O N

21          BY MS. CAMERON-RULKOWSKI:

22          Q    Good morning, Ms. Hendrickson.

23          A    Good morning.

24          Q    This is Jennifer Cameron-Rulkowski, I am an  
25          assistant attorney general representing Staff in this

0087

1 proceeding. I just have a couple questions for you.

2 Do you remember approximately when it was that  
3 you traveled by town car?

4 A Fall of 1911 -- my goodness. Yeah, it was in  
5 the fall, I think it was September 2011.

6 Q Thank you.

7 And did Shuttle Express ever obtain your  
8 written permission to travel in the town car, as  
9 opposed to the regular vehicle?

10 A Well, except that I had a -- you know, I got  
11 an online voucher and I signed that. I guess that's  
12 sort of written permission, but not ahead of time or  
13 specifically for the town car.

14 Q And the online voucher that you signed, did  
15 that have any indication of vehicle?

16 A I believe it says, you know, that it may be  
17 one of the above kind of things. I guess a multiuse  
18 form or something.

19 Q I see.

20 And are you aware that Shuttle Express is  
21 regulated by the Washington Utilities and  
22 Transportation Commission?

23 A Yes.

24 Q And at the -- at the time of your travel with  
25 the town car, were you aware of that?

0088

1 A Yes.

2 Q Do you know that you can file an informal or a  
3 formal complaint with the Washington Utilities and  
4 Transportation Commission if you have any questions  
5 with Shuttle Express?

6 A Yes.

7 MS. CAMERON-RULKOWSKI: Thank you,  
8 Ms. Hendrickson. I have no further questions.

9 THE WITNESS: Okay.

10 JUDGE TOREM: Ms. Hendrickson, this is  
11 Judge Torem. I just want to delve into one of your  
12 answers to Mr. Sherrell.

13

14 E X A M I N A T I O N

15 BY JUDGE TOREM:

16 Q You said on this particular day you were  
17 expecting a van. Was the first notice you got that it  
18 would be a town car when that town car pulled up in  
19 your driveway?

20 A You know, I think so, but it's possible that  
21 he called. They sometimes call. I've ridden in  
22 Shuttle many times. It's possible that he called  
23 saying that -- the shuttle driver himself, saying that  
24 it was going to be a town car instead of a van or  
25 something.

0089

1 Q Okay.

2 A That may have happened. I can't really  
3 remember. They have often called if there is any  
4 delay or trouble finding the house or, you know, any  
5 kind of thing like that. I have often received a  
6 phone call, as well as the van just showing up.

7 Q How often do you use Shuttle Express?

8 A Probably twice a year.

9 Q Okay.

10 JUDGE TOREM: Let me see if Mr. Sherrell  
11 has any follow-up questions and if not we will be  
12 done.

13 Mr. Sherrell?

14 MR. SHERRELL: I do not, Your Honor.

15 JUDGE TOREM: Ms. Cameron-Rulkowski, any  
16 follow-up?

17 MS. CAMERON-RULKOWSKI: None, Your  
18 Honor.

19 JUDGE TOREM: Well, Ms. Hendrickson,  
20 thanks very much for making time to call in and  
21 provide testimony. I do appreciate it.

22 Anything else you want to tell me about your  
23 experience with Shuttle Express?

24 THE WITNESS: No. I've used them, like  
25 I said, probably over the -- you know, I've probably

0090

1 used them 30 times and I appreciate the service.

2 JUDGE TOREM: Okay. Well, thanks,

3 Ms. Hendrickson.

4 THE WITNESS: Okay.

5 JUDGE TOREM: You can hang up on your  
6 end. We are going to get our next witness as soon as  
7 we can.

8 THE WITNESS: Okay. Thank you.

9 JUDGE TOREM: Thanks, ma'am.

10 THE WITNESS: Bye-bye.

11 MR. DEVIN SHERRELL: Your Honor, I was  
12 unable to contact Ms. Diane Coons [phonetic]. I can  
13 try one more time.

14 JUDGE TOREM: She is scheduled at 11:30.  
15 Let's go ahead, we will just be at recess until either  
16 you reach her or she calls in.

17 MS. CAMERON-RULKOWSKI: Are we off the  
18 record?

19 JUDGE TOREM: We will be off the record.

20 (A brief recess.)

21 JUDGE TOREM: Let's break for lunch.

22 (Lunch recess.)

23 JUDGE TOREM: Let's go back on the  
24 record. It's about 3 minutes after 1:00. Over the  
25 break there were no phone calls, at least that I heard

0091

1     come in on the bridge line that were Ms. Coombs. And  
2     also -- unless Ms. Coombs is calling in right now,  
3     that's not -- we haven't heard from her; is that  
4     right, Mr. Sherrell?

5                     MR. SHERRELL: That's correct.

6                     JUDGE TOREM: So I think what we are  
7     proposing to do is go ahead and resume Mr. Hagen's  
8     testimony at this time.

9                     The only other note to put on the record, as  
10    we had a quick discussion about the Staff Exhibit  
11    BY-1, Appendix D. We have confirmed that is the same  
12    as Shuttle Express's Exhibit 6. We will just go ahead  
13    and accept that there's some duplication and overlap  
14    in the record. That's not the first case that's  
15    happened, where both parties bring the same exhibit.  
16    We will just leave it alone and know if we refer to  
17    one, it's the same as the other.

18                    Mr. Hagen, welcome back. Your oath from this  
19    morning still carries, so I won't readminister that.

20                    THE WITNESS: I understand.

21                    JUDGE TOREM: Mr. Sherrell, if you want  
22    to pick up. My notes say you left off with Mr. Hagen  
23    at about 10:45, dealing with the question of  
24    sufficient reserve equipment. That was the last set  
25    of questions we had covered.



0092

1                   MR. SHERRELL: I think I passed. I  
2 think I was done, wasn't I? I wasn't done?

3                   JUDGE TOREM: I think we got through  
4 sufficient reserve equipment. According to your  
5 witness list, he was going to handle not only the  
6 first and the second cause of action, but also the  
7 customer information piece on the third cause of  
8 action. I'm not sure how else you were structuring  
9 your questions.

10                  Go ahead and take a look at your notes. If  
11 there are additional questions for Mr. Hagen, you can  
12 ask them now. If not, we will defer to  
13 cross-examination for Staff, and see if there's  
14 further redirect when you come back.

15                  Go ahead and take a moment.

16                  MR. SHERRELL: Just for clarification, I  
17 kind of separated this into the different alleged  
18 violations, so should I just go ahead and do John  
19 Hagen all the way through and then --

20                  JUDGE TOREM: Yes, please.

21                  MR. SHERRELL: Okay, all right.

22

23                  D I R E C T   E X A M I N A T I O N (Cont'd)

24 BY MR. SHERRELL:

25                  Q   Mr. Hagen, do you have information of when

0093

1 Mr. Ray booked his trip and used -- and was rescued by  
2 Shuttle Express for that September 2011...

3 A I'm sorry, ask that again, I didn't hear you.

4 Q Do you know when Mr. Ray used -- used our  
5 rescue system for Mr. Ray?

6 A Do I know when he did?

7 Q The date?

8 A No, I don't.

9 Q Okay.

10 I would like to talk about Shuttle Express to  
11 the airport, and we're talking about door-to-door vans  
12 only. We are going to talk about from the airport  
13 separately.

14 Do you route for -- to the airport only?

15 A Do we route to the airport only?

16 Q Yes.

17 A I'm sorry, Jim, I don't understand that.

18 Q When you route for the day, do you route just  
19 to the airport or do you route to the airport and from  
20 the airport?

21 A Oh, I see, what your question is. Okay.

22 So our routing consists of routing to the  
23 airport only. From the airport is not -- it's not  
24 combined at the same time.

25 Q Okay.

0094

1           A    We've tried that before and it doesn't help us  
2    out.

3           Q    In your routing, is multiple stops important?

4           A    Yes, it is.  We -- we try to -- with our  
5    routing we build up, try to build our load factors.  
6    We want to have more than -- one stop nobody is making  
7    money doing that.  Two, probably not.  Three is where  
8    we start to get profitable.

9           Q    So is this how you set our prices?

10          A    Yeah, pricing is absolutely set on multiple  
11   stops.

12          Q    Do you put routes together for a day's  
13   operation?  Just a second.  We already talked about  
14   that.

15                How do you plan for how many vans or drivers  
16   you will need in a day, specifically by time and day?

17          A    Okay.  So we -- we -- people will make  
18   reservations in advance.  We will let them make them  
19   as long as -- you know, whatever.  They can make a  
20   reservation a year in advance.  I monitor all of  
21   those.  I also -- I do -- I forecast.  You know,  
22   people will make reservations up to the last minute,  
23   pretty much, of their flight.

24                So I do -- I still need to forecast.  That's  
25   based off of last year's numbers, it can be based off

0095

1 what the current trend is right now, how we're doing  
2 for the year, those things. I do it by per hour and I  
3 monitor the number of drivers that I already have  
4 scheduled. I subtract based on what we have. Every  
5 hour is different.

6 Q Do you plan for company vans only when you do  
7 this?

8 A Share -- we're talking about door-to-door  
9 reservations?

10 Q Share ride, yes.

11 A Share ride goes to vans, to our employee vans.  
12 It's planned that way, period.

13 Q Do you ever grant -- route or plan to use ICs  
14 doing that work?

15 A No.

16 Q What can cause a van not to be able to make a  
17 route as planned?

18 A Okay. The big one around here it's traffic,  
19 there's weather, there are guests not being ready to  
20 go, there's mechanical issues.

21 (Pause in the proceedings.)

22 A I'm sorry, I'm drawing a blank. There's a  
23 myriad of things that get -- that can -- that's a  
24 little bit out of our control.

25 Q If we get 300 walk-ups, unexpected walk-ups in

0096

1 an hour, can that affect how we serve the inbound to  
2 the airport?

3 A It can. And it's actually happened before,  
4 where we had very much -- very -- a lot more than  
5 expected number of people, a lot more. It will impact  
6 the inbound. The routes become -- we need to get  
7 people out of the airport, so the routes become fuller  
8 out of the airport. It takes longer to drop people  
9 off than anticipated and it starts to put pressure on  
10 the inbound routes coming back in.

11 That whole roundtrip of picking people up,  
12 dropping them off, then picking up that group, going  
13 back to the airport, the airport will also affect  
14 that.

15 Q That affects the door-to-door service. Does  
16 that affect our scheduled service in the same way that  
17 it affects door-to-door?

