

**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

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WASHINGTON UTILITIES AND ) DOCKET TC-200151  
TRANSPORTATION COMMISSION, )  
)   
Complainant, )  
)   
vs. )  
)   
SHUTTLE EXPRESS, INC., )  
)   
)   
Respondent. )

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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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1 LACEY, WASHINGTON; SEPTEMBER 29, 2020

2 1:31 P.M.

3 --oOo--

4 P R O C E E D I N G S

5

6 JUDGE HOWARD: Good afternoon, everyone.

7 Let's be on the record. The time is 1:31 p.m.

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

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

15 The Commission issued a complaint in Order  
16 01 in this docket. The order alleges that Shuttle  
17 Express violated Commission rules pertaining to auto  
18 transportation companies and should be penalized.

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

25 Let's start by taking appearances, and do we

1 have an appearance for Shuttle Express?

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

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

7 Could we have an appearance for Staff?

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

12 JUDGE HOWARD: Thank you.

13 And can we have an appearance for Public  
14 Counsel?

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

19 JUDGE HOWARD: Great.

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

25 Okay. I'm not hearing anyone responding to

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

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?

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



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,

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

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.

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

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 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 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 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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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

*Tayler Garlinghouse*

Tayler Garlinghouse, CCR 3358



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