

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

1 This settlement agreement (Agreement) is entered into by both parties to this proceeding for the purpose of resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this Agreement are Shuttle Express, Inc. (Shuttle), and the Staff of the Washington Utilities and Transportation Commission (Staff) (collectively, “the Parties”).

II. BACKGROUND

3 Shuttle is an auto transportation company¹ that holds a certificate of public convenience and necessity from the Washington Utilities and Transportation Commission (Commission) to transport passengers. In April of 2008, Staff completed an investigation into the allegation that Shuttle was contracting with six charter bus carriers as independent contractor drivers to provide passenger transportation services authorized under Shuttle’s Commission certificate. Pursuant to Commission rule, WAC 480-30-213(2), the driver of a vehicle operated by a passenger transportation company must be the certificate holder or an

¹ Defined at RCW 81.68.010(3).

employee of the certificate holder. Staff determined that Shuttle was violating this rule by using independent contractor drivers.

4 Shuttle operated its independent contractor driver program² from June 16, 2007, to December 31, 2007, when it voluntarily terminated the program. Staff found that during the operations period it examined, from September 1 to September 30, 2007, Shuttle used the six drivers it had contracted with as independent contractors to provide passenger transportation 95 times, in violation of WAC 480-30-213(2).

5 Based on Staff's findings, the Commission assessed penalties of \$9,500 against Shuttle on April 28, 2008. On May 22, 2008, Shuttle requested a hearing. The parties reached an agreement in principle to settle shortly thereafter and so informed the Commission on June 4, 2008.

III. AGREEMENT

6 The Parties have reached agreement on the issues raised in the above docket and present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

7 Shuttle admits that its independent contractor driver program violated WAC 480-30-213(2). The Parties agree that Shuttle will pay to the Commission penalties totaling \$9,500.

² Shuttle's independent contractor driver program operated as follows: Shuttle managed the operations of independent contractor drivers who possess Commission charter carrier authority. These charter carriers worked only for Shuttle and drove vehicles they leased from Shuttle's subsidiary. The vehicles displayed the Shuttle name as did the fare tickets used by the charter carriers. Reservation and dispatching services for the charter carriers took place at Shuttle. Shuttle compensated the charter carriers for providing transportation services authorized under Shuttle's certificate.

8 The amount shall be ordered due and payable in three monthly installments beginning the first day of the first month after the Commission issues its order approving this Agreement, or on July 15, 2008, whichever occurs last. Each subsequent installment shall be due and payable on the first of each month, with a five-day grace period. If Shuttle fails to timely make any payment, the full remaining balance will be due and payable within 10 days. The amount of the first two installments shall be \$4,000. The final installment shall be \$1,500.

9 Shuttle agrees that it will comply with all applicable rules and statutes enforced by the Commission, including those at issue in this proceeding.

10 Staff agrees not to seek additional penalties for violation of WAC 480-30-213(2) from Shuttle; Shuttle's officers, directors, employees, and agents; or the six independent contractor drivers based on Shuttle's use of the six charter carriers for operation of 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. This Agreement does not preclude the Commission from pursuing penalties for violations of Commission rules and statutes unrelated to the subject matter of this Agreement at any time or for violations of any rules or statutes at issue in this proceeding with respect to independent contractor drivers not identified in Staff's investigation, or that occurred before June 16, 2007, the date Shuttle began operating the program, or after December 31, 2007, the date Shuttle terminated the program ("Unrelated Claims"). Nor does this agreement preclude Shuttle from asserting any defenses that it may have as to any unrelated claims.

IV. GENERAL PROVISIONS

11 The Parties agree that this Agreement reflects the settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement—including the admissions contained herein—is not binding unless and until accepted by the Commission. If the Commission does not accept this Agreement, including all of its terms and conditions without change, then the Parties shall be free to assert their pre-settlement positions and agree that neither this Agreement nor any statements or admissions contained herein shall be admissible or used for any purpose in this docket or any other proceeding for any purpose.

12 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

13 The Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements) and (2) to include in any news release or announcement a statement that the Staff's recommendation to approve the settlement is not binding on the Commission itself.

14 Nothing in this Agreement shall limit or bar any other entity from pursuing legal remedies against Shuttle or Shuttle's ability to assert defenses to such claims.

15 The Parties have entered into this Agreement to avoid further expense,
inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents
a compromise of the Parties' positions. As such, conduct, statements, and documents
disclosed during negotiations of this Agreement shall not be admissible as evidence in this
or any other proceeding, except in any proceeding to enforce the terms of this Agreement or
any Commission order fully adopting those terms. This Agreement shall not be construed
against either party because it was a drafter of this Agreement.

16 The Parties have negotiated this Agreement as an integrated document to be effective
upon execution. This Agreement supersedes all prior oral and written agreements on issues
addressed herein. Accordingly, the Parties recommend that the Commission adopt this
Agreement in its entirety.

17 The Parties may execute this Agreement in counterparts and as executed shall
constitute one agreement. Copies sent by facsimile are as effective as original documents.

18 The Parties shall take all actions necessary as appropriate to carry out this
Agreement.

19 In the event that the Commission rejects all or any portion of this Agreement, each
party reserves the right to withdraw from this Agreement by written notice to the other party
and the Commission. Written notice must be served within 10 business days of the Order
rejecting part or all of this Agreement. In such event, neither party will be bound or
prejudiced by the terms of this Agreement, and either party shall be entitled to seek
reconsideration of the Order.

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

ROBERT M. MCKENNA
Attorney General

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
Counsel for the Washington Utilities and
Transportation Commission

Dated: _____, 2008.

SHUTTLE EXPRESS, INC.

JIMY SHERRELL
President

Dated: _____, 2008.

BROOKS E. HARLOW
Counsel for Shuttle Express, Inc.

Dated: _____, 2008.