

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

In re Application TC-091931 of)	DOCKET TC-091931
)	
SHUTTLE EXPRESS, INC.,)	ORDER 02
)	
For a Certificate of Public Convenience)	ORDER GRANTING PETITION
and Necessity to Operate Motor)	FOR REVIEW
Vehicles in Furnishing Passenger and)	
Express Service as an Auto)	
Transportation Company)	
.....)	

1 **SYNOPSIS.** *In this order, the Commission grants Seatac Shuttle’s petition for administrative review of the interlocutory and initial order in this proceeding. In granting administrative review, the Commission modifies the interlocutory order’s determination that Seatac Shuttle’s protest should be stricken as untimely filed and that the prehearing conference should be canceled. This Order also modifies the initial order’s determination that the adjudicative proceeding addressing Shuttle Express, Inc.’s application should be terminated. The Commission accepts Seatac Shuttle’s protest, finds that the prehearing conference should be rescheduled and that this application should be addressed in an adjudicative proceeding.*

INTRODUCTION

2 **NATURE OF PROCEEDING.** This proceeding involves an application by Shuttle Express, Inc., (Shuttle Express) to extend its certificate to provide passenger and express service as an auto transportation company. The application seeks to remove the restriction that service be limited to vehicles no larger than a seven-passenger van.

3 **PARTY REPRESENTATIVES.** Brooks Harlow. Miller Nash, LLC, Seattle, Washington, represents Shuttle Express. John Solin, President, Oak Harbor, Washington, represents Seatac Shuttle, LLC (Seatac).

- 4 **PROCEDURAL HISTORY.** On December 17, 2009, Shuttle Express filed an application seeking an extension of its certificate to provide passenger and express service as an auto transportation company. Notice of the application was published in the Washington Utilities and Transportation Commission's (Commission) weekly Docket of December 22, 2009.
- 5 On January 20, 2010, Seatac filed, via the Commission's Web Portal, a protest to the application.¹ On January 27, 2010, Seatac filed a paper copy of its protest. On January 29, 2010, the Commission issued a Notice of Prehearing Conference.
- 6 On February 3, 2010, Shuttle Express filed a Motion to Strike Protest, Cancel Prehearing Conference, and Terminate Adjudicative Proceeding. On February 10, 2010, Seatac filed a Response to the Motion.
- 7 On February 25, 2010, Administrative Law Judge Adam Torem entered Order 01, *Interlocutory Order Granting Motion to Strike Protest, Canceling Prehearing Conference, Initial Order Terminating Adjudicative Proceeding.*
- 8 On March 12, 2010, Seatac filed a Response to Interlocutory Order. On March 22, 2010, Shuttle Express, treating Seatac's Response as a petition for administrative review, filed an Answer to Petition for Administrative Review on March 23, 2010.

MEMORANDUM

- 9 This issue before the administrative law judge, and now before us on review, is whether Seatac's protest was timely filed. The Commission's rules allow existing certificate holders to file a protest to an application within 30 days of the date the Commission mails the application. In this case, the 30-day deadline expired on January 21, 2010. While Seatac electronically submitted its protest within the 30-day period, on January 20, 2010, it did not file a paper copy on the following business day, January 21, 2010. The Commission received the paper copy on January 27, 2010.

¹ The Commission's website includes a location, the Web Portal, which allows persons to file documents electronically.

- 10 The Initial Order concludes that the electronic submission did not satisfy the Commission's filing requirements for protests because mail or hand-delivery is required for all documents and that documents are deemed received when date-stamped by the Commission. The Order concludes that an untimely protest bars a potential protestant from further participation in the proceeding unless the Commission did not provide proper notice of the application or if good cause exists for failure to file a timely protest.
- 11 Though the parties made various policy arguments in support of and in opposition to the overturning of the Initial Order, this issue can be resolved simply by reference to the Commission's rules practices in cases such as this and to the Administrative Procedure Act.
- 12 Non-adjudicative auto transportation applications are processed by the agency's Transportation Section. Adjudicative auto transportation applications are referred from the Transportation Section to the Administrative Law Division for processing. The distinction between the two types of proceedings is important because different rules apply to filing documents in non-adjudicative and adjudicative proceedings.
- 13 In non-adjudicative matters, we apply the rule in WAC 480-07-140(1)(a), which states in part:
- Electronic filing, limitations.* You may **file** documents electronically using the commission's web portal (see WAC 480-07-125) if you are not submitting documents in an adjudicative proceeding. . . . Electronic filing means the commission accepts the electronic version of the document as the official filing and does not require a paper copy of the documents.
- 14 It is apparent from the foregoing rule that in non-adjudicative proceedings electronic filings are accepted as official filings and a date-stamped hard copy of the document is not required.
- 15 On the other hand, in adjudicative matters, we apply the rule in WAC 480-07-145, as follows:

