

Docket No. TC-200151 - Vol. I

WUTC v. Shuttle Express, Inc.

September 29, 2020



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND) DOCKET TC-200151
TRANSPORTATION COMMISSION,)

Complainant,)

vs.)

SHUTTLE EXPRESS, INC.,)

Respondent.)

TELEPHONIC PREHEARING CONFERENCE, VOLUME I
Pages 1-18
ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

September 29, 2020
1:31 p.m.

Washington Utilities and Transportation Commission
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Lacey, Washington 98503

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LACEY, WASHINGTON; SEPTEMBER 29, 2020
1:31 P.M.

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P R O C E E D I N G S

JUDGE HOWARD: Good afternoon, everyone.
Let's be on the record. The time is 1:31 p.m.

My name is Michael Howard, and I'm an
administrative law judge with the Washington Utilities
and Transportation Commission.

We're here today for a prehearing conference
in Docket TC-200151, which is captioned Washington
Utilities and Transportation Commission versus Shuttle
Express, Incorporated.

The Commission issued a complaint in Order
01 in this docket. The order alleges that Shuttle
Express violated Commission rules pertaining to auto
transportation companies and should be penalized.

Today we're here for a prehearing
conference. This is a chance for the parties to clarify
the issues and discuss the procedural schedule including
setting a date for hearing. After today's conference, I
will enter an order setting out the schedule and setting
a date for the hearing.

Let's start by taking appearances, and do we

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MICHAEL HOWARD

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* * * * *

have an appearance for Shuttle Express?

MR. SHERRELL: Jimmy Sherrell, J-i-m-y, last
name Sherrell, S-h-e-r-r-e-l-l. CEO of Shuttle Express.

JUDGE HOWARD: Thank you, Mr. Sherrell. And
I see we have your contact information already in the
docket.

Could we have an appearance for Staff?

MR. FUKANO: Good afternoon, Your Honor.
Harry Fukano, Assistant Attorney General, here on behalf
of Commission Staff. And with me is co-counsel,
Assistant Attorney General Jeff Roberson.

JUDGE HOWARD: Thank you.

And can we have an appearance for Public
Counsel?

MS. SUETAKE: Yes, thank you. This is Nina
Suetake, Assistant Attorney General, for Public Counsel.
And I'm joined by regulatory analyst Shay Bauman and
Sarah Laycock.

JUDGE HOWARD: Great.

So I will just go through some of the
procedural issues that I typically address in these
conferences. As far as interventions go, we did not
receive any written petitions to intervene. Do we have
anyone to wishes to intervene on the call today?

Okay. I'm not hearing anyone responding to

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1 that.

2 The next issue I want to address would be

3 discovery, and would the parties like to have the

4 Commission's formal discovery rules available in this

5 case? I would maybe turn first to Staff.

6 MR. FUKANO: At this time, Commission Staff

7 does not -- does not require discovery in the case

8 having already concluded its investigation.

9 JUDGE HOWARD: Would Shuttle Express or

10 Public Counsel like to add anything?

11 MS. SUETAKE: Your Honor, this is Nina

12 Suetake for Public Counsel. While I am aware that Staff

13 has finished their investigation, on the off chance that

14 we might have additional questions going forward, I

15 would like to have the availability of discovery.

16 JUDGE HOWARD: Would Shuttle Express like

17 to -- Mr. Sherrell, would you like to respond to that?

18 MR. SHERRELL: We do -- I do not require any

19 discovery on this. I think we've covered everything in

20 detail. We just have one issue left.

21 JUDGE HOWARD: Okay. Would you object to

22 Public Counsel's request for discovery or would you

23 oppose it?

24 MR. SHERRELL: I will not oppose it, no. I

25 think if they want discovery, they should be able to

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1 have it.

2 JUDGE HOWARD: Okay. Mr. Fukano, do you

3 have any response or objection to that?

4 MR. FUKANO: Can I have a moment to confer

5 with Commission Staff?

6 JUDGE HOWARD: Certainly.

7 MR. FUKANO: Thank you. Just two minutes,

8 please.

9 JUDGE HOWARD: Okay. Let's go off the

10 record for a moment since Staff is convening. So we're

11 off the record for a moment.

12 (Pause in the proceedings.)

13 JUDGE HOWARD: Let's go back on the record.

14 Mr. Fukano, what was Staff's response on the discovery

15 issue?

16 MR. FUKANO: Staff has no objection to

17 discovery in the case.

18 JUDGE HOWARD: In light of -- in light of

19 the parties' positions here, I will include the

20 discovery rules in this prehearing conference order and

21 make those available.