18 A Not really, because scheduled service is just  
19 what it is, it's -- it's routes on a schedule. People  
20 can get on the next schedule, where on door-to-door,  
21 there's no guarantee that there's another vehicle out  
22 there to come back. So if you are coming out of  
23 whatever area, there's no guarantee that there is  
24 another vehicle, another route right behind it to pick  
25 up if something goes wrong. Scheduled service there

0097

1 is.

2 Q So when we experience this problem of  
3 coverage, what's your first procedure for rescuing?  
4 Who do you go to first?

5 A We always look for a van.

6 Q One of our --

7 A One of our vans, typically. We always do.  
8 Who is in the area?

9 Q And what is your second procedure?

10 A Second is to use an independent contractor.

11 Q And what would be our third procedure?

12 A Ask the guest to drive themselves and we pay  
13 for their parking.

14 Q You pay for their parking. And what can  
15 that --

16 A We pay for their parking.

17 Q And what can that run if we --

18 A Oh, gosh, it depends on how long they are  
19 gone. It can be quite expensive. I don't know, 500  
20 bucks, 600 bucks. I can't remember how much per day  
21 it is right off the top, but it's a lot per day.

22 Q You heard testimony by Mr. Ray and he said he  
23 wasn't quite sure whether we called him. Is it  
24 standard procedure to always call every guest before  
25 we pick them up with an alternate rescue service?

0098

1 A Yes.

2 Q Does Shuttle Express ever upcharge for using  
3 rescue service?

4 A No.

5 Q Has Shuttle Express ever been turned down by a  
6 passenger for a rescue service?

7 A No.

8 Q You are aware of Shuttle Express financials  
9 and cost per trip?

10 A Uh-huh, yes. Yes. I'm sorry.

11 Q What is the most efficient rescue?

12 A What is the most efficient?

13 Q Financial rescue for Shuttle Express?

14 A Well, it's -- I think what you are asking is  
15 what's the best cost for us. Of course, it's in a  
16 van. It's going to cost more to send an independent  
17 contractor.

18 JUDGE TOREM: You have to keep your  
19 voice up so she can take it down.

20 THE WITNESS: I'm sorry.

21 A So it's more cost effective to send a van for  
22 a rescue than an independent contractor.

23 Q Looking at the financials, when Shuttle  
24 Express uses a rescue service, does Shuttle Express  
25 make money on that?

0099

1 A On the particular trip?

2 Q By using a rescue service over a van?

3 A Does Shuttle Express make money on -- no, I  
4 wouldn't believe so.

5 Q So there's no financial advantage for Shuttle  
6 Express to use an independent contractor over a van?

7 A No, there's none. There isn't an advantage.  
8 Using an independent contractor for rescue service  
9 does not help Shuttle Express's financials.

10 Q Do you feel it might be a cost to Shuttle  
11 Express because they are losing a rider off of an  
12 existing van that would be moving?

13 A There's no -- yeah, there's -- we have to pay  
14 for the driver that's already in the field. We don't  
15 want to take the -- we don't want that to happen.

16 Q In your experience, has Shuttle Express ever  
17 used taxis for rescue service?

18 A Yes, we have.

19 Q And what time period would that be?

20 A It was a while back. It was before I left in  
21 2007. You know, I can't tell you what year it was,  
22 but it was -- it was a while back. We used Far West  
23 Taxi.

24 Q Did we use taxis when we first had Shuttle  
25 Express, in its inception?



0100

1 A At the very beginning?

2 Q Yes.

3 A I'm sorry, Jim, I don't remember.

4 Q That's okay.

5 A I don't.

6 Q Do we use taxis today?

7 A No, we do not.

8 Q Why?

9 A Because we don't know what we are going to  
10 get. Taxi drivers are not drug tested. And with our  
11 experience, too, they are not reliable.

12 Q Do we have a flight guarantee for people?

13 A Yes, we do.

14 Q And how does that work?

15 A If someone traveling on our service, share  
16 ride service to the airport, when they go at our  
17 requested time or earlier. If they chose to go later,  
18 that's not a guarantee. If we make a mistake and they  
19 miss their flight, we get them on a flight. We get  
20 them on the next flight. We pay all the expenses it  
21 takes to do that.

22 Q That's expensive to the company. Why would  
23 the company do that?

24 A Well, we do it because we are going to take  
25 care of the people. It is expensive, but...

0101

1 Q Do you feel rescue service is an important  
2 service in the interest of the public?

3 A I think a rescue service is absolutely needed  
4 in our business.

5 Q Could you just add more vans and drivers to  
6 the current day, add more equipment and solve this  
7 problem so you wouldn't have to use rescue service?

8 A No, and this is why. Adding -- it kind of  
9 goes back to the original thing about having enough  
10 equipment, the reason why we have enough equipment.  
11 Adding -- just adding drivers to the fleet does not  
12 solve this problem. The problem that exists is we  
13 don't know where the rescue is going to happen. So  
14 with the service area that we cover, in order for me  
15 to guarantee -- to have a van in the area would be to  
16 have a backup van in every area that we serve all the  
17 time. A mechanical can happen at any given time,  
18 traffic can happen at any given time, so a rescue  
19 service is needed.

20 Q I would like to talk next about out of the  
21 airport. What is an acceptable time for getting  
22 people out of the airport?

23 A Well, we will -- we will stage our routes or  
24 people going to areas up to 45 minutes.

25 Q And why do you stage?

0102

1           A    We stage because we can't -- we can't  
2 necessarily afford to just go to an area with one  
3 person.  It's share ride, it's share the ride, and we  
4 need to build up the trips.

5           Q    On occasion, do we experience long waits at  
6 the airport for people to get on our vans?

7           A    Yes.

8           Q    And what causes that?

9           A    There's a number -- I mean the things that I  
10 just talked about with traffic and those things are a  
11 definite cause of that.  Airlines are also a cause of  
12 that, flight delays.  You know, we try to plan out the  
13 best that we can with the flights coming in.  You  
14 start getting flight delays on top of the regular  
15 arrivals, then that can be double the amount of people  
16 that you are expecting in that hour, or half an hour,  
17 or pick a time period.

18          Q    You stated earlier that we've experienced  
19 unexpected walk-ups in large numbers.  When you  
20 experience that and route out of the airport, does  
21 that also have an effect on the inbound pickup times?

22          A    We can end up -- yes.  We can end up pushing  
23 that, the inbound pickup times because we are so full  
24 with dropping people off.

25          Q    Do you experience any problems with mass

0103

1 walk-ups on scheduled service out of the airport?

2 A It's not such a problem because scheduled  
3 service you can have a bigger vehicle. Scheduled  
4 service we can provide a bus. I mean it can happen,  
5 but for the most part, we can run buses versus the  
6 ten-passenger van, share ride.

7 Q Do you ever use independent contractors to  
8 support your scheduled service?

9 A It can happen. The same thing can happen with  
10 a vehicle breaking down on a scheduled service. But  
11 for the most part, we have another vehicle behind it  
12 to help out with scheduling. It's not nearly as  
13 critical but it can happen.

14 Q Do you build in extra drivers for extra  
15 passengers on a day you expect large walk-ups?

16 A I forecast and I always staff to the forecast.  
17 If we are expecting extra walk-ups, I am going to add  
18 drivers to that.

19 Q And if we have excessive wait times, do people  
20 then sometimes migrate to a taxi or limo rather than  
21 using us?

22 A Yeah, we will lose guests to the taxis and the  
23 limousines at the airport if our wait times get too  
24 high.

25 Q Are you aware of the taxi and limo rates at

0104

1 the airport? Are they higher than us?

2 A Yeah, they are. They are higher than -- they  
3 are higher than us.

4 Q In your experience, is price a major reason  
5 people use us?

6 A Yes, price is a big reason why they share the  
7 ride.

8 Q So if people are planning to use our service  
9 and they move to a taxi or a limo, then they end up  
10 paying more money than what they expected?

11 A Yes.

12 Q Do you use rescue service out of the airport?

13 A If their wait times exceed the 45 minutes,  
14 then we have to start looking at getting -- how are we  
15 going to get people out of the airport.

16 Q Do you have a charge to people for using  
17 rescue service out of the airport?

18 A No, we never charge -- we never charge people  
19 more than -- than their share ride fare.

20 Q So would it be safe to say that by using  
21 rescue service, we save people money out of their  
22 fares?

23 A Yes.

24 Q Do we ask people when they leave the airport  
25 if they want to use our service or upgrade?

0105

1 A Do we -- do we upgrade our -- I'm sorry, Jim.

2 Q Are people asked if they want to use our  
3 upgraded service out of the airport if we offer rescue  
4 service?

5 A We do -- do we upsell our -- I'm sorry, I  
6 don't understand.

7 Q Do we ask people if they want to use our  
8 upgraded service for the same price out of the airport  
9 when we want to use a rescue?

10 A Oh, yes. I'm sorry. No different than  
11 calling them prior to using it. If we are going to  
12 use an IC out of the airport to help with the share  
13 ride, we are going to talk to them first.

14 Q So is using multiple stops on occasion out of  
15 the airport a necessity?

16 A Yes, it is.

17 Q Why?

18 A It's the same thing. I think I already said  
19 that.

20 Q Let me ask you a question. If we have two  
21 people that are going in a similar direction and a  
22 similar location and they are both standing at the  
23 airport, would it make sense to use one vehicle for  
24 using a rescue for two stops or should you use two  
25 rescue vehicles?

0106

1           A    Yeah, I mean you have two people going in the  
2   same direction and they both need to be rescued, it  
3   makes more sense to put them in the same vehicle, yes.

4           Q    Have you -- has Shuttle Express operated not  
5   using multistops in the last 60 days?

6           A    Shuttle Express -- for the ICs?

7           Q    For the ICs, I'm sorry.

8           A    Has Shuttle Express in the last 60 days -- I'm  
9   sorry, used or not used?

10          Q    Not used multistops for rescue service?

11          A    In the last 60 days, we have used an IC for a  
12   multistop.

13          Q    I don't know if you understand my question.

14          A    Have I -- I didn't.

15          Q    Okay.

16                For the last 60 days, was there a company memo  
17   that said do not use multistops for rescue service?

18          A    I don't know, I'm sorry.

19          Q    Okay.

20          A    I -- I don't know.

21          Q    Do taxis at the airport ever use multistops  
22   out of the airport?

23                    JUDGE TOREM:  Mr. Sherrell, I'm not sure  
24   that taxis are at all relevant.

25                    MR. SHERRELL:  Okay.

0107

1 JUDGE TOREM: I really want to focus on  
2 your operations and how you use independent  
3 contractors.

4 MR. SHERRELL: Okay.

5 JUDGE TOREM: So just skip over anything  
6 that has to do with taxis and what they offer.

7 Q Do you know how long Shuttle Express has used  
8 a rescue service, including current town cars or taxis  
9 or whoever?