(2) *Mail or hand delivery service is required for all documents.* Parties to adjudicative proceedings . . . must file original, signed documents and paper copies by mail or hand delivery . . . to satisfy official filing requirements

(6) *Web portal, e-mail or fax transmission may be used to expedite the filing process.*

(a) *Paper copy required.* Parties may submit documents to the commission electronically through the web portal, e-mail or fax, on the date established for paper filing under the procedural schedule in an adjudicative proceeding, subject to the following conditions:

(i) *Timing.* Electronic submissions must be completed by 3:00 p.m. on the date established for filing. The commission encourages the use of the web portal rather than e-mail or fax.

(ii) *Paper Copy Required.* The commission must physically receive the original and required number of copies by 12:00 noon on the first business day following the filing deadline established under the procedural schedule.

16 In such adjudicative proceedings, physical service of the pleading is required.

17 Therefore, we must determine the nature of the proceeding at the time the protest was filed electronically. The Administrative Procedures Act (APA) provides a “bright line” definition of the commencement of an adjudicative proceeding. RCW 34.05.413 states:

(5) An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

18 In this matter an adjudicative proceeding commenced when the Commission issued the Notice of Prehearing Conference on January 29, 2010. On that date, the Commission notified the parties that the stages of adjudication including, but not limited to, appointing an Administrative Law Judge to preside, scheduling a prehearing conference, and establishing a procedural schedule, including a hearing date, would be applicable to Shuttle Express’ pending application. Prior to that time, Shuttle Express’ application was being processed as a non-adjudicative matter.

Because the protest predates the commencement of an adjudicative proceeding, as defined in the APA, the rule applicable to non-adjudicative matters governs Seatac's filing. Therefore, because under Commission rules electronic filings are official filings and because the protest was electronically filed within the 30-day protest period, it was timely filed.

- 19 The Commission's internal treatment of Shuttle Express' application is consistent with this finding. The Transportation Section received Seatac's electronically-filed protest on January 20, 2010, and treated it as timely filed. If the Transportation Section believed that the protest was not timely filed, it would have processed this application as unprotested. It did not. The Transportation Section forwarded the application to the Administrative Law Division for processing on January 22, 2010. It is noteworthy that this transfer from the Transportation Section to the Administrative Law Division occurred on January 22, 2010, or one day *after* the deadline for filing a paper copy should one have been required.
- 20 Moreover, the Administrative Law Division treated the protest as timely filed because it accepted the application for processing. If a paper copy of the protest had been required, the deadline for such a filing was January 21, 2010. The lack of a paper copy by the "deadline" did not prompt the Administrative Law Division to return the application to the Transportation Section for processing. Instead, the Administrative Law Division issued a Notice of Prehearing Conference on January 29, 2010. Again, it begs mention that the Notice was issued eight days after the deadline for filing a paper copy of the protest (should one have been required) and two days *after* a paper copy of the protest was actually received by the Commission. Moreover, in the Notice, the Commission cites the electronic filing date of January 20, 2010, not the date of receipt of the paper copy, as the date Seatac's protest was filed.
- 21 We conclude that WAC 480-07-140(1)(a) governed the filing requirements in this matter until such time as the Commission commenced an adjudicative proceeding according to RCW 34.05.413. Accordingly, we modify the Interlocutory Order's ruling and conclude that the motion to strike should have been denied and the prehearing conference should not have been canceled. We also modify the Initial Order's decision to terminate the adjudicative proceeding. Having accepted Seatac's

protest, we conclude that the prehearing conference should be rescheduled and this application and the protest should be considered.

ORDER

THE COMMISSION ORDERS That:

- 22 (1) Seatac Shuttle's Petition for Administrative Review is granted.
- 23 (2) Order 01, Interlocutory and Initial Order in this proceeding, is modified to Deny the Motion to Strike Protest, Reschedule Prehearing Conference, and Reinstate Adjudicative Proceeding.
- 24 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective August 25, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner