

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	DOCKET TC-072228
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
SHUTTLE EXPRESS, INC.,	)	NARRATIVE SUPPORTING
	)	SETTLEMENT AGREEMENT
Respondent.	)	
_____	)	

**I. INTRODUCTION**

1 This Narrative Supporting Settlement Agreement (Narrative) is filed pursuant to WAC 480-07-740(2)(a) on behalf of both Shuttle Express, Inc. (Shuttle), and the Staff of the Washington Utilities and Transportation Commission (Staff). Both parties have signed the settlement agreement (Agreement), which is being filed concurrently with this Narrative. This Narrative summarizes the Agreement. It is not intended to modify any terms of the Agreement.

**II. PROPOSALS FOR REVIEW PROCEDURE**

2 The parties submit that this matter is considerably less complex than a general rate proceeding and request that review proceed on a timetable for less complex matters, as provided in WAC 480-07-740(1)(b). To the knowledge of either party, there are no opponents of the settlement. Because of the less complex nature of this matter and the

uncontested status of the settlement, the parties suggest that a formal settlement hearing along with the opportunity for public comment are unnecessary in this case.

3           The parties do not intend to file documentation supporting the Agreement, with the exception of the Agreement itself and this Narrative. If the Commission requires supporting documents beyond the Agreement, Narrative, and the other documents on file in this docket, the parties will provide documentation as needed.

4           In keeping with WAC 480-07-740(2)(b), the parties are prepared to present one or more witnesses each to testify in support of the proposal and answer questions concerning the Agreement's details, and its costs and benefits, should such testimony be required. In addition, counsel for both parties are available to respond to any questions regarding the proposed settlement that the Commission may have.

5           The parties request a streamlined review of the proposed settlement. To that end, the parties would prefer an informal review on a paper record. In accordance with WAC 480-07-730, the parties propose the foregoing procedural alternatives for review of the proposed settlement agreement.

### **III. SCOPE OF THE UNDERLYING DISPUTE**

6           The underlying dispute concerns penalties assessed by the Commission against Shuttle. In April 2008, Staff completed an investigation and determined that Shuttle was violating WAC 480-30-213(2) by using six charter bus carriers as independent contractor drivers to provide passenger transportation services authorized under Shuttle's Commission certificate. WAC 480-30-213(2) requires the drivers of a vehicle operated by a passenger transportation company be the certificate holder or an employee of the certificate holder.

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Shuttle filed a request for hearing. While Shuttle did not dispute the underlying facts of the investigation, the company contested the violations based on its interpretation of the applicable laws and Commission rules. In support of its challenge of the violations, Shuttle contended that its independent contractor operation “was and is still debatably legal,” in that (1) relevant regulation in California that is similar to regulation in Washington allows the use of independent contractor drivers with charter licenses, and (2) the Employment Security Department has classified Shuttle’s independent contractor drivers as employees. Shuttle also provided arguments for mitigation; namely that the independent contractor driver operation was safe, that it constituted an upgraded service, that Shuttle carried additional insurance on each charter driver, that Shuttle did not intend to disregard regulations but rather intended to move the independent contractor debate forward to a final decision, and that penalizing Shuttle for seeking a remedy to higher prices results in penalizing the traveling public. Subsequently, the parties negotiated and reached a full settlement of the dispute.

#### **IV. DESCRIPTION OF PROPOSED SETTLEMENT**

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The settlement resolves all of the issues in dispute. Shuttle admits for settlement purposes that its independent contractor program violated a Commission rule, and the company pledges future compliance. The settlement provides for payment of the full penalty amount of \$9,500 in return for assurance that Staff will not seek penalties for any violations of 480-30-213(2) that may have occurred based on Shuttle’s use of the six charter carriers outside the period of Staff’s investigation but during the period Shuttle operated its independent contractor driver program from June 16, 2007, the date Shuttle began operating

the program, to December 31, 2007, the date Shuttle terminated the program. Finally, the settlement provides for payment of the penalty in installments over three months to begin July 15, 2008, or the first day of the month following the final order, whichever is later.

**V. STATEMENT OF PARTIES' INTERESTS AND THE PUBLIC INTEREST**

9 As stated in the Agreement, the settlement represents a compromise of the positions of the two parties. The parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the public interest that this dispute conclude without the further expenditure of public resources on litigation expenses.

10 The Commission will receive the full amount of the penalty without expending resources on litigation. Staff's agreement not to pursue additional penalties for violations of WAC 480-30-213(2) related to Shuttle's use of the six charter carriers that occurred during the time Shuttle operated its independent contractor driver program is reasonable because Shuttle has terminated the program. The summer start date of the payment plan will allow Shuttle to pay the penalty after the start of its busy season, when it expects to have accumulated more revenue, which will delay payment of the penalty for less than one month, if at all.

**VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT**

11 In WAC 480-07-700, the Commission states its support for parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest. The parties have resolved all of the issues in dispute

between them, and their resolution complies with Commission rules and, as explained above, is consistent with the public interest.

## VII. CONCLUSION

12 Because the parties have negotiated a compromise on all of the issues in this dispute and because the settlement is in the public interest, both parties request that the Commission issue an order approving the Agreement in full.

Respectfully submitted this \_\_\_\_ day of July, 2008.

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