10 A I couldn't remember when we first started, way  
11 back when, if we used them or not. We've used them  
12 for a long time.

13 Q Twenty years?

14 A Let's see, we've been in business for 25. I  
15 would -- I would say that's a safe year. I mean it's  
16 been 15 to 20 years.

17 Q Does Shuttle Express ever give credits or free  
18 travel to its passengers when there is a problem?

19 A Yes. At times we will discount their fare if  
20 we've had a service issue.

21 Q Are you aware of the ICCU regulations -- UTC  
22 regulations?

23 A Yeah. Our -- yes, our -- our -- in -- I can't  
24 recite the number, I'm sorry, but in there it does say  
25 that we are allowed to reduce the fare if there are



0108

1 service issues.

2 Q Have you read WAC 480-30-466, which allows  
3 credits and refunds as compensations to its customers?

4 A That's what I'm talking about.

5 Q That's what you're talking about, okay.

6 MR. SHERRELL: Your Honor, I think I'm  
7 finished.

8 JUDGE TOREM: Are you prepared for  
9 cross-examination?

10 MS. CAMERON-RULKOWSKI: Thank you, Your  
11 Honor. Actually, give me just a moment.

12 (Pause in the proceedings.)

13

14 C R O S S - E X A M I N A T I O N

15 BY MS. CAMERON-RULKOWSKI:

16 Q Good afternoon, Mr. Hagen.

17 A Good afternoon.

18 Q You had just testified about the need for  
19 rescue service and also you testified that multistop  
20 rescues had occurred this summer, if I understood your  
21 testimony correctly. I have a couple of questions  
22 about that.

23 Do you know how many multistop rescues have  
24 occurred during the summer season so far?

25 A This particular summer?

0109

1 Q Yes.

2 A I would say the very first multistop rescue  
3 this summer was last week. So to give you a real  
4 number after that -- it's very few, but the very first  
5 multistop was last week.

6 Q So it has decreased markedly since the review  
7 period of Staff's investigation?

8 A Yeah, I don't know what period that is. I  
9 know when I came back to Shuttle in May of last year.

10 Q And the review period that I was referring to  
11 is from October 2010 to September 2011.

12 A Okay. In that period I was not there, at  
13 Shuttle.

14 Q So help me understand this. You testified  
15 that there was an ever-present risk of rescue being  
16 needed; is that right?

17 A Yeah, that's I think okay to say.

18 Q And you also testified that you forecast the  
19 driver and equipment needs on a regular basis; is that  
20 right?

21 A Yes.

22 Q So what would your forecast for rescues be for  
23 this week, say, if you do it on a weekly basis or a  
24 daily basis?

25 A A daily basis --

0110

1 Q Sure.

2 A -- would be an easy way to explain it.

3 So I have so many reservations. I have a  
4 ratio to match up the number of people that -- we have  
5 an average number of people that we take. I have a  
6 ratio which tells me how many drivers I need. Then I  
7 have to figure in, okay, we are going to have some  
8 sickness, some drivers are going to be sick, so I  
9 figure that in. And then in my calculations, I add a  
10 couple more.

11 So that -- that's how I would -- how I would  
12 figure in extra drivers for problems that are going to  
13 occur. The problem I have is I don't know where the  
14 problem is going to occur, so with that extra driver  
15 that I have out there, where do I put him to help  
16 solve that. That's the dilemma.

17 Q So -- so let's talk about tomorrow. You have  
18 reservations presumably already for tomorrow. So what  
19 would your forecasted need for rescues be for  
20 tomorrow?

21 A Well, tomorrow -- you know, just so everybody  
22 knows, we look at it by hour, all the way through, and  
23 every hour is going to be different, different type of  
24 kind of the share ride service, so to speak. I  
25 would -- tomorrow morning we are running about 37

0111

1 drivers on the road in the bulk period in the morning,  
2 and the forecasted need shows for 34. I'm adding two  
3 for sickness and an extra driver, too, for whatever,  
4 is what I'm doing.

5 Q And so your forecasted driver need is the  
6 amount of drivers you need, plus three extra?

7 A Yeah, that -- sure. I mean, you know, if --  
8 if I drop down lower in the winter, maybe it's not so  
9 much, but the thing is, I can't -- if I put more on,  
10 they are just going to sit around. We've tried doing  
11 that.

12 Q So where do the independent contractors fit  
13 into your forecast for -- for extra drivers?

14 A I don't forecast them at all.

15 Q So do I understand, then, that you have the  
16 number of drivers you need, plus three extra, working  
17 that day; is that correct?

18 A Yes.

19 Q So what you are telling me is that there is a  
20 constant ever-present risk that your forecast is wrong  
21 and that you are going to need additional drivers and  
22 vehicles; is that right?

23 A I question the word "constant." You know, I  
24 can't answer that question by saying -- I mean you  
25 have -- I have to answer that question yes. The

0112

1 reason I have to answer the question yes is because I  
2 can't predict where the vehicle is going to have a  
3 flat tire or a vehicle is going to break down. So  
4 is -- am I -- I cannot accurately forecast 100 percent  
5 because of that reason. I can get close.

6 Q So given the few rescues that have occurred  
7 this summer, and given that that appears to be a  
8 pattern based on what the Company has told Staff about  
9 the reduced number of rescues, is there really a need  
10 for this independent contractor program?

11 A Yes, because what's happening right now is our  
12 service isn't as good.

13 Q I'm sorry, can you repeat that?

14 A Our service is not as good right now because  
15 we don't have the multi -- I mean up until last week,  
16 when we did some more, the service isn't as good. I  
17 mean we are -- we don't have the ability to send out  
18 an independent contractor to go pick up two stops, so  
19 that person, we are either scrambling too much, or we  
20 are pushing their flight time to get them to the  
21 airport, or they are paying for parking.

22 So the balance is, we still need -- we need  
23 some sort of rescue service. The balance is we are  
24 pushing service. It's not -- it's not that the  
25 problem has went away at all, it has existed the whole

0113

1 time. We have just said, Okay, well, we are going  
2 to -- we are not going to do multistop rescue service,  
3 but our service is going to suffer because of it.  
4 That's what's happening right now.

5 Q Except that you still are doing multistop  
6 rescue service?

7 A Very little, though, yeah. I personally do  
8 not think we did any rescue, multistop rescue service,  
9 I don't have the 100 percent numbers to back me up,  
10 but since I've been back here, in May of 2001.

11 Q Except for the one --

12 A Except for this --

13 Q -- instance of --

14 A -- this last week.

15 JUDGE TOREM: Let me interrupt and make  
16 sure we are talking about the same thing.

17 THE WITNESS: Okay.

18 JUDGE TOREM: The question is posed as  
19 to multistop rescue service. Are you thinking of an  
20 independent contractor picking up more than two stops  
21 to or from the airport, or just rescuing somebody from  
22 a multistop route?

23 THE WITNESS: Oh, I'm --

24 JUDGE TOREM: I'm not sure that we are  
25 asking the same question here.

0114

1 THE WITNESS: Okay.

2 JUDGE TOREM: Given your confusion, I  
3 want Ms. Cameron-Rulkowski to define what she means by  
4 a multistop rescue.

5 MS. CAMERON-RULKOWSKI: Certainly, Your  
6 Honor.

7 Q That's a pickup or a drop-off that involves  
8 more than one stop.

9 A So the trip itself is -- so a trip is a  
10 culmination of reservations, so it has more than  
11 one reservation in it.

12 JUDGE TOREM: A rescue, though, would  
13 involve more than one drop-off at a household, it  
14 would be --

15 Q A rescue would be a pickup at two or more  
16 addresses or a drop-off at two or more addresses.

17 A With using an independent contractor?

18 Q From the questions that I've asked, I've been  
19 talking about independent contractors. Has that been  
20 your understanding?

21 A Yes.

22 Q Okay.

23 MS. CAMERON-RULKOWSKI: I don't have any  
24 further questions at this time. Thank you.

25

0115

E X A M I N A T I O N

1

2 BY JUDGE TOREM:

3 Q Mr. Hagen, you were here earlier for  
4 Ms. Young's testimony.

5 A Yes.

6 Q And I asked her about her interpretation of  
7 this WAC rule 480-30-213(2).

8 A Okay.

9 Q I will hand this across to you. This is the  
10 one that says that the driver of a vehicle operated by  
11 a passenger transportation company such as Shuttle  
12 Express has to be the certificate holder or an  
13 employee of the certificate holder.

14 It's the top part of the page there.

15 A Okay.

16 Q And I think you heard me ask Ms. Young about  
17 how she distinguishes between an employee and an  
18 independent contractor. If I understood her  
19 testimony, any use of an independent contractor would  
20 violate this rule. Did you hear that testimony  
21 earlier today?

22 A Yes, I did.

23 Q So from your testimony, are you telling me  
24 that the only way for Shuttle Express to comply with  
25 this rule strictly would be to have service quality



0116

1 suffer?

2 A Yeah, or change the rule.

3 Q I understand. We are here not to change the  
4 rules in this proceeding. I have to go with the rules  
5 as they are written.

6 A I understand.

7 Q When you read this rule, do you interpret it  
8 any differently than Ms. Young just said? Do you see  
9 any allowance within the rule, in your interpretation,  
10 for use of an independent contractor?

11 A Can I read it one more time?

12 (Pause in the proceedings.)

13 A I can't remember exactly what Ms. Young said,  
14 as far as it, but I -- it's pretty straightforward.  
15 The employee or certificate holder must...

16 Q So my understanding from your description of  
17 all of the operational management of scheduling and  
18 forecasting, is you do your best to avoid any reliance  
19 for rescues on an independent contractor; is that  
20 correct?

21 A That is correct.

22 Q But on occasion, in order to either uphold  
23 your customer's flight guarantee or for service  
24 quality, you have to turn to them to keep things  
25 rolling?

0117

1 A That is correct.

2 Q And so what would happen if you just didn't  
3 use independent contractors at all?

4 A Our service quality would drop.

5 Q And is there any way for you to build the  
6 independent contractors you have described in your  
7 current operations out of the program? Could you  
8 change price? You said you couldn't have drivers  
9 sitting around, that's undesirable. Is there any  
10 other options you could think about for how to  
11 eliminate independent contractors if the rule were to  
12 stay the same?

13 A To be honest, no. I think we would have  
14 already did it.

15 Q Now, it's my understanding there's another  
16 rule that's not cited in the complaint or otherwise,  
17 but it's within the same chapter, it's 480-31-66, that  
18 allows for subcontracting to other certificate  
19 holders. Have you ever explored essentially leasing  
20 parts of our Shuttle Express certificate while you  
21 were at the company?