22 Would any party request a protective order?

23 Okay. Hearing no responses on that issue,

24 let's move on to the issue of the procedural schedule.

25 Have the parties had an opportunity to discuss this?

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1 And I would turn to Mr. Fukano first.

2 MR. FUKANO: Staff has not had an

3 opportunity to discuss with the -- with the other

4 parties about a procedural schedule, although it has

5 discussed internally. One -- one -- one question Staff

6 did have is whether the Commission would have a

7 preference for live testimony or prefiled written

8 testimony in this case?

9 JUDGE HOWARD: My inclination would be that

10 this case would be appropriate for prefiled testimony.

11 Given the number of the allegations, I think it would be

12 helpful to have the prefiled testimony laying everything

13 out in detail. And especially if I understand

14 correctly, and parties might have narrowed the issues

15 that are being disputed, that would be -- that would be

16 helpful.

17 What -- what are the parties' thoughts on

18 having prefiled testimony versus only live testimony at

19 the hearing?

20 MR. FUKANO: Staff would be amenable to

21 either option.

22 JUDGE HOWARD: Mr. Sherrell, what -- what is

23 your -- what -- what are your thoughts?

24 MR. SHERRELL: Well, there is only one issue

25 left in this docket and that's money. And -- and so can

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1 I talk a little bit or is that -- is this just a yes or

2 no thing?

3 JUDGE HOWARD: Go ahead. If -- if, you

4 know, as long as it's not for more than several minutes

5 or something. I -- I would like to hear your -- your

6 thoughts.

7 MR. SHERRELL: Okay. So Shuttle Express is

8 in a position of closing everything down. We have been

9 destroyed, the airport has destroyed us basically, not

10 the Commission. But anyway, so the one thing that --

11 that remains and I would agreed with Staff on the

12 agreement on everything except one issue and that is the

13 money side, and that's the only thing I see that's

14 outstanding.

15 So I don't know how you want to discover

16 that. If you want to see my financials, you can see I

17 have the money, but I don't know what else you want to

18 discover. So that -- that is my position. There's just

19 one thing that I think is a waste of time for the

20 Commissioners to look at unless they want to rule on

21 that one issue. So back to you.

22 JUDGE HOWARD: Okay. Thank you for -- for

23 explaining that. I will have to think about that going

24 forward.

25 Public Counsel, do you have any thoughts on,

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1 first of all, whether we should have prefiled testimony
 2 or live testimony at the hearing?
 3 MS. SUETAKE: Your Honor, Public Counsel's
 4 amenable to either option. Given there is already the
 5 Staff investigative report in the record, we would be
 6 open to just verbal testimony.
 7 JUDGE HOWARD: Well, given that to be --
 8 that the -- the underlying violations of the -- the WAC
 9 don't seem to be at issue in the case and the parties
 10 are more focused on penalty -- one moment, sorry. I
 11 suppose one -- one thought I -- I have is if Shuttle --
 12 is Shuttle Express willing to stipulate that the
 13 violations did occur as alleged in the complaint?
 14 MR. SHERRELL: Yes, and this is actually
 15 listed and agreed to on the proposed settlement. So the
 16 answer is yes. And I -- and I would prefer just oral
 17 rather than discovery because I think discovery is
 18 already out there.
 19 JUDGE HOWARD: Okay. You know, in that
 20 case, I am -- I -- I think live testimony without any
 21 requirement for prefiled testimony would be the
 22 appropriate way to go in this case. So I will -- I will
 23 not be including any deadlines for prefiled testimony in
 24 the prehearing conference order.
 25 And my only other thought before I might

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1 leave the call so the parties can discuss the schedule
 2 and propose some hearing dates, would be the issue of
 3 including a settlement conference, which I -- which is
 4 normally required in a procedural schedule, but at this
 5 point, we've already had a significant amount of time
 6 when parties were discussing settlement. So I'm
 7 inclined to -- to not include another settlement
 8 conference in the schedule even though that would be the
 9 normal practice.
 10 So I would -- I would therefore plan on
 11 going off the record here in a moment and letting the
 12 parties discuss the schedule, the plan for live
 13 testimony at the hearing, and if the parties could
 14 propose some hearing dates, and that should be -- that
 15 should be a fairly straightforward schedule.
 16 Mr. Fukano, would you mind sending me a
 17 message on Teams or the Skype program when the parties
 18 have finished that discussion?
 19 MR. FUKANO: Yes, I will contact you after
 20 the parties have had an opportunity to confer.
 21 JUDGE HOWARD: Okay. Great.
 22 MR. SHERRELL: Mr. Howard?
 23 JUDGE HOWARD: Yes.
 24 MR. SHERRELL: I'd like to make a comment
 25 when it's appropriate.

