

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BREMERTON-KITSAP AIRPORTER, INC.

Complainant,

SHUTTLE EXPRESS, INC.

Respondent.

DOCKET NO. TC-110230

MOTION TO AMEND THE
COMPLAINT OF BREMERTON-
KITSAP AIRPORTER, INC.

I. PARTIES TO ACTION

1 Bremerton-Kitsap Airporter, Inc. ("BKA") by counsel, hereby moves to amend its *pro se* original complaint of January 31, 2011 in the above referenced docket so as to set forth more succinctly the allegations that are the subject of this action. BKA's full name and address are:

Bremerton-Kitsap Airporter, Inc.
5748 Bethel Road
PO Box 1255
Port Orchard, WA 98366

BKA's Representative:

David W. Wiley
Williams Kastner & Gibbs PLLC
601 Union Street, #4100
Seattle, WA 98101

II. RULES/STATUTES AT ISSUE POSED BY MOTION

2 WAC 480-07-395(5), WAC 480-07-395(4), RCW 34.05.437 and RCW 34.05.419.

MOTION TO AMEND THE COMPLAINT OF BREMERTON-
KITSAP AIRPORTER, INC. - 1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

III. RELIEF REQUESTED

3 BKA asks that leave for and its Motion to Amend the Complaint be granted.

IV. STATEMENT OF FACTS

4 On or about January 31, 2011, BKA filed a Complaint raising issues related to the tariff publication practices and operations of Respondent Shuttle Express, Inc. which it alleged were in excess of authorized authority and in violation of law and rule.

Following appearance by counsel and initial suggestion by the Administrative Law Division of potentially hearing the dispute on a paper record which Complainant opposed, the parties engaged in informal settlement discussions which resulted in two approximate month deferrals of the adjudication. Following suspension of those discussions, Complainant now seeks to amend the *pro se* Complaint to provide additional clarification, contentions and references to law and rule.

V. STATEMENT OF ISSUES

5 Should the instant Complaint be allowed amendment under governing law and rule?

VI. ARGUMENT IN SUPPORT OF MOTION TO AMEND

6 BKA should be permitted to amend its complaint under WAC 480-07-395(4) as that provision establishes a liberal pleading construction standard with a “view to affect justice among the parties.”¹ Because the original *pro se* complaint may not have been completely clear as to the gravamen of the allegations and what potential remedies were sought by the Complainant, the Complainant, through counsel, now seeks to amend the Complaint to add additional explanation and scope to the allegations. Doing so is fully consistent with the liberal construction standards of the Commission and the promotion of “fair and just results” that WAC 480-07-395(5) prescribes.

¹ See also, Order 05, Docket TC-091931, *In re Application of Shuttle Express* (Apr. 2011) at 4, where the Commission recently, citing WAC 480-07-395(4), allowed Shuttle Express to have an application for extension treated as a Petition to Amend a Certificate.

7 Indeed, the Commission's procedural regulation is similarly consistent with Civil Rule
15(a) by which the Superior Courts of the State allow amendments of pleadings when
justice so requires. *See also, Orwick v. Fox*, 65 Wn.App 71, 89, 828 P.2d 12 (1992),
where the Court found that in the absence of prejudice to the non-moving party, a 3 ½
year interval from the filing of the original complaint alone is insufficient to justify
denial of the Motion to Amend.²

8 In this case, retention of counsel and two separate brief intervals whereby the parties
unsuccessfully sought to resolve the matter through settlement discussions (which
promotes the Commission's goal of alternative case settlement), have taken a number
of months to address. Such discussions have clearly not caused prejudicial delay to the
parties and the alternative of seeking leave for withdrawal and refile of a wholly new
complaint would seem to portend even more costly delay than allowing amendment to
and service of this pleading under the Commission's pertinent rule and established
liberal pleading amendment policy.

9 A copy of the proposed Amended Complaint is separately filed simultaneously for the
Commission's and parties' reference.

VII. PRAAYER FOR RELIEF

10 For the reasons set forth above, BKA respectfully requests that its Motion to Amend its
Complaint be granted and that following Answer by the Respondent, that the

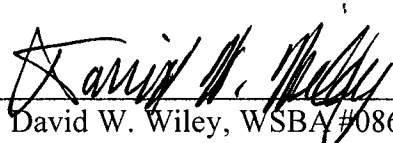
² As the Commission itself has previously noted in Order M.V. No. 126852, *Application for Authority to Transfer Permit No. CC8779 from Delta Trucking Company to Thorndike Trucking, Inc.*, App. No. P-66283 (1982) “. . . We have previously looked, and we continue to look, to analogous statutes and rules for guidance in interpretation of our own statutes. We believe that the cited civil procedural statute and rule, the philosophy which they express, and the cases which are decided interpreting those statutes and rules are fully consistent with our results in this proceeding. The statute, the rules, and the cases express a philosophy of liberality in terms of authorizing amendments and go so far as to permit the amendment of pleadings to conform with the proof presented at trial.” Order M.V. No. 126852 at 10.

Commission set this matter either for hearing or for a brief adjudication, pursuant to WAC 480-07-610, in the discretion of the Commission.

DATED this 7th day of July, 2011.

RESPECTFULLY SUBMITTED,

WILLIAMS, KASTNER & GIBBS PLLC

By  _____
David W. Wiley, WSBA #08614
dwiley@williamskastner.com
Attorneys for Complainant

CERTIFICATE OF SERVICE


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

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

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

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

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Lyndsay Taylor