22 A You know, I -- I -- I don't think I'm in the  
23 position to answer that question.

24 Q That's okay. I just wondered if you had any  
25 experience.

0118

1           A    I don't have the experience.

2                         JUDGE TOREM:   Okay.  Those are the  
3   questions I had.

4           Mr. Sherrell, do you have any follow-up for  
5   Mr. Hagen?

6                         MR. SHERRELL:   Yes, I do.

7

8                         R E D I R E C T   E X A M I N A T I O N

9   BY MR. SHERRELL:

10          Q    If it states in the rule that we can use  
11   another auto transportation company to provide service  
12   that we cannot provide, is there any operator that you  
13   know out there that could provide that service for us,  
14   licensed operator?

15          A    A WUTC license?

16          Q    Correct.

17          A    No.

18          Q    When we have a huge demand at the airport, do  
19   you use overtime to help staff that, to take care of  
20   the rush, the demand?

21          A    I'll use employee overtime before I use  
22   independent contractors, yes.  So the answer is yes.

23          Q    Did you state that when multistops were  
24   discontinued using ICs that our service deteriorated?

25          A    Yes.  When we stopped using independent

0119

1 contractors to help with rescues, yes.

2 Q So our service is worse?

3 A Our service is worse.

4 Q In an unrealistic world -- I better rephrase  
5 that. In a perfect world, if you were to add just all  
6 the advantage you could, how many would it take to put  
7 out there so you wouldn't have to use rescue service?

8 A You know, that's a difficult question to  
9 answer. You know, in order to truly eliminate rescue  
10 service altogether, you have to have an extra van  
11 positioned to be out in every area, so 20. I mean  
12 it's unrealistic.

13 Q Are we currently doing multistops with rescue  
14 service?

15 A We had done a couple last week.

16 Q Did I mandate that we start using it again?

17 A Yes.

18 MR. SHERRELL: I don't have anything  
19 else, Your Honor.

20

21 FURTHER EXAMINATION

22 BY JUDGE TOREM:

23 Q Just before lunch, we were talking about  
24 having sufficient equipment. Under the rules it says  
25 you are supposed to have sufficient reserve equipment

0120

1 to ensure the reasonable operation of your established  
2 routes and fixed time schedules.

3 You may need to refer to one of the exhibits,  
4 I think it was Exhibit 2 or 3, and I'll let  
5 Mr. Sherrell find that for you.

6 A The number of vehicles?

7 Q The number of vehicles.

8 A I know that.

9 Q Can you give me an idea as to how many vans  
10 Shuttle Express has and what percentage of them are in  
11 use on any given day, and also account in your answer  
12 for the seasonability you described before lunch?

13 A So I know we have 80 vans, 80 share ride vans,  
14 and we have 15 buses, so buses will sometimes be used.  
15 A lot of times busses are used on scheduled service.  
16 We can have -- I think our -- I think we talked about  
17 it yesterday. Our down ratio for vehicles should be  
18 between 10 to 15 percent. So let's say that's 12, so  
19 we are down to 68 operating vehicles.

20 As I said earlier, for tomorrow morning -- and  
21 this is August, which is prime time. Tomorrow morning  
22 we are going to run 37 vans on the early morning, and  
23 I will schedule up to 50 drivers -- not tomorrow, but  
24 Friday will be up to 50 drivers. I am not scheduling  
25 over 50 drivers on the road at one time right now. We

0121

1 have plenty equipment.

2 Q How many drivers do you have on your schedule?

3 It's another one of the exhibits.

4 A Yeah, I might need to see that. I don't know  
5 if it's listed by drivers. I need to look.

6 MR. SHERRELL: That's one of yours?

7 MS. CAMERON-RULKOWSKI: It's yours.

8 MR. SHERRELL: Okay.

9 A While he's looking at that, it's a little over  
10 140.

11 (Pause in the proceedings.)

12 A 184 total drivers.

13 Q That's full and part time?

14 A Yeah, that would be full. So 140 full time.

15 Q And so when you say that tomorrow you are  
16 going to have 68 vehicles available and you will have  
17 about 35 of the vans scheduled with a driver, what are  
18 the other vans doing?

19 A What will also happen is, as the day goes on,  
20 we have a shift exchange. We do require a few more  
21 vehicles to help because we will have some people  
22 coming on and some people coming off. With the way  
23 that the business works, flight delays and things, I  
24 may hold drivers over to do an extra run to help out.  
25 I have to have a few more vehicles available during

0122

1 shift change. That's kind of our crunch time, if we  
2 ever have one, with vehicles. So during that time I  
3 still preschedule. I'm not going over 40 drivers for  
4 68 vehicles, but I at least only end up using 50 of  
5 them.

6 Q So do the vans come back to a Shuttle  
7 Express-owned parking lot or do they go home with the  
8 drivers?

9 A They -- all but three come back to Shuttle  
10 Express in Renton.

11 Q So at shift change there's some vans going  
12 into the lot and some coming out of the lot. Is that  
13 how it works?

14 A Yes.

15 Q What's the most number of vans you've ever had  
16 out on the road, including a shift change one time?

17 A Well, we used to have more vans than we do  
18 now. I remember scheduling up to 70-some vehicles at  
19 one time.

20 Q Rough percentage of your fleet on the road at  
21 one time?

22 A I guess are you asking me what was now  
23 and then what -- I mean we had them all on the road at  
24 one time, with the exception of some being down. I  
25 can't tell you an exact number at this point. We did

0123

1 have -- you know, four or five years ago we were  
2 busier than we are now.

3 Q To look at the second cause of action, this  
4 question of sufficient reserve of equipment, is the  
5 independent contractor issue that we have described in  
6 maintaining level of service Shuttle Express wants,  
7 that deals with that first cause of action, is hiring  
8 the independent contractor a substitute for having  
9 more vans or are they related?

10 A Well, it's not a substitute for having more  
11 drivers or vans. Sometimes we get confused on what we  
12 are talking about here. The driver has to go with a  
13 van or it can't run.

14 Q You'd have to be an awfully strong driver to  
15 take those passengers.

16 A It's not a substitute, it's a requirement. We  
17 have to have a -- and whether it's an IC or a backup  
18 service, whatever we want to call it, we have to have  
19 a backup service. In this case we are using our ICs  
20 because we know them well, because we just don't know  
21 where things are going to happen.

22 I stress that a lot, but I've been doing this  
23 a long time. You don't know where things are going to  
24 happen. I can add five, ten more drivers on the road.  
25 Sure, I can do that, we have the equipment for it, but



0124

1 it still does not fix the problem of having the driver  
2 in the right place to help with the rescue. And even  
3 at -- even using the independent contractors, they are  
4 not always in the right place to help out. They  
5 are -- they are busy with their own set of work or  
6 they are across town and we need help in Issaquah or  
7 something. It's a complicated deal.

8 JUDGE TOREM: Okay. I think that  
9 answers the questions I had.

10 Mr. Sherrell, did that raise any additional  
11 questions for you?

12 MR. SHERRELL: Yes, it did. Just a  
13 couple.

14

15 FURTHER REDIRECT EXAMINATION

16 BY MR. SHERRELL:

17 Q Do you take part in deciding how much  
18 equipment we need?

19 A Yes.

20 Q Has management ever said they would not buy  
21 the equipment you want?

22 A No.

23 MR. SHERRELL: That's it.

24 JUDGE TOREM: Recross?

25 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

0125

1 R E C R O S S - E X A M I N A T I O N

2 BY MS. CAMERON-RULKOWSKI:

3 Q Have you ever asked to purchase additional  
4 equipment? Have you ever asked management to purchase  
5 additional equipment?

6 A Absolutely. I have, yeah. Oh, let me  
7 clarify, too, because I don't want to get -- that's a  
8 pretty open-ended question. Have I asked? Yes.  
9 There's reasons for replacement, that I know vehicles  
10 are breaking down more. You know, I go to Jim and  
11 say, I need new equipment, or Devin, I need new  
12 equipment. Have I asked because I do not have enough  
13 vans, if that's what your question is? No.

14 Q So --

15 A I've been asking for more buses. That helps  
16 with our scheduled service. That's -- that's been  
17 asked for. He knows that. Am I asking for more vans  
18 because we don't have enough to service the public?  
19 The answer is no.

20 Q Thank you.

21 I have a question for you that you may or may  
22 not know the answer to, and perhaps Mr. Sherrell might  
23 be able to help.

24 To your knowledge, has Shuttle Express ever  
25 sought a waiver of the vehicle and driver rule from

0126

1 the Commission?

2 A Not to my knowledge, I'm sorry.

3 Q And to your knowledge, has Shuttle Express  
4 ever asked the Commission for a declaratory ruling on  
5 the legality of their independent contractor  
6 operation?

7 A I don't know what that is, so no.

8 Q I will rephrase the question.

9 A Okay.

10 Q Has Shuttle Express ever formally asked the  
11 Commission to rule, to issue a decision on whether the  
12 independent contractor operation was compliant with  
13 the statutes and rules that the Commission regulates?

14 A Okay. Well, you -- the Commission does not  
15 regulate independent contractors, so --

16 Q Let me back up.

17 A Okay.

18 Q I'm simply asking, has Shuttle Express ever  
19 come to the Commission and asked for a decision about  
20 whether it can legally do what it is doing under its  
21 independent contractor program?

22 A You know, I don't know. I would -- that's the  
23 time period I was gone.

24 Q Understood.

25 MS. CAMERON-RULKOWSKI: That's the only

0127

1 other question that I had. Thank you.

2 JUDGE TOREM: Any other questions that  
3 you have for Mr. Hagen?

4 MR. SHERRELL: No, Your Honor, I'm  
5 finished.

6 JUDGE TOREM: I apparently need to  
7 address something with staff for my division. Let's  
8 go ahead, it's almost two o'clock, and take a  
9 ten-minute break. When we come back we will --  
10 Mr. Sherrell, I think you will be the last witness.  
11 We will get you sworn in, have you give your testimony  
12 in a form that -- you don't have to ask yourself  
13 questions, but narrate whatever subjects you think we  
14 need to go into, and then we will get the  
15 cross-examination.

16 We will come back at 10 after.

17 (A brief recess.)

18 JUDGE TOREM: Let's go back on the  
19 record. It's now 2:15. I think we are ready to  
20 return to Shuttle Express's presentation.

21 Do you have any other witnesses, Mr. Sherrell,  
22 aside from yourself?

23 MR. SHERRELL: I do not.

24 JUDGE TOREM: Do you want me to swear  
25 you in to give testimony at this time?

0128

1 MR. SHERRELL: Yes, please.

2 JUDGE TOREM: All right.

3

4 JIMY SHERRELL, witness herein, having been  
5 first duly sworn on oath,  
6 was examined and testified  
7 as follows:

8

9 JUDGE TOREM: Thank you.

10 The court reporter already has the spelling of  
11 your names, so let's press on with --

12 THE WITNESS: Do you want me to move?

13 JUDGE TOREM: Right here is fine, I  
14 think, so the court reporter can see you. We can keep  
15 this more informal, that's fine.