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1 JUDGE HOWARD: Please go ahead.
 2 MR. SHERRELL: How about if I suspend all of
 3 our licenses and we'll cease operation and rather than
 4 worry about going forward with all this, because the
 5 penalty's so -- I won't do anything in the future, which
 6 I wasn't going to do anyway, but this consideration if
 7 you would -- if I could just cancel all the licenses.
 8 We've been shut down since March anyway, so it's pretty
 9 easy to just discontinue and Shuttle will just go away.
 10 JUDGE HOWARD: You know, I think that that
 11 is a -- a very relevant good offer for the parties to
 12 discuss when we go off the record here in a moment. And
 13 that is certainly -- if that is Shuttle Express's
 14 position, then that is certainly something I can
 15 consider after the hearing in terms of -- of what is the
 16 appropriate course of action for any violations. So as
 17 far as -- as far as I'm concerned, I would be arriving
 18 at that determination after the hearing and not today.
 19 But if the parties want to discuss that when
 20 we go off the record here in a moment, I'd encourage
 21 that. Of course, this is a prehearing conference and I
 22 don't want to get too -- I don't want to expand the
 23 issues too much today, so hopefully we can -- we can
 24 wrap up a simple procedural schedule and any sort of
 25 preliminary thoughts on the offer from Shuttle Express

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1 within -- within a half an hour or so.
 2 Mr. Fukano, is that agreeable?
 3 MR. FUKANO: Yes, Your Honor.
 4 JUDGE HOWARD: Okay. Ms. Suetake, any --
 5 any thoughts on that?
 6 MS. SUETAKE: No, that's fine.
 7 JUDGE HOWARD: Okay. So we are off the
 8 record.
 9 (A break was taken from
 10 1:45 p.m. to 1:53 p.m.)
 11 JUDGE HOWARD: Let's go back on the record.
 12 The parties have agreed on a procedural schedule, and I
 13 will ask Mr. Fukano to read those dates into the record.
 14 MR. FUKANO: Yes, Your Honor. The witness
 15 list, direct exhibits, cross-exhibits, and time
 16 estimates would be due to the Commission by
 17 November 4th, 2020, and the live hearing before the
 18 Commission would be set for November 9th, 2020.
 19 JUDGE HOWARD: All right. Thank you,
 20 Mr. Fukano.
 21 And we'll -- I think we will plan at this
 22 point on doing oral closing arguments at the hearing if
 23 the parties are agreeable to that.
 24 Would -- would that sound good to you,
 25 Mr. Sherrell?

1 MR. SHERRELL: Yes, and one question.
 2 Before the Commissioners, it this before the
 3 Commissioners or is this before a different party?
 4 JUDGE HOWARD: At -- at this point, this
 5 would be before myself as the administrative law judge
 6 and then if there's any appeal, the next step would be
 7 to the Commissioners for final order.
 8 MR. SHERRELL: So will I be speaking to the
 9 Commissioners or just to you and then you refer that to
 10 the Commission?
 11 JUDGE HOWARD: You would be speaking to me
 12 as the deciding official for -- for the case, and I
 13 would enter -- at the conclusion of that, I would enter
 14 an initial order. And that will be effective if not
 15 pursued further or it can be appealed to the
 16 Commissioners for final order.
 17 MR. SHERRELL: Okay. Thank you for
 18 clarifying that.
 19 JUDGE HOWARD: Not a problem.
 20 Ms. Suetake, would oral closing remarks at
 21 the hearing work for Public Counsel?
 22 MS. SUETAKE: Yes, that would be fine.
 23 JUDGE HOWARD: Okay. Well, it's -- that
 24 resolves the main issue I wanted to address today at the
 25 conference. I would just remind the parties about the

