

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application No. D-079145 of

SEATAC SHUTTLE, LLC, d/b/a  
SEATAC SHUTTLE

for a Certificate of Public Convenience  
and Necessity to Operate Motor  
Vehicles in Furnishing Passenger and  
Express Service as an Auto  
Transportation Company

DOCKET NO. TC-030489

COMMISSION STAFF'S  
ANSWER TO PETITION FOR  
ADMINISTRATIVE REVIEW

1           The Commission Staff (Staff) submits this answer in response to the petition for administrative review filed by Wickkiser International Companies, Inc., d/b/a/ Airporter Shuttle (Airporter Shuttle). As set forth below, the Initial Order is supported by substantial evidence and is neither arbitrary nor capricious. Therefore, the Washington Utilities and Transportation Commission (Commission) should deny Airporter Shuttle's petition for administrative review.

**ARGUMENT**

**A.    The Initial Order's Findings Regarding the Public Convenience and Necessity Are Supported by Substantial Evidence and Are Neither Arbitrary Nor Capricious**

2           At issue in this matter is the application for a certificate of public convenience and necessity by SeaTac Shuttle, LLC, d/b/a SeaTac Shuttle (SeaTac Shuttle) to operate air porter service from Oak Harbor, Washington to SeaTac Airport. SeaTac Shuttle

requests authority to provide service along a route traveling south on Whidbey Island, to the Mukilteo-Clinton ferry, with closed-door service from Clinton to the airport. **cite**

3 SeaTac Shuttle's application overlaps authority held by Airporter Shuttle.

Airporter Shuttle provides airporter service from Oak Harbor, Washington by traveling north to Anacortes, then to Mount Vernon, where it transfers its passengers to another vehicle, and continues to SeaTac Airport, with a couple of possible stops along the way.

**cite** Airporter Shuttle protests SeaTac Shuttle's application to provide airporter service from Oak Harbor to SeaTac Airport.<sup>1</sup>

### 1. Airporter Service is Direct, Premium Service

4 This Commission has held that airporter service is direct, premium service:

Airporter service is commonly understood to be a premium service that is direct, expedited, and convenient. Convenience, directness, and speed are essential characteristics of such service.

*In re Application D-76533 of Sharyn Pearson & Linda Zepp d/b/a Centralia-SeaTac Airport Express, for an extension of their Certificate C-993 to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company, Order M.V.C. No. D-76553, Commission Decision and Order Granting Reconsideration; Modifying Final Order; Granting Application, at 3 (June 24, 1994) (citations omitted). Therefore, the*

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<sup>1</sup> In addition to its authority to provide airporter service from Oak Harbor, Airporter Shuttle has authority to provide such service in central and south Whidbey Island, but does not provide service in that area. Therefore, Airporter Shuttle does not protest SeaTac Shuttle's application to provide airporter service in the area generally south of Oak Harbor.

duration of the trip and directness of the route factor largely in the Commission's decision to grant an application for airporter service.

**2. SeaTac Shuttle's Service Is Necessary for the Public Convenience and Necessity**

5           Airporter Shuttle contends that the Initial Order is not supported by substantial evidence. Pet. for Admin. Rev. at 3. An agency's order must be supported by "evidence that is substantial when viewed in light of the whole record . . . ." RCW 34.05.570(3)(e). The substantial evidence standard does not mean that the factual findings must be the only findings possible—reasonable minds can differ regarding the findings. The question is whether the record supports the findings the agency (or in this case, the administrative law judge) made. *See ARCO Products Inc. v. Washington Utils. & Transp. Comm'n*, 125 Wn.2d 805, 814, 888 P.2d 728 (1995).

6           Substantial evidence supports the Initial Order's findings that people traveling to SeaTac Airport from Whidbey Island desire—and expect—airporter service that is quick and convenient. The record shows that Airporter Shuttle's schedule from Oak Harbor to SeaTac was over three hours. *See, e.g.*, Tr. 129, ll. 7-18; 90, ll. 2-17; 114 l.3-25. Many witnesses testified that they would use an airporter service that provided Whidbey Island with a faster and more direct airporter service.