16 MR. SHERRELL: Perfect. Then my hands  
17 don't shake as bad.

18 JUDGE TOREM: That's right.

19 Go ahead, sir.

20

21 T E S T I M O N Y

22

23 MR. SHERRELL: I would like to make it  
24 very clear that in 2008, when we were issued a  
25 citation and paid a fine, that we discontinued that

0129

1 service 100 percent. The difference between our  
2 rescue service and that service is that the service we  
3 were fined for with the independent contractors, the  
4 independent contractors were using Shuttle Express  
5 vans and they -- that they leased and they themselves  
6 were independent contractors. The independent  
7 contractors that we use for rescue service own their  
8 own vehicle and they are independent contractors. The  
9 two are not related in any way, shape or form, as far  
10 as operations.

11 The second part is that rescue service is a  
12 reaction of immediacy. In our business, people are  
13 flying to destinations and that imposes financial  
14 commitment on their part and also making an  
15 appointment that could be all the way up to life and  
16 death and everything in between. We see an immediate  
17 urgency, and the immediacy is something that we have  
18 to react to with whatever resources we can react to.

19 When I chose to put independent contractors in  
20 vans and provide door-to-door service, of the service  
21 that we were fined for, I had asked for all Staff  
22 communications involving the use of independent  
23 contractors. In that communication, I found that a  
24 top UTC official had recommended to the commissioners  
25 that they could react in two different ways: One,

0130

1 they could ignore the fact; or two, they could cause  
2 it to cease and desist. I chose to put it in place,  
3 hoping that it would be ignored and it wasn't, so I  
4 paid a fine and I discontinued the service.

5 Operating independent contractors in cars, I  
6 looked at the independent contractor programs and what  
7 you need to do to set that up, and I understand the  
8 independent contractors I think pretty fully, and I  
9 understand the regulations within the UTC.

10 I will save some of my other comments for the  
11 closing statements.

12 JUDGE TOREM: Okay.

13 MR. SHERRELL: I would like to say that  
14 we do have enough equipment and that I am committed to  
15 purchase equipment needed. In fact, there's ten new  
16 vans on the way right now. It's just standard, except  
17 this year we bought 20 rather than ten.

18 I think my closing statement will cover the  
19 rest of what I want to say.

20 JUDGE TOREM: Okay

21 Ms. Cameron-Rulkowski, cross-exam?

22 MS. CAMERON-RULKOWSKI: Thank you, Your  
23 Honor.

24

25

0131

1 C R O S S - E X A M I N A T I O N

2 BY MS. CAMERON-RULKOWSKI:

3 Q Mr. Sherrell, I had asked Mr. Hagen a couple  
4 of questions that he didn't have full knowledge about,  
5 so I would like to ask them of you.

6 One is, has Shuttle Express ever sought a  
7 waiver of any rule of the Commission?

8 A No, we have not.

9 Q And has Shuttle Express ever sought a  
10 declaratory ruling on the legality of any of its  
11 independent contractor operations?

12 A I don't believe so.

13 Q And to perhaps help you on that question, a  
14 declaratory ruling would mean that a proceeding would  
15 be docketed and parties would present evidence and the  
16 Commission would issue a formal decision. Has  
17 anything like that ever occurred on the issue of the  
18 independent contractor operations?

19 A Are you asking me the ruling that was passed  
20 down that we got the fine on? Is that what you are  
21 asking me?

22 Q Oh, no, I'm not.

23 A Okay.

24 Q I'm asking you if the Company has ever come to  
25 the Commission to get an answer about whether its



0132

1 independent contractor operation complied with the  
2 laws and the rules that the Commission enforces?

3 A No, we have not.

4 Q And I'm going to refer you to Exhibit BY-2,  
5 and to Exhibit D, which is on Page 55. I will just  
6 give you a moment there to look that over. What I --  
7 what I would like to know is, if you turn to -- I'm  
8 interested in the second page.

9 So first of all, do you recall this letter?

10 JUDGE TOREM: Just to make sure that we  
11 are looking at the same thing, we are in Exhibit BY-2,  
12 attachment D, as in Delta. This is a letter regarding  
13 proposed driver contract for November 4th, 2005,  
14 signed by Carol Washburn, who was then the executive  
15 secretary of the Commission.

16 MS. CAMERON-RULKOWSKI: That's my  
17 intent, Your Honor.

18 JUDGE TOREM: I just want to make sure  
19 we are all on the same pages.

20 MS. CAMERON-RULKOWSKI: Yes.

21 A Do I remember reading it, no, but I know I  
22 did. I know I read it. Anything legal that comes to  
23 the office I read.

24 Q Understood.

25 And so if you turn to Page 2 of that letter,

0133

1 on Page 56, would you mind reading that paragraph at  
2 the top?

3 A As Staff has advised you previously, you have  
4 the option of requesting a declaratory ruling by the  
5 Commission about the legality of the proposed  
6 arrangement. Shuttle Express and Staff would present  
7 their respective views to the commissioners who would  
8 issue a written decision. In addition, you may wish  
9 to consider the option of filing an application to  
10 lease your certificate of authority and a petition to  
11 lease other properties on the terms of your proposed  
12 agreement. And, of course, any option for you to  
13 consider is seeking a change in the statutes.

14 Q Thank you.

15 I believe it read "another option" there.

16 A Oh, I'm sorry.

17 Q That's all right. And that actually is my  
18 question. Have you ever sought a change in the  
19 statutes through the legislature?

20 A No, I wouldn't do that.

21 MS. CAMERON-RULKOWSKI: Thank you.

22 Those are all the questions that I have for you.

23 Thank you.

24 JUDGE TOREM: So after

25 cross-examination, usually I give you a chance to

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1 offer anything else that might come to mind, so  
2 anything else testimony-wise?

3

4 F U R T H E R T E S T I M O N Y

5

6 MR. SHERRELL: Yeah. When I read this,  
7 that was back in '05, so my questions then would have  
8 been to operate Shuttle Express with independent  
9 contractors only. It had nothing to do with any  
10 rescue service in my mind whatsoever. So from that  
11 letter, I made a decision to put vans -- independent  
12 contractors in vans and run door-to-door service. I  
13 paid for a utility commission's car, \$9500, a down  
14 payment anyway, for trying that, to see if it would  
15 work. This, in my mind, had nothing to do with using  
16 independent contractors for rescue service.

17 At that time I believe that our town cars were  
18 operated by employees, so our rescue service would  
19 have been provided by employees, which is absolutely  
20 totally legal, it's just a difference in vehicles. So  
21 I separate the two in my thoughts of what I would  
22 seek. And there is a WAC that states you can use  
23 alternate service. The only license service I know  
24 that can provide it is taxicabs or limos, and so I've  
25 chosen to use an operation that I know is safe.

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1 I hope I answered...

2 JUDGE TOREM: Any other cross?

3 MS. CAMERON-RULKOWSKI: No, Your Honor.

4

5 E X A M I N A T I O N

6 BY JUDGE TOREM:

7 Q Mr. Sherrell, let me just ask if your  
8 interpretation of WAC 480-213(2) [sic] -- this is the  
9 one that says any cars have to be driven by an  
10 employee -- the same question I asked Mr. Hagen. Do  
11 you see any way to comply with that and still make use  
12 of independent contractors?

13 A No, I do not. They are not employees.

14 Q And I think I understood you have already  
15 addressed the issue with sufficiency of equipment to  
16 your satisfaction?

17 A Yes.

18 Q Did you want to address anything about the  
19 third cause of action, about the customer information  
20 being given outside the company, WAC 480-30-456?

21 A We have a policy at Shuttle Express that we do  
22 not give any passenger information out to any  
23 institute, business or other companies. We make that  
24 strictly adhered to by Shuttle Express and any  
25 contract we have with another operator, IC. We have

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1 dismissed contracts because we found ICs were -- had  
2 called upon one of Shuttle Express's previous  
3 customers. We enforce that and adhere to it.

4 Q And do you understand the Commission's adding  
5 that third cause of action appears to be because the  
6 information is given to the independent contractor to  
7 provide the rescue?

8 A Yes, I do. We can't pick somebody up if the  
9 driver doesn't know a name and address and where to  
10 pick them up. If we are going to rescue somebody, we  
11 need to give the information out to a contract carrier  
12 that we have.

13 JUDGE TOREM: Is there any other  
14 cross-exam at this time from the Commission?

15 MS. CAMERON-RULKOWSKI: No, Your Honor.  
16 I would be ready to recall Ms. Young at the time, if  
17 you are ready.

18 JUDGE TOREM: I think so.

19 Mr. Sherrell, anything else that you want to  
20 provide me from Shuttle Express's point of view?

21 MR. SHERRELL: No.

22 JUDGE TOREM: I think what we are going  
23 to do is we are going to stay on the record, we are  
24 going to get Ms. Young back to testify. She is still  
25 under oath.

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1           This is the opportunity for Staff to make a  
2       recommendation based on all of the evidence that they  
3       have heard, including the written documents, but also  
4       the testimony provided by Shuttle Express's witnesses.  
5       And then see -- I know there's a recommendation that  
6       was contained in the investigation itself. I  
7       anticipate we will talk about that and whether it has  
8       changed based on today's information, and you will  
9       have the opportunity to cross-exam.

10           MR. SHERRELL: Can I make one last  
11       statement because I didn't know we were going to do  
12       that?

13           When I look at the fine, the \$250,000, and  
14       they get that from Shuttle Express receiving \$250,000  
15       from its passengers, Shuttle Express has experienced  
16       losses in providing --

17           JUDGE TOREM: Let me have you hold that  
18       because let's see what the recommendation is.

19           MR. SHERRELL: Okay.

20           JUDGE TOREM: I think you will have an  
21       opportunity to ask that in the form of a question.

22           MR. SHERRELL: Okay.

23           JUDGE TOREM: And if you want to then  
24       come back and give further testimony on what you  
25       think, if there should be any penalty at all, what it

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1 should be, then we can have you -- you will still be  
2 under oath as well, and we can get all of the  
3 information out there.

4 MR. SHERRELL: I understand.

5 JUDGE TOREM: Thank you. I'm sorry for  
6 the confusion in the procedure. I want to hear  
7 everything you want to tell me. We will just get it  
8 in the right order today.

