

8300 Greensboro Dr.  
Suite 1200  
McLean, VA 22102  
(703) 584-8678  
WWW.FCCLAW.COM

Brooks E. Harlow  
(703) 584-8680 direct  
(206) 650-8206 mobile  
bharlow@fcclaw.com  
NOT ADMITTED IN VA

**LNGS** | LUKAS,  
NACE,  
GUTIERREZ  
& SACHS, LLP

August 26, 2013

**VIA WUTC WEB PORTAL AND REGULAR MAIL**

Mr. Steven V. King  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive, S.W.  
PO Box 47250  
Olympia, WA 98504-7250

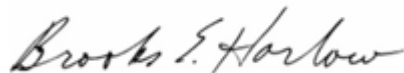
**Re: Utilities and Transportation Commission v. Shuttle Express, Inc.  
TC-120323**

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and five (5) copies of a Motion for Continuance, and Certificate of Service.

If you have any questions, please feel free to contact the undersigned.

Respectfully submitted,



Brooks E. Harlow  
*Counsel for Shuttle Express, Inc.*

cc:  
ALJ Adam E. Torem (via email only)  
Parties of Record

Enclosures

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

SHUTTLE EXPRESS, INC.,

Respondent.

DOCKET TC-120323

MOTION OF SHUTTLE EXPRESS, INC.  
FOR CONTINUANCE

TO: STEVEN V. KING, Executive Director and Secretary, Washington Utilities and  
Transportation Commission, P.O. Box 47250, Olympia, Washington, 98504-7250; and

TO: Administrative Law Judge Adam Torem

TO: PARTIES OF RECORD

**MOTION**

<sup>1</sup> Pursuant to WAC 480-07-385 Respondent Shuttle Express, Inc. (“Shuttle Express”) moves for a continuance of the briefs due in this Docket on September 20, 2013, pending the filing, consideration, and determination of a petition for exemption to be expeditiously filed by Shuttle Express, which would be a condition of the continuance. Shuttle Express suggests a continuance for six (6) months, to February 28, 2014, solely because WAC 480-07-385(4) requires a date certain. However, the intent is that litigation in this docket would resume promptly upon conclusion of the exemption petition proceeding, and six months should be sufficient. Shuttle Express suggests that a status conference be set on February 28<sup>th</sup> and the date can be advanced if the exemption proceeding concludes well before that date.

2 This motion is based on the pleadings and record developed in this docket to date and the arguments set forth below. Shuttle Express has discussed this motion with Staff and understands that the Staff opposes any continuance.

### **PROCEDURAL AND FACTUAL HISTORY**

3 The Commission issued its complaint on May 1, 2013, asserting four causes of action against Shuttle Express. On May 24, 2013, Shuttle Express filed its formal answer to the complaint (styled a “Response”), summarily denying each and every cause of action. As to the First Cause of Action, of alleged violation of WAC 480-03-213, Shuttle Express further alleged “reasonable circumstances.”

4 A hearing was held in the docket on August 1, 2013. The Staff was represented by Assistant Attorney General Jennifer Cameron-Rulkowski (the “AAG”). Shuttle Express was represented by Jimmy Sherrell, who is not an attorney. At the hearing, the parties presented testimony and introduced exhibits, which were admitted into the record.

5 At the conclusion of the hearing, the administrative law judge (“ALJ”) expressed a desire for a resolution going forward. For example: “[T]he Commission I believe needs to be informed on what the path forward is going to be. And if the path forward leads to the Company being defunct and/or being back in the hearing room with the same questions again, then we are failing as a Commission.” TR. 155. Further: “What I want is some recommendation on how Shuttle Express can meet the needs of its passengers and how Shuttle Express can comply with all applicable Commission rules.” TR. 156. Further to that end, the ALJ directed the parties to attempt to file a joint brief with recommendations or options for going forward. TR. 155. After

learning of the AAG’s absence from the office from August 26<sup>th</sup> through September 9<sup>th</sup>, the ALJ set September 20<sup>th</sup> as the due date for the brief(s). *See* TR. 164-67.

6 On August 5, 2012, the ALJ issued a Notice Requiring Post-Hearing Briefing, which memorialized the request on the record that the parties, “address potential means by which Shuttle Express can satisfactorily serve its customers....” One of the options listed in the Notice was, “Shuttle Express petitioning the Commission for an exception to rule....”

7 On August 6, 2013, the undersigned appeared in the case as counsel for Shuttle Express.

8 Mr. Sherrell and counsel met with the AAG and representatives of Staff on August 19, 2013 pursuant to the ALJ’s directive. Later in the week and up to the time of the ALJ’s departure for vacation on the afternoon of August 23, 2013, counsel and the AAG exchanged draft documents and had telephonic discussions. Shuttle Express believes that further progress could have been made and impasse had not been reached, but time simply ran out due to the AAG’s schedule.