7           For example, SeaTac Shuttle called several witnesses who testified that they wanted a faster trip to SeaTac Airport. Dave Johnston, a board member of the Oak

Harbor Chamber of Commerce, testified that he would consider using SeaTac Shuttle if its application were granted, Tr. at 127, ll. 15-17, and that there is a public need for the service. Tr. at 127, ll. 22-25 – 128, l. 1. Contrary to Airporter Shuttle’s strained reading of the transcript, Mr. Johnson did not qualify his testimony with the understanding that Airporter Shuttle would remain in business. *See* Pet. for Admin. Rev. at 8; Tr. at 134, ll. 22-25 – 135 ll. 1-15 (Mr. Johnson testified that he had no knowledge of Airporter Shuttle’s future business plans).

8           Travel agent Sue Sebens testified in support of SeaTac Shuttle’s application. She testified that there is a need for SeaTac’s proposed direct, expedited, and convenient airporter service. Tr. at 85, ll. 14-25. She testified that Airporter Shuttle’s service is not convenient because it stops in Anacortes, Mount Vernon, and two other stops. Tr. at 90-91, *see also* Ex. 1 (Airporter Shuttle schedule showing possible stop in Stanwood and a stop in Marysville).

9           Airporter Shuttle’s attempts to discredit Ms. Sebens’ testimony because she cannot predict whether Airporter Shuttle will cut its service are without merit. *See* Pet. for Admin. Rev. at 10. Ms. Sebens testified that more options are better, but just as the area overcame the discontinuation of Harbor Air’s service, the area would overcome service cuts by Airporter Shuttle. Tr. at 108, ll. 5-17. Ms. Sebens also testified that if Airporter Shuttle cut its service, and SeaTac Shuttle picked up the slack, this would

enhance travel opportunities. Tr. at 110, ll. 3-9. This is substantial evidence that SeaTac Shuttle's service would meet the needs of the public.

10 Priscilla Heistad testified in support of SeaTac Shuttle's application. She is the executive director of the Greater Oak Harbor Chamber of Commerce, Tr. at 139, ll. 3-7, and in that capacity she serves on the Island County joint board on tourism. *Id.* ll. 11-14. Ms. Heistad, therefore, is uniquely qualified to address the needs of the traveling public, and her testimony that a direct, expedited, and convenient airporter service would enhance tourism and business on Whidbey Island is sufficient to persuade a fair minded person that such service would serve the public convenience and necessity.

11 Airporter Shuttle argues that the Commission nevertheless should discredit Ms. Heistad's testimony because she is not qualified to testify regarding the needs of others. Pet. for Admin. Rev. at 8. Airporter Shuttle is wrong. This Commission frequently has accepted testimony from travel agents who have testified regarding the needs of their clients. *See, e.g., In re Application No. D-78932 of Valentinetti, Steve & Brian Hartley, d/b/a Seattle Super Shuttle, for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company, Docket No. TC-001566, Commission Decision and Order Reversing Initial Order, Denying Application, at 4 (Feb. 2002) (declining to rely on testimony of witness who had no experience with the needs of the traveling public).* Here, Ms. Heistad's position

with the Chamber of Commerce gives her direct experience with the need for travel options within the area. Her testimony is of the kind upon which reasonable persons rely in considering the business and tourist environment in the area.

12           There is nothing arbitrary and capricious about the Initial Order’s reliance on the considerable evidence supporting the application—such as that discussed above.

Arbitrary and capricious action is:

[W]illful and unreasoning action, without consideration and in disregard of facts and circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly upon due consideration, even though one may believe the conclusion was erroneous.

*Pierce Cy. Sheriff v. Civil Serv. Comm’n*, 98 Wn.2d 690, 695, 658 P.2d 648 (1983). Airporter Shuttle’s disagreement with the Initial Order does not make it arbitrary and capricious. *Wilson v. Nord*, 23 Wn. App. 366, 376, 597 P.2d 914 (1979).