9 MR. SHERRELL: Okay.

10 JUDGE TOREM: Ms. Cameron-Rulkowski,  
11 Ms. Young is still recalled.

12 MS. CAMERON-RULKOWSKI: Thank you, Your  
13 Honor.

14 JUDGE TOREM: You are still under oath.

15

16 R E D I R E C T E X A M I N A T I O N

17 BY MS. CAMERON-RULKOWSKI:

18 Q From what you have heard today, Ms. Young,  
19 would you add anything to the discussion of penalties  
20 in your report?

21 A I think from Staff's perspective, I think  
22 it's -- it's important to note that whether in  
23 the pre -- as in the previous investigation in Docket  
24 TC-072228, or the type of service that was being  
25 provided in the current investigation, the key for

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1 Staff is that it is the type of service being  
2 provided. It's not the distinction that it's a  
3 rescue, it's the fact that another company, or someone  
4 that wasn't an employee of Shuttle Express was  
5 providing regulated services under Shuttle Express's  
6 certificated authority.

7 If -- I think it's also important to note that  
8 if another company that didn't have an independent  
9 contractor agreement with Shuttle Express was  
10 providing this same service within Shuttle Express's  
11 territory, Shuttle Express would complain about that  
12 to me, and have in the past, I'm actually working on a  
13 complaint right now. There's a company that Shuttle  
14 Express believes is providing share ride services  
15 within its territory. So it's the type of service  
16 being provided, it's not the fact that it's -- the  
17 Company deems it as a rescue. It's the fact that  
18 Shuttle Express can't use someone that's not an  
19 employee to provide services under its certificate  
20 authority.

21 And another thing that I think is important to  
22 mention in the discussion of what remedies the Company  
23 has or what options the Company has to provide this  
24 service, we talked about, earlier it was brought up on  
25 record about subcontracting and the fact that that's



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1 available in the statute. There's also WAC  
2 480-30-141, which is -- which allows the Company to  
3 lease out portions of its authority. That doesn't  
4 have to be with another auto transportation carrier,  
5 that can be with anybody. The Commission has to  
6 approve that in advance. That's the key. If you  
7 want -- if a company wants to provide that type, or  
8 lease out a part of its service or subcontract, it has  
9 to bring that proposal before the Commission and the  
10 Commission has to decide about that.

11 There are -- in Staff's opinion, it seems that  
12 getting the business done, in this case the business  
13 was more important than following the Commission's  
14 rules. I think it's clear that this behavior not only  
15 continued, it will continue. Shuttle Express doesn't  
16 appear to have any interest in discontinuing the  
17 independent contractor rescue service. I think just  
18 in that sense that's the only things -- those are the  
19 things I would add to the penalty discussion in my  
20 investigation.

21 Q Thank you.

22 A Uh-huh.

23 Q Following that, what relief do you recommend  
24 that the Commission order in this proceeding?

25 A I recommend that the Commission issue an order

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1 requiring Shuttle Express to cease utilizing its  
2 independent contractor program to provide services  
3 regulated by the Commission and that the Commission  
4 impose \$250,000 in penalties against the Company for  
5 its violations of state law and Commission  
6 regulations.

7 Q Thank you.

8 MS. CAMERON-RULKOWSKI: I have no  
9 further questions for Ms. Young.

10 JUDGE TOREM: Mr. Sherrell, do you want  
11 to inquire further of Ms. Young, or do you want to go  
12 straight to giving me your ideas on a penalty, if any,  
13 of what might be merited and appropriated for the  
14 Commission to act based on the evidence that I have in  
15 front of me?

16 You can certainly ask Ms. Young about it, this  
17 is the time to do it if you want. You can also tell  
18 me your thoughts. If you want to cross-examine  
19 Ms. Young on anything she just said about adding to  
20 what's already in her report and/or the penalty  
21 amount, you can do that.

22 If you want a quick break to do that, we do  
23 have time to let you gather your thoughts, too.

24 MR. SHERRELL: Okay. Let's take a quick  
25 break.

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1 JUDGE TOREM: Ten minutes. Come back at  
2 a quarter till.

3 (A brief recess.)

4 JUDGE TOREM: Back on the record.

5 Mr. Sherrell, are you ready to tell me  
6 your perspective on potential Commission action on the  
7 evidence we have heard today?

8 MR. SHERRELL: I think I get to cross  
9 first, don't I?

10 JUDGE TOREM: Do you have questions?  
11 Yes, please, let's go ahead and ask those questions  
12 first.

13 MR. SHERRELL: Okay.

14

15 R E C R O S S - E X A M I N A T I O N

16 BY MR. SHERRELL:

17 Q In looking at the fine, are you taking into  
18 account that Shuttle Express discounted its fares?

19 A Discounted its fares?

20 Q Yes, in your report.

21 A Discounted its fares for what?

22 Q For rescue service people or people that we  
23 weren't able to provide good transportation to or  
24 service?

25 A It was my understanding that people that took

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1 the rescue service, the trips that were in question  
2 here, that they paid the same amount. No, I would say  
3 we did not factor that in.

4 Q Okay, okay.

5 Are you -- in your report you said that the  
6 service that we were fined for and the service that we  
7 are providing today is just a reappearance of us  
8 changing things so we could still do independent  
9 contractors. Do you still believe that the two are  
10 related?

11 A Could you ask me that question again? I'm not  
12 quite sure I understand what you are asking.

13 Q I've got it right here.

14 A Okay.

15 Q You say that Shuttle Express crafted a revised  
16 independent contractor program to provide regulated  
17 service that was even broader in scale. Is that still  
18 your opinion?

19 A Yes.

20 Q So you don't feel that there's a difference  
21 between what Shuttle Express was doing in '08 and what  
22 they are doing today with the rescue service?

23 A I think the difference is in the manner that  
24 it as being provided in 2008. I think in 2008 it was  
25 provided by charter drivers using your vans. I think

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1 today it's provided by other companies in their own  
2 vehicles. It's still the same service provided on  
3 your regulated routes.

4 Q And where do you come up with the \$250,000  
5 fine? How do you come up with that figure?

6 A Well, I think I laid it out in the report, but  
7 I can certainly go back to that and read the steps in  
8 my analysis.

9 Q It's on Page 25.

10 A One of the things that we looked at was the  
11 amount of revenue Shuttle retained for providing the  
12 services. That was recorded in the rate case in  
13 Docket TC-112072. That amount was \$241,549.

14 And then the other thing, as an enforcement --  
15 in the enforcement work that I do, part of what the  
16 Commission asks the enforcement staff to consider are  
17 these ten factors in the Commission's enforcement  
18 policy. Those are all explained starting on Page 21  
19 in my report, through the various different things  
20 that the Commission considers when and how to take  
21 enforcement action.

22 It was a combination of the information that's  
23 included in here. The Commission Staff took into view  
24 the totality of the violations, all the separate  
25 violations, which were 22,860 violations as we counted

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1     them.  We also believe that -- Staff -- I,  
2     representing Staff, also believe that Shuttle Express  
3     never should have had the independent contractors  
4     providing this service, never should have committed  
5     these violations, never should have retained the  
6     \$241,000 plus in revenue.  Staff believes that that's  
7     a reasonable penalty recommendation based on the size  
8     of the violations, the amount of violations, the  
9     continued violations, even though Commission had fined  
10    Shuttle Express for the practice before.  Sort of all  
11    of those things that I laid out in the final piece of  
12    the report.

13         Q     So in testimony today, you heard that Shuttle  
14    Express actually loses money by offering the rescue  
15    service, and undoubtedly has expenses in generating  
16    revenue, and you do not take that into account?

17         A     To me that's not relevant because it's a  
18    violation of the Commission rule.  You know, in the  
19    settle -- the previous settlement agreement, Shuttle  
20    Express agreed to comply with Commission rules.  Based  
21    on its own commitment, it had committed not to violate  
22    these rules.  To me the amount of money the Company  
23    lost on it is not part of my consideration.

24         Q     In RCW 80.01 it directs the commissioners to  
25    act in the interest of the public.  Do you feel that

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1 Shuttle Express did not act in the interest of the  
2 public?

3 A I think any regulated company that violates  
4 the rules of the Commission is not acting in the  
5 public interest, that's correct.

6 Q So you feel that 5,715 people should have  
7 called in a complaint to the Commission?

8 A I can't testify to what 5,715 people should  
9 have done. I don't think Commission Staff has any  
10 argument to the notion that these customers probably  
11 received very comfortable, possibly even better  
12 service than sitting on a van. That's not the issue,  
13 though. The issue is this practice violates rules,  
14 this type of service being provided by independent  
15 contractors violates Commission rules, and Shuttle  
16 Express was aware of that, so -- because of the  
17 previous compliance action the Commission had taken.  
18 That's really the heart of Staff's case.

19 JUDGE TOREM: Any other questions?

20 MR. SHERRELL: (Nods head.)

21 JUDGE TOREM: Mr. Sherrell, why don't  
22 you tell me your position on what you think the  
23 Commission should do, given the evidence. That may  
24 involve a penalty, no penalty. What remedy or relief  
25 should I grant, if any, to the Commission's

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1 complaints?

2 In a way I don't want you to bid against  
3 yourself and say, oh, well, this is what I would do,  
4 Judge. You have heard all evidence. Ms. Young had an  
5 opportunity to comment on what the Commission's  
6 position is. You have heard the numbers and the  
7 reason. I just want you to have an opportunity to  
8 say, no, that's wrong, there's no penalty, there's a  
9 penalty but it should only be. Anything in that  
10 regard, that's what I want your testimony to tell me  
11 now, if you want to.

12 MR. SHERRELL: Thank you.

13 The way I interpret RCW 80.01 is we need to  
14 work in the public interest. For 26 years, Shuttle  
15 Express has had to use alternate transportation  
16 because of the type of operation it is. I feel the  
17 Commission and Staff have never totally understood  
18 share ride door-to-door. I had to fight my way in  
19 through many hearings to get a license to serve. At  
20 that time, the Commission didn't know what they wanted  
21 to do with us or how to operate -- how we operate. I  
22 still feel that that's happening today. Shuttle  
23 Express has never ever willingly, knowingly broke any  
24 rule or regulation for its own interest and it will  
25 always provide service in the public interest.



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1           So when Staff says we will continue to do  
2 rescue service, that is absolutely what we will do,  
3 bar none. If there's an avenue that we can seek a  
4 remedy so that that's legal, we will take  
5 whatever avenue we can take.

6           There absolutely should be no penalty. We  
7 operate on an extremely short budget, and \$250,000 has  
8 the effect of basically come get my certificate  
9 because it will bankrupt the company. So the  
10 questions here for the Commission is do you want to  
11 have share ride provided by the best operator in the  
12 United States, which you can substantiate by any  
13 Shuttle business out there, and the safest in the  
14 United States?