1 that in the prehearing conference order just indicating
 2 that the hearing will be focused on the remedy that
 3 should be given for these penalties.
 4 Mr. Sherrell, do you have any thoughts on
 5 that issue?
 6 MR. SHERRELL: No, I think -- I think I'm
 7 agreeable to everything -- I am agreeable to everything
 8 that was proposed as a proposed settlement agreement, so
 9 I think it makes it pretty easy. The only thing I have
 10 is the amount of the fine and then the other side is
 11 relinquishing all the share ride and schedule
 12 certificates that Shuttle Express has.
 13 JUDGE HOWARD: Okay. Then it does sound
 14 like the parties' really only remaining dispute at this
 15 point is over remedy.
 16 Ms. Suetake, would you like to respond?
 17 MS. SUETAKE: I -- sorry, I'm a little
 18 confused about the format going forward because of what
 19 is existing on the record and what needs to be put on
 20 the record. Is the company going to be making
 21 stipulations in the oral testimony? Is -- or am I
 22 understanding that incorrectly?
 23 JUDGE HOWARD: The way I would understand it
 24 is Mr. Sherrell has indicated that the only issue he's
 25 disputing today -- and then we will include language in

1 Commission's rules for electronic filing and electronic
 2 service. We have the electronic filing link on the
 3 Commission web page. The prehearing conference order
 4 will include requirements for filing exhibits and
 5 exhibit lists in advance of the hearing and the -- and
 6 it will contain details on this topic.
 7 Also the Commission's rules provide for
 8 electronic service of documents. The Commission will
 9 serve the parties electronically and the parties will
 10 serve each other electronically.
 11 If you have any corrections or updates to
 12 our master service list, please file a written notice of
 13 appearance or email me at Michael.howard@utc.wa.gov.
 14 Is there anything else that we should
 15 address today?
 16 MR. FUKANO: Your Honor, Harry Fukano for
 17 Commission Staff. I wanted to confirm that in light of
 18 the stipulation made today whether the prehearing
 19 conference order would also include any specifications
 20 of the issues that will be addressed at -- at hearing?
 21 JUDGE HOWARD: That is a good point. I
 22 think given Mr. Sherrell's willingness to stipulate to
 23 the violations, I think that -- that does limit the
 24 scope of the -- the issues for the hearing. So I
 25 will -- I would anticipate including some language on

1 the prehearing conference order indicating that the only
 2 issue for the hearing is going to be the remedy because
 3 the company is conceding that the violations occurred.
 4 So that -- that prehearing conference order I would
 5 understand it as controlling the scope of the proceeding
 6 if it's not challenged itself. Did that hopefully
 7 answer your question?
 8 MS. SUETAKE: Yes. Okay. I think we'd be
 9 fine with that provided -- so the prehearing conference
 10 statement would act as the formal filing of that -- of
 11 his agreement, of the company's agreement; is that
 12 correct?
 13 JUDGE HOWARD: That's -- that's how I'm --
 14 that's how I'm going to proceed, and I believe that once
 15 I -- we have the prehearing conference order with the
 16 language indicating what the disputed issues are based
 17 on the positions of the parties and that the time limit
 18 passes for challenging the prehearing conference order,
 19 I would see that as -- as controlling the outcome of the
 20 case.
 21 MS. SUETAKE: Okay.
 22 JUDGE HOWARD: If we get to the hearing and
 23 that -- that were to -- just hypothetically were to
 24 change suddenly, then I think we would need to revise
 25 the issues and -- and do a top to bottom look at how

1 we're proceeding.
2 MS. SUETAKE: Okay. Thank you. I would be
3 fine with that approach, then.
4 JUDGE HOWARD: Okay. Is there anything else
5 that the parties would like to address today?
6 MR. FUKANO: Nothing further from Staff.
7 JUDGE HOWARD: Okay. I will -- hearing
8 nothing further, I will issue an order shortly
9 containing the procedural schedule and the other
10 guidelines for the disposition of this case. We are
11 adjourned. Thank you.
12 (Adjourned at 2:00 p.m.)
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1 CERTIFICATE