**3.       Airporter Shuttle’s Service Is Not Sufficiently Direct, Expedited, or Convenient to Constitute Satisfactory Airporter Service**

13           The Administrative Law Judge properly considered the nature of airporter service in finding that Airporter Shuttle does not provide service that is satisfactory to the Commission. The evidence that Airporter Shuttle’s schedule will take over three hours from Oak Harbor to SeaTac Airport is uncontroverted. *See* Ex. 2. SeaTac Shuttle proposes to provide airporter service from Oak Harbor to SeaTac Airport in two-hours and fifteen minutes. This will save the traveling public about one hour of travel time.

14           The Administrative Law Judge properly considered the nature of airporter service. The Administrative Law Judge did not err in finding that Airporter Shuttle does not provide service to the satisfaction of the Commission because it is “not convenient, direct, or expeditious.” Initial Order, at 25 (Finding of Fact 12).

**B.     The Administrative Law Judge Properly Declined to Rely on Airporter Shuttle’s Evidence of the Economic Viability of Two Airporters Serving Oak Harbor**

15           Much of Airporter Shuttle’s arguments in support of administrative review are held together by its contention that the market for airporter service in Oak Harbor cannot support more than one provider. *See* Pet. for Admin. Rev., at 3 (claim of insufficient population to support more than one carrier; SeaTac cannot survive by providing service); 5; 6-8. Airporter Shuttle contends that it was arbitrary and capricious not to deny SeaTac Shuttle’s application based on these arguments. *See id.* at 7, ll. 11-13. This contention fails.

16           Airporter Shuttle moved into evidence what it purports to call a “professional” service impact study of the airporter market in Oak Harbor. Ex. 7; *see also* Pet. for Admin. Rev., at 5, l. 26. Airporter Shuttle suggests that the Administrative Law Judge gave insufficient weight to this study. Pet. for Admin. Rev., at 4-6. However, the Administrative Law Judge gave this study the proper weight.

17           This study was prepared by Richard Johnson. Tr. at 393, ll. 19-25. Mr. Johnson is the general manager of the company that operates Airporter Shuttle. Tr. at 390. As a preliminary matter, the study is 14-pages long, but consists of very little text. Ex. 7. This study is little more than a summary of Airporter Shuttle’s service and costs of service, and what Mr. Johnson believes SeaTac Shuttle’s costs will be, *based on Airporter Shuttle’s costs*. Tr. at 398-99. Because this study is based on Airporter Shuttle’s operations—and was prepared by Airporter Shuttle’s general manager—the Administrative Law Judge properly declined to give it substantial weight in the analysis of whether the community can support more than one airporter service. This simply is not credible evidence that Airporter Shuttle will cease operations or that SeaTac Shuttle cannot survive economically in a two-airporter world.

18           SeaTac Shuttle proposes four round-trips from Oak Harbor to SeaTac Airport. Ex. 2. Airporter Shuttle complains that the Initial Order permits SeaTac Shuttle to “cream-skim” the most profitable travel times. Pet. for Admin. Rev., at 6-7. To the contrary, SeaTac Shuttle has proposed to provide airporter service that will best meet the needs of the traveling public. Tr. at 176-77. SeaTac may add more trips if demands warrant. *Id.* SeaTac Shuttle is a new company, and will serve not just Oak Harbor, but other areas of Whidbey Island as well. It is not unreasonable to expect that a new company will not operate the same number of routes as a more established company.

It was not arbitrary and capricious for the Administrative Law Judge to find that “Airporter Shuttle has struck a compromise between economics and public need, to the detriment of public need.” Initial Order, ¶ 71. Indeed, Airporter Shuttle has discontinued serving the area south of Oak Harbor, despite having authority to do so, *Id.* ¶ 10, likely because it sees no profit in providing such service. SeaTac Shuttle will serve the public need by providing service to the broader areas of Whidbey Island — including Oak Harbor.

### CONCLUSION

For the foregoing reasons, the Commission should deny Airporter Shuttle’s petition for administrative review. The Commission should adopt the findings of fact and conclusions of law in the Initial Order and grant SeaTac Shuttle’s application.

Dated: October 8, 2003.

Respectfully submitted,

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