15           And there needs to be either a regulation or a  
16 relief issued so that the people in Seattle can enjoy  
17 share ride door-to-door service. Without that, there  
18 will not be any service. And while you may say, Well,  
19 just go get a different operator, we are the best in  
20 the U.S., and they are going to enter the same  
21 position. Other operators that would come in here  
22 would want to use independent contractors.

23           Anyway, I don't feel that Staff is looking at  
24 what Shuttle Express has already paid to provide this  
25 rescue service, and that there is no advantage to

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1 Shuttle Express to provide rescue service, other than  
2 it keeps its customers. If Shuttle Express had any  
3 way of not using independent -- any way of not using  
4 another carrier to provide service, it would use it.

5 When you really get down to the bottom line,  
6 we are talking about one stop. While the Commission  
7 has not looked at the rescue service for individual  
8 passengers, because the cars are licensed for  
9 individual passengers, which is not against the law,  
10 it has only chose to look at two stops, so they are  
11 really talking about one stop for \$250,000. So any  
12 fine of any kind is outrageous.

13 Doing day-to-day work running the Company, did  
14 I miss maybe going to the Commission and raising our  
15 hand and saying we need relief? Probably. Did I  
16 recognize it? No. Would I have done it? Yes.

17 Has Shuttle Express ever violated any other  
18 rules and regulations within the UTC after it issued  
19 its license? The answer is no. And there's no  
20 complaints from the public. So I feel that Shuttle  
21 Express is totally within -- providing service in the  
22 interest of the public by providing rescue service.  
23 That's where I'm at.

24 JUDGE TOREM: Thank you.

25 Ms. Cameron-Rulkowski, I think that turned out

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1 to be more of a closing argument.

2 MR. SHERRELL: That would be good.

3 JUDGE TOREM: But I have to give  
4 Ms. Cameron-Rulkowski an opportunity to give her  
5 closing, as much as Ms. Young gave her opinion  
6 strictly on that. That would seem to be much more  
7 opinion, unless you had a cross-examination question  
8 on any of the particulars that Mr. Sherrell had that  
9 were more factual in nature than opinion. I wasn't  
10 sure if you had any questions for Mr. Sherrell on the  
11 penalty issue.

12 It seemed like a good blend of testimony and  
13 argument. I wanted to not foreclose questions on  
14 testimony, but see if you understood it in the same  
15 way, and if so, then we would transition quickly to  
16 your closing.

17 MS. CAMERON-RULKOWSKI: Thank you, Your  
18 Honor. I heard it as opinion as well.

19 JUDGE TOREM: Do you need time to  
20 prepare your closing or are you prepared to go  
21 forward?

22 MS. CAMERON-RULKOWSKI: I'm ready to go.

23 JUDGE TOREM: All right. Let's press  
24 on.

25 MS. CAMERON-RULKOWSKI: All right.

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1           I will just begin by saying that, as Ms. Young  
2 just testified, the customer experience is not what is  
3 at issue in this proceeding. Staff does recognize  
4 that there are challenges to operating Shuttle Express  
5 sustainably and profitably, which is what much of the  
6 testimony from the Company concerned, that we heard  
7 today. However, in enforcement proceedings, which is  
8 what this proceeding is, is not the forum to address  
9 alternative regulation.

10           This proceeding concerns the four causes of  
11 action set forth in the complaint and whether the  
12 alleged violations occurred during the review period  
13 which spans October 2010 to September 2011. Staff has  
14 met its burden of showing that the alleged violations  
15 occurred. The violations alleged in each of the  
16 causes of action in the complaint are documented and  
17 explained in Ms. Young's investigation report dated  
18 March 2013, which has been marked as Exhibit BY-1.  
19 These violations have not been refuted or even really  
20 contested by Shuttle Express's evidence today.

21           To summarize, Shuttle Express violated WAC  
22 480-30-213(2), WAC 480-30-216(6) and WAC 480-30-456,  
23 and also violated the Commission's order in Docket  
24 TC-072228 each time the Company provided Commission  
25 regulated transportation pursuant to its independent

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1 contractor program. As stated by Shuttle Express in  
2 response to a data request from Staff, this type of  
3 transportation occurred 5,715 times during the  
4 investigation period. Today we had some discussion of  
5 the reserve equipment rule. Regardless of driver  
6 counts or how many vans are on the street and in the  
7 lot or in the garage, reserve equipment isn't  
8 sufficient if Shuttle Express can't pick up everyone  
9 it wants to.

10 And I would like to touch briefly on the  
11 violation of the Commission order. The issue there is  
12 that both of these enforcement proceedings centrally  
13 involve the same rule, which was the -- the driver and  
14 vehicle rule which states that a vehicle operated by  
15 an auto trans provider must be operated by the  
16 employee -- I am paraphrasing here -- or the owner of  
17 the certificate, and because both proceedings  
18 centrally involve the same rule, that's why we have  
19 focused on the order in TC-072228, and Shuttle  
20 Express's failure to comply with that order, and with  
21 its commitment in the settlement agreement adopted in  
22 that order that it would comply forthwith with that  
23 rule and others enforced by the Commission.

24 Ms. Young's investigation report contains a  
25 thorough discussion of the factors in the Commission's

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1 enforcement policy that the Commission considers when  
2 determining an appropriate penalty. In her testimony  
3 today she added to that discussion. RCW 81.04.380  
4 authorizes penalties of up to \$1,000 per violation.  
5 With the four causes of action, Staff has documented  
6 well over 20,000 violations. Staff calculated that  
7 Shuttle Express gained close to \$250,000 in revenue  
8 from providing regulated transportation services  
9 through its independent contractor program during the  
10 review period.

11 This calculation which Ms. Young testified  
12 about towards the end of our day today is fully  
13 explained on Page 16 of her investigation report.  
14 Based on Staff's discussion of the enforcement policy  
15 and based on what Staff heard here today, Staff  
16 recommends that \$250,000, which approximates the  
17 amount of the retained revenue from the review period,  
18 is an appropriate penalty amount.

19 Shuttle Express has failed to demonstrate a  
20 basis to justify any mitigation of Staff's recommended  
21 penalties. A business does not get to pick and choose  
22 which rules to comply with based on its perception of  
23 necessary cost savings.

24 In closing, Staff asks that the Commission  
25 issue an order requiring Shuttle Express to cease

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1 using its independent contractor program to provide  
2 services regulated by the Commission and that the  
3 Commission impose \$250,000 in penalties against the  
4 Company for its violations of state law and Commission  
5 regulations.

6 That concludes Staff's closing.

7 JUDGE TOREM: Mr. Sherrell, did you have  
8 anything else that you wanted to say as the last word  
9 on that?

10 MR. SHERRELL: If --

11 JUDGE TOREM: I know you have covered a  
12 lot of it already. Any response?

13 MR. SHERRELL: Well, if the Commission  
14 issues us a \$250,000 fine and we no longer can use  
15 rescue service, the Company is defunct, so you might  
16 as well issue a cease and desist. And that's the way  
17 it is.

18 JUDGE TOREM: Well, I asked you earlier  
19 about briefing and whether you wanted briefs. Now I  
20 have realized that I am going to ask you to do it  
21 whether you want to or not. I am seeing a conflict  
22 here that means the outcome that Staff is asking for  
23 and the business questions that have been raised and  
24 sympathized with by Staff mean that we are going to  
25 come back for a third proceeding again, on the same

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1 rule, if we don't get something resolved.

2 This may not be the forum for me to know how  
3 to change the rule or do alternative forms  
4 of regulation, but the Commission I believe needs to  
5 be informed on what the path forward is going to be.  
6 And if the path forward leads to the Company being  
7 defunct and/or being back in the hearing room with the  
8 same questions again, then we are failing as a  
9 Commission. No matter what the rules say or what the  
10 challenges of day-to-day shuttle operations and  
11 scheduling might be, I don't want to see you guys back  
12 here again.

13 The Commission issued a complaint in 2007 or  
14 '8, and you settled it. I think that both parties  
15 wanted to walk away saying, you're \$9500 lighter on  
16 the books for Shuttle Express, but there was a lesson  
17 learned. We weren't going to be back. I'll make a  
18 ruling based on what happened between now and then,  
19 this complaint, but I think I have to ask for either  
20 independent or a joint product from the parties here.

21 Now, I'll let you decide. If you can work on  
22 something together and submit it jointly, that's  
23 easier, even if it's a joint letter with, we support A  
24 and we support B. So talk to each other after we  
25 close the hearing today and come up with something by



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1 Friday the 16th of August. And if you need an  
2 extension, that's fine, but I would like to have  
3 something by noon on Friday the 16th.

4 If you need an extension -- I'm out of town  
5 the entire next week on other personal business. I  
6 would be glad to give you one if it's going to lead to  
7 a better product. But if I get it by noon on the  
8 16th, I will take your product with me and consider it  
9 while I'm out of town.

10 What I want is some recommendation on how  
11 Shuttle Express can meet the needs of its passengers  
12 and how Shuttle Express can comply with all applicable  
13 Commission rules. There have been some invitations  
14 that have been set out in the letter from  
15 Ms. Washburn, going back to 2005, and cited in the  
16 various exhibits that Ms. Young wrote up as part of  
17 BY-1, and maybe even in BY-2, suggesting a need or the  
18 option for a declaratory ruling, a workshop, an  
19 exception to rule. There's a variety of tools that  
20 are not available to me to deal with what's occurred  
21 in the past, but I would like to be able to write an  
22 order that gives a way forward, so that we don't have  
23 to be here having this argument again.

24 So that's the briefing I want. Not on the  
25 facts of necessarily this case and how I should act,

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1 not on the facts of what the penalty should be, but  
2 simply -- either it's a letter, but some way that  
3 shows that going forward, if independent contractors  
4 are going to be used, it's going to be with a  
5 Commission endorsement; if independent contractors  
6 aren't going to be used, that there's a way for  
7 Shuttle Express to handle that other 5 percent, I  
8 think it was, under the evidence, of passengers that  
9 would not be satisfied with their shuttle opportunity  
10 experience.

11 If you come back to me and it says we couldn't  
12 get together, then write independent issues on what  
13 Staff would like to see happen to address this from  
14 coming back again, and maybe from Shuttle Express. I  
15 could predict, you know, Shuttle Express would say  
16 change the rule, that's pretty easy to say, but I  
17 would like to have some thought put into it. Under  
18 the current rules is what I'm talking about. If one  
19 part is change the rule, fine, talk about that.

20 There was an invitation earlier about changing  
21 a statute. Those are all options to be discussed from  
22 Shuttle Express's perspective.