2
3 STATE OF WASHINGTON
4 COUNTY OF THURSTON
5

6 I, Tayler Garlinghouse, a Certified Shorthand
7 Reporter in and for the State of Washington, do hereby
8 certify that the foregoing transcript is true and
9 accurate to the best of my knowledge, skill and ability.
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12 Tayler Garlinghouse
13 Tayler Garlinghouse, CCR 3356
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<p style="text-align: center;">A</p> <p>ability 18:9 able 5:25 accurate 18:9 act 16:10 action 11:16 add 5:10 additional 5:14 address 4:21 5:2 13:24 14:15 17:5 addressed 14:20 adjourned 17:11 17:12 administrative 1:13 2:2 3:9 13:5 advance 14:5 afternoon 3:6 4:8 agreeable 12:2,23 15:7,7 agreed 8:11 9:15 12:12 agreement 8:12 15:8 16:11,11 ahead 8:3 11:1 airport 8:9 allegations 7:11 alleged 9:13 alleges 3:16 amenable 7:20 9:4 amount 10:5 15:10 analyst 4:17 answer 9:16 16:7 anticipate 14:25 anyway 8:10 11:6,8 appeal 13:6 appealed 13:15 appearance 4:1,7 4:13 14:13 appearances 3:25 approach 17:3 appropriate 7:10 9:22 10:25 11:16 arguments 12:22 arriving 11:17 Assistant 2:7,20</p>	<p>4:9,11,16 Attorney 2:8,20,20 4:9,11,16 Attorneys 2:7 auto 3:17 availability 5:15 available 5:4 6:21 Avenue 1:22 2:21 aware 5:12</p> <p style="text-align: center;">B</p> <p>back 6:13 8:21 12:11 based 16:16 basically 8:9 Bauman 4:17 behalf 4:9 believe 16:14 best 18:9 bit 8:1 bottom 16:25 Box 2:9 break 12:9 Buell 1:22</p> <p style="text-align: center;">C</p> <p>C 2:1 3:4 18:1,1 call 4:24 10:1 cancel 11:7 captioned 3:12 case 5:5,7 6:17 7:8 7:10 9:9,20,22 13:12 16:20 17:10 CCR 1:21 18:13 cease 11:3 CEO 4:3 certainly 6:6 11:13 11:14 certificates 15:12 Certified 18:6 certify 18:8 challenged 16:6 challenging 16:18 chance 3:20 5:13 change 16:24 clarify 3:20</p>	<p>clarifying 13:18 closing 8:8 12:22 13:20 co-counsel 4:10 comment 10:24 Commission 1:2,4 1:17 2:5 3:10,13 3:15,17 4:10 5:6 6:5 7:6 8:10 12:16,18 13:10 14:3,8,17 Commission's 5:4 14:1,7 Commissioners 8:20 13:2,3,7,9,16 companies 3:18 company 15:20 16:3 company's 16:11 Complainant 1:5 complaint 3:15 9:13 conceding 16:3 concerned 11:17 concluded 5:8 conclusion 13:13 confer 6:4 10:20 conference 1:11 3:11,20,22 6:20 9:24 10:3,8 11:21 13:25 14:3,19 15:1 16:1,4,9,15 16:18 conferences 4:22 confirm 14:17 confused 15:18 consider 11:15 consideration 11:6 contact 4:5 10:19 contain 14:6 containing 17:9 controlling 16:5,19 convening 6:10 correct 16:12 corrections 14:11</p>	<p>correctly 7:14 Counsel 2:18,21 4:14,16 5:10,12 8:25 13:21 Counsel's 5:22 9:3 COUNTY 18:4 course 11:16,21 covered 5:19 cross-exhibits 12:15</p> <p style="text-align: center;">D</p> <p>D 3:4 date 3:22,24 dates 10:2,14 12:13 deadlines 9:23 deciding 13:12 destroyed 8:9,9 detail 5:20 7:13 details 14:6 determination 11:18 different 13:3 direct 12:15 discontinue 11:9 discover 8:15,18 discovery 5:3,4,7 5:15,19,22,25 6:14,17,20 9:17 9:17 discuss 3:21 6:25 7:3 10:1,12 11:12 11:19 discussed 7:5 discussing 10:6 discussion 10:18 disposition 17:10 dispute 15:14 disputed 7:15 16:16 disputing 15:25 Division 2:8 docket 1:4 3:12,16 4:6 7:25 documents 14:8 doing 12:22</p>	<p>due 12:16</p> <p style="text-align: center;">E</p> <p>E 2:1,1 3:4,4 18:1,1 easy 11:9 15:9 effective 13:14 either 7:21 9:4 electronic 14:1,1,2 14:8 electronically 14:9 14:10 email 14:13 encourage 11:20 enter 3:23 13:13,13 especially 7:13 estimates 12:16 exhibit 14:5 exhibits 12:15 14:4 existing 15:19 expand 11:22 explaining 8:23 Express 1:7 2:13,15 3:14,17 4:1,3 5:9 5:16 8:7 9:12 11:25 15:12 Express's 11:13</p> <p style="text-align: center;">F</p> <p>F 18:1 fairly 10:15 far 4:22 11:17,17 Fifth 2:21 file 14:12 filing 14:1,2,4 16:10 final 13:7,16 financials 8:16 fine 12:6 13:22 15:10 16:9 17:3 finished 5:13 10:18 first 5:5 7:1 9:1 focused 9:10 15:2 foregoing 18:8 formal 5:4 16:10 format 15:18 forward 5:14 8:24</p>
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