

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application TC-082064 of)	DOCKET TC-082064
)	
MILLER SCHMER, INC., d/b/a)	
SEATTLE EXPRESS)	ORDER 02
)	
For Extension of Authority under)	
Certificate No. C-1052, For a)	ORDER GRANTING REQUEST TO
Certificate of Public Convenience and)	WITHDRAW; CANCELLING
Necessity to Operate Motor Vehicles in)	HEARING; AND CLOSING DOCKET
Furnishing Passenger and Express)	
Service as an Auto Transportation)	
Company)	
)	
.....)	

MEMORANDUM

1 **NATURE OF PROCEEDING.** On November 14, 2008, Miller Schmer, Inc., d/b/a Seattle Express (Seattle Express or Applicant), filed with the Washington Utilities and Transportation Commission (Commission) an application for an extension of Certificate No. C-1052 for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company (Application).¹ On February 18, 2009, Evergreen Trails, Inc., d/b/a Gray Line of Seattle (Evergreen Trails) filed a protest with the Commission.²

¹The Applicant requests its authority be revised to include passenger service between hotels in the City of Tukwila, South Center Mall, Pike Place Market, and Cruise Terminals 90-91 along the following route: East on 180th Street, merging onto Highway 509 North which becomes East Marginal Way, then take the Western Avenue exit off East Marginal Way, then take Western Avenue 1.1 miles, then turn slight left onto Elliot Avenue for 1.2 miles, then turn right onto Magnolia Bridge, go over bridge and proceed into Terminal 90-91 Lot and return over the same route.

²A prehearing conference was originally noticed for February 4, 2009 in this matter. However, on January 28, 2009, the Commission cancelled the February 4, 2009, prehearing conference upon determining that the Commission’s notice of the application in the Transportation Docket

2 **APPEARANCES.** Matt Schmer, vice president, Snohomish, Washington, appeared pro se on behalf of Seattle Express. David L. Rice, attorney, Miller Nash, LLP, Seattle, Washington, appeared on behalf of Evergreen Trails. Donald T. Trotter, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).³

3 **PROCEDURAL HISTORY.** The Commission held a prehearing conference on March 25, 2009, before Administrative Law Judge Marguerite E. Friedlander. At the prehearing conference, the parties indicated that they had reached a settlement and that the agreement was awaiting signature. Thereafter, the Commission adopted a procedural schedule in Order 01 establishing April 20, 2009, as the deadline for the parties to file a settlement agreement in this matter. In the event that the settlement agreement was not executed and filed with the Commission by the April 20, 2009, deadline, the Commission also scheduled an evidentiary hearing in this docket for May 5, 2009.

4 On April 20, 2009, counsel for protestant, Evergreen Trails, contacted Judge Friedlander to assert that the parties had reached a settlement in principle but that the parties would not be able to file the agreement by the end of business on April 20, 2009. Evergreen Trails verbally requested an additional day to get the settlement agreement finalized, and Judge Friedlander granted the request.

5 On April 21, 2009, counsel for Staff notified Judge Friedlander that the parties were unable to reach the Applicant to finalize the settlement agreement. Staff requested an additional extension of the settlement agreement deadline until April 24, 2009, and on April 22, 2009, Staff filed this request in writing with the Commission. The

contained an erroneous description of the proposed service route. The application was subsequently re-noticed in the Commission’s Transportation Docket, and a new prehearing conference was scheduled for March 25, 2009.

³In formal proceedings, such as this case, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners’ policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

6 Commission issued a Notice Extending Deadline for Filing Settlement on April 23,
2009, granting Staff's request.

7 **WITHDRAWAL OF PETITION.** On April 24, 2009, Staff filed a letter with the
Commission on behalf of the parties.⁴ The letter notifies the Commission that the
parties have agreed that Seattle Express will withdraw its application without
prejudice, and requests that the Commission close Docket TC-082064 without
resolving the merits of the application. The agreement also provides that Seattle
Express may file another application, and the agreement in this docket does not affect
such a filing. Further, the agreement protects the right of Evergreen Trails to protest
any such future application.

8 Under WAC 480-07-380(3), a party must seek permission from the Commission to
withdraw an initial pleading when the Commission has issued a hearing notice or
begun an adjudication. In this case, the Commission issued Order 01 on April 2,
2009, including a notice of hearing scheduled for May 5, 2009.

9 The Commission will grant a request to withdraw when doing so is in the public
interest. The parties did indicate at a very early stage in the adjudicative process that
they had an agreement in principle which only lacked signatures, and the request to
withdraw was filed well in advance of the scheduled hearing. Therefore, it is
reasonable and in the public interest to grant Applicant's request to withdraw its
initial filing. Seattle Express' request to withdraw its Application should be granted,
and the docket closed. Furthermore, the May 5, 2009, hearing scheduled in this
docket should be cancelled.

⁴While they did not sign the letter filed by Staff, Applicant and Evergreen Trails each filed separate e-mails on April 24, 2009, confirming the agreement as filed.

ORDER

10 THE COMMISSION ORDERS that Miller Schmer, Inc., d/b/a Seattle Express' request to withdraw its Application for extension of authority under Certificate No. C-1052, for a certificate of public convenience and necessity to operate motor vehicles in furnishing passenger and express service as an auto transportation company is granted without prejudice, the May 5, 2009, hearing is cancelled, and the docket is closed.

Dated at Olympia, Washington, and effective April 27, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and three (3) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250