23 But from Staff's perspective, particularly  
24 with the closing that concedes that there's not an  
25 issue with the customer experience, it's compliance

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1 with the rules, this Commission's end goal is always  
2 compliance, and so with that in mind, we want to keep  
3 companies compliant.

4 We see it in all manner on our utilities and  
5 on our transportation side. It's a consistent theme  
6 of regulatory practice. If you are an unregulated  
7 company, you do other things within the bounds of the  
8 law. Here you have got additional regulations piled  
9 on and we need to know how we are not going to  
10 continue to have a regulated company butting heads  
11 with its regulators on something.

12 I don't see any recalcitrance here. I see  
13 some resignation, but I think we need to get outside  
14 the box, and you guys are in the best position to tell  
15 me how the Commission should go forward. How that  
16 will get factored into the order, I don't know, but it  
17 will come in as part of the record. And that way, if  
18 either of you feel that whatever the solution or the  
19 order says, you can file an appeal, or the  
20 commissioners want to look at this on their own, the  
21 record is going to be further developed from the  
22 commissioners' perspective as to what's the long-term  
23 solution, not only for Shuttle Express but statewide,  
24 given that these rules apply statewide.

25 And as much as Shuttle Express might be

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1 uniquely positioned to have this challenge, there may  
2 be others that we are not thinking of today, that the  
3 commissioners, when they write a rule and it is a  
4 statewide precedential order, this information is  
5 going to help them, I hope tremendously, to see a way  
6 ahead, whether that requires a rule change or whether  
7 that just simply requires additional incentive to the  
8 Company to get the message to comply, I know they like  
9 the rules, go forward from there.

10 So it's kind of a freestyle assignment of a  
11 brief. I don't care how long it is, but I care how  
12 well thought out and effective the presentation is.  
13 I'll let you take it together. If you can do it in  
14 the next two weeks, great; if you need additional  
15 time, that's fine. I will continue to working on  
16 crafting the order. As I said, I don't think it can  
17 influence the facts of the case, but it will help me  
18 to address the disease, not just the symptoms here, if  
19 you will.

20 MS. CAMERON-RULKOWSKI: Your Honor, I  
21 have a concern about acting as legal counsel for the  
22 Company, because what you are asking us to provide is  
23 essentially a legal solution. And is there -- could  
24 we encourage the Company to retain legal counsel to --  
25 for this situation?

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1 MR. SHERRELL: Yes.

2 JUDGE TOREM: I think that would be at  
3 the Company's option, but I understand your  
4 reluctance. You have a role to provide to your  
5 client, but I think it may also be that Staff can work  
6 without legal counsel and correspond with the Company,  
7 as almost the way we do technical assistance, to  
8 provide it. I think the legal solution, as you call  
9 it, because this is so rule centric, is going to be  
10 necessary. For this limited purpose, if the Company  
11 thinks it's a good investment, I would recommend it,  
12 but again, I can't give legal advice to the Commission  
13 Staff or to counsel for the Company, but it's  
14 definitely a meritorious suggestion and should be  
15 considered.

16 MS. CAMERON-RULKOWSKI: And, Your Honor,  
17 I have one other request, and that is that you issue  
18 an order that explains what it is you want from us.  
19 We will now need to --

20 JUDGE TOREM: You actually want me to  
21 put that in writing?

22 MS. CAMERON-RULKOWSKI: I know, Your  
23 Honor.

24 JUDGE TOREM: I will do something  
25 tomorrow to specify the elements at the very least. I

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1 don't want anything that I craft as an order requiring  
2 a posthearing brief, but I think that's fair, to  
3 actually take that rambling discourse and put it into  
4 some bullet points that should be addressed.

5 MS. CAMERON-RULKOWSKI: I would  
6 appreciate it. We will need to be explaining that to  
7 multiple staff members and it would certainly be  
8 easier if we had one document to work from.

9 JUDGE TOREM: And we don't even have  
10 anyone on the bridge line inhale deeply and wonder  
11 what I'm saying.

12 So I can do that. I will try to issue  
13 something, if not tomorrow, then by early next week.  
14 I will get a letter out to you, or as it is an order,  
15 explaining the deadline of the 16th and the bulleted  
16 points.

17 I think you have the general idea. I think  
18 you're right, trying to communicate this without the  
19 transcript might be difficult to others that might  
20 have an interest, particularly if you hire legal  
21 counsel. This will give us all a place to have a  
22 starting point.

23 MS. CAMERON-RULKOWSKI: Essentially  
24 what -- just to make sure that I understand what it is  
25 you are seeking, it looks to me that you are seeking

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1 at this point a mediated resolution. Do you think  
2 that that is a fair --

3 JUDGE TOREM: Oh, not to this complaint.  
4 I'm looking at --

5 MS. CAMERON-RULKOWSKI: Essentially a  
6 mediated -- a mediated solution to going forward, to  
7 compliance going forward?

8 JUDGE TOREM: Yeah, I'm not even sure I  
9 would call it mediated. It can be a joint  
10 recommendation, it can be individual recommendations.  
11 I'm simply looking for input for the Commission to  
12 prevent this from recurring again.

13 I will give this some more thought and put it  
14 down into a letter directive format. Again, it will  
15 be kind of a suggestion on what you should do, but it  
16 won't be limited to -- if you think of something when  
17 you are driving home today, or otherwise, Well, here's  
18 the solution and the judge didn't contemplate it,  
19 please include it. Take it as the broadest stroke of,  
20 how do you keep the Commission and Shuttle Express, or  
21 any other auto transportation company, from having  
22 these set of rules again litigated because of the  
23 perceived need to meet passenger satisfaction demands,  
24 or as Mr. Sherrell put it, to do RCW 80.01. We want  
25 to serve the public interest.

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1           I understand that there's a variety of  
2 interests being served when you charge money for a  
3 service. However, taking that in the manner it was  
4 intended, I think to have the customer experience not  
5 ever be an issue in front of the Commission, how do we  
6 keep the ability to meet the customers' needs and  
7 satisfaction, and yet also have compliance with the  
8 rules? If the rule is wrong under door-to-door  
9 service, as has been suggested, and it only works for  
10 scheduled service, there's ways to deal with that. If  
11 there are ways to get exceptions to rules, if there  
12 are ways to have an independent contractor provision,  
13 or some other way, I just want a preventive tool going  
14 forward. I'll try to come up with some more discrete  
15 bullets and discrete direction.

16                   MS. CAMERON-RULKOWSKI: Thank you, Your  
17 Honor.

18                   JUDGE TOREM: All right. So I will  
19 issue that hopefully no later than Monday. I will  
20 send it out to you electronically, as soon as it's  
21 cut, and you will get one in the mail. It will also  
22 set the deadline of Friday, August 16th at noon.  
23 Again, if you need a -- hopefully, by at least  
24 24 hours in advance, if you need an extension, let me  
25 know. That way we can easily turn out the new date.



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1           Any other questions besides what in the heck  
2 did he just say?

3           Okay. Then it's now about 3:25. It looks  
4 like we are ready to adjourn for the day.

5           Does anybody want to order a copy of the  
6 transcript, besides what the Commission is already  
7 going to order?

8           MR. SHERRELL: Yes, please.

9           JUDGE TOREM: Let me have you get with  
10 the court reporter after, so you understand when you  
11 say, Yes, I want to order the transcript, what the  
12 approximate cost might be as well.

13           MR. SHERRELL: Yes, I want to order a  
14 transcript.

15           JUDGE TOREM: Fair enough.

16           And the transcripts are usually available -- I  
17 think we are running two weeks or ten days. Ten  
18 business days probably. So it may not -- if you need  
19 the transcript to respond to the briefs, then we will  
20 definitely need an extension, so let me know on that  
21 as soon as you sort that out with the Company as well.  
22 I don't want you to have to incur rushed service just  
23 to respond to that.

24           MS. CAMERON-RULKOWSKI: So just in terms  
25 of, if we are talking about extensions, I'm going to

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1 be out for vacation and minor surgery starting  
2 August 26th, and through the following week,  
3 September 6th. I will need to either get this done  
4 before then or after then.

5 JUDGE TOREM: Okay. So I realize an  
6 extension request could be 30 days.

7 MS. CAMERON-RULKOWSKI: Okay.

8 JUDGE TOREM: I'm either going to expect  
9 this product from you mid-August, or if it can't be  
10 done, we're waiting on transcripts or something else,  
11 then mid-September.

12 For the Commission, my target to enter an  
13 order typically is 60 days after the date of the  
14 hearing, after the record closes, and I'm hoping that  
15 I can get you an order before September. If I have to  
16 wait on the inputs, then we will probably just wait  
17 until toward the end of September to get the order  
18 out. If that's fine with everybody, it's not a more  
19 urgent matter for either side to get the order, then  
20 we can do it all together. I can have most of the  
21 order written, and then work in whatever discussion I  
22 have about materials I'll get from you, so that's not  
23 critical.

24 MS. CAMERON-RULKOWSKI: That sounds  
25 reasonable, Your Honor.

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1                   JUDGE TOREM:  So for now we will set it  
2   for the 16th of August at noon.  I will anticipate and  
3   liberally grant an extension to mid-September, if  
4   that's justified in what you need to do.

5                   Thank you.  It's 3:25.  We are adjourned.

6                   (Discussion off the record.)

7                   JUDGE TOREM:  We are back on the record  
8   at the request of the parties.  I will note it's a  
9   very reasonable request, as we just discussed, the  
10  August 16th date and the likelihood of it being  
11  extended is pretty much 100 percent, maybe  
12  105 percent.  We have picked a new date that still  
13  complies with the Commission trying to get an order  
14  out within 60 days of today.  Friday, September 20th  
15  will be the date.  We won't really entertain any  
16  further extensions, unless there's very good cause,  
17  because we don't want to delay the product coming out.

18                  I will do my best to write the order.  As I  
19  say, this won't necessarily influence the outcome of  
20  the order, but will be discussed in a latter section  
21  of the order, and I will work hard to incorporate it  
22  shortly after I receive it.

23                  Friday, September 20th, at close of business  
24  is when a joint brief or individual explanations will  
25  come out.  I will still send you by early next week,

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1 Monday, I hope, the bulleted, more directed point of  
2 this.

3 MS. CAMERON-RULKOWSKI: Thank you, Your  
4 Honor.

5 MR. SHERRELL: Thank you.

6 (Hearing adjourned 3:28 p.m.)

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STATE OF WASHINGTON

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COUNTY OF KING

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I, Sherrilyn Smith, a Certified

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Shorthand Reporter in and for the State of Washington,

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do hereby certify that the foregoing transcript is

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true and accurate to the best of my knowledge, skill

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and ability.

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SHERRILYN SMITH

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