9 Counsel and the AAG discussed the possibility of a continuance, but were unable to agree.

### **DISCUSSION, GROUNDS FOR REQUEST**

10 At the outset, Shuttle Express wishes to set the record straight on the issue of its position on the alleged violations. Answers given by Mr. Sherrell—a non-lawyer—at the hearing

may have given the impression that Shuttle Express may admit one of the causes of action.<sup>1</sup> That is most definitely not the case. All four causes were denied in the Response. Mr. Sherrell was never asked if Shuttle Express intended to change its May 24, 2013 pleas and so the denials in the Response stand.

11        Regardless of its position in this docket, Shuttle Express agrees with the ALJ that a solution going forward is preferable to continued uncertainty about how Shuttle Express can meet the public need and public interest in providing efficient, reliable, and timely service to airport passengers at a cost that is sustainable. Accordingly, Shuttle Express seeks a reasonable time to pursue such a solution.

12        The Notice identified a petition for exception as one of the potential options available. Presumably the reference was to a petition under WAC 480-07-110. In preparation for meetings with the Staff, Shuttle Express prepared an outline of an exemption from WAC 480-30-213, including a number of conditions relating to safety, fares, and regulatory oversight to ensure that the public interest remains fully protected even when independent contractors are used to provide rescue service. Accordingly, Shuttle Express could file a petition for exemption within one week of the service date of an order granting a continuance. Shuttle Express would seek to import the record of this docket into the petition docket, as the public interest issues were well-developed at the hearing on August 1<sup>st</sup>.

13        The standard for granting a continuance is “good cause” and if the continuance will not prejudice any party or the Commission. WAC 480-07-385(2).

---

<sup>1</sup> The questions were in the nature of requests for opinions on matters of law; *e.g.* application of WAC 480-30-213; and accordingly should be given no weight. Only the facts adduced at the hearing should be considered in determining if the WACs or statutes were violated.

14 Here there are several reasons good cause exists. First, the presiding officer has requested a going forward solution, which is urgently needed by the carrier and the public and probably cannot be accorded in the current docket. An exemption requires a petition by the carrier and allows for participation by other interested parties. Neither can be accomplished at this stage of this proceeding. Second, the Commissioners will need to approve any exemption of the rules that may be necessary to effectuate a going forward resolution. The parties and the ALJ can make recommendations, but will not know until after the case is out of their hands how the Commissioners will react. An exemption petition would potentially come before the Commissioners early on at a Commission open public meeting and could also be further vetted in an adjudicative proceeding. WAC 480-07-110(2)(b). A going forward resolution would narrow the issues in this docket to a determination of what penalty, if any, should be imposed on Shuttle Express. Guidance from the exemption petition docket might enable the parties to find common ground to settle. In contrast, proceeding on the complaint could lead to further and perhaps protracted litigation and appeals, which would not be conducive to seeking a prompt and permanent “win-win” resolution.

15 A continuance would not prejudice the staff or the Commission. There is no danger of loss of evidence or witnesses, as the hearing has been concluded. There was no evidence of imminent danger to public health, safety, or welfare.<sup>2</sup> The Staff contends that there is an ongoing rule violation, but it is clear that an order on the Staff’s complaint without resolving matters going forward will not result in compliance.<sup>3</sup> Notably, the Staff’s complaint only sought penalties, not a cease and desist order. The quickest way to ensure compliance

---

<sup>2</sup> Staff may dispute this, but realistically a limousine carrying four or five passengers to one location is no safer than a limousine carrying four or five passengers to two locations, which seems to be what the issue may come down to.

<sup>3</sup> Of course should the order find no violation, then *a fortiori* Shuttle Express would be deemed in compliance.

would be to move forward with the exemption petition, which would be facilitated by the continuance.

### CONCLUSION

16 The parties should be given additional time to work on a going forward solution to the demonstrated need for Shuttle Express to be able to operate a “rescue” service. A petition for exemption and proceeding under WAC 480-070-110 is the most effective way to accomplish that. Moreover, it would allow participation of other carriers, the public, and the Commissioners. It is in the public interest to conclude the exemption proceeding before entering a decision in this docket. Shuttle Express requests a ruling on this request at least a week before September 20<sup>th</sup>, when work on the briefs would otherwise have to begin.<sup>4</sup>

Respectfully submitted this 26<sup>th</sup> day of August, 2013.

LUKAS, NACE, GUTIERREZ & SACHS, LLP



\_\_\_\_\_  
Brooks E. Harlow  
Counsel for Shuttle Express, Inc.

---

<sup>4</sup> Aware of her vacation plans, Shuttle Express’ Counsel advised the AAG before she left that coverage should be arranged because this motion might be filed early this week.

Docket TC-120323  
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Notice of Appearance upon the persons and entities listed on the Service List below via e-mail and by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at McLean, Virginia this 26th day of August, 2013.

  
JOSEPH S. MIRSHAK

Commission Staff

Jennifer Cameron-Rulkowski  
Assistant Attorney General  
1400 S. Evergreen Park Drive S.W.  
P.O. Box 40128  
Olympia, WA 98504-0128

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