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**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of
SEATAC SHUTTLE, LLC d/b/a SEATAC
SHUTTLE
For Certificate of Public Convenience and
Necessity in Furnishing Passenger and Express
Service.

Docket No. TC-030489
Application No. D-079145
MOTION OF WICKKISER
INTERNATIONAL COMPANIES, INC.
TO FILE A REPLY RESPONDING TO
EVENTS OUTSIDE THE RECORD
RAISED BY THE APPLICANT'S
ANSWER

I. NAME AND ADDRESS OF PLEADING PARTY

The pleading party's name and address are:

Wickkiser International Companies, Inc. ("Airporter Shuttle")
1416 Whitehorn Street
Ferndale, Washington 98248

II. RULES AND STATUTES RELEVANT TO THIS PLEADING

This pleading involves RCW 81.68.040 and WAC 480-09-425.

III. SUMMARY OF MOTION TO REPLY

The Commission should allow Airporter Shuttle to reply to the Applicant's Answer because the Answer discusses events that are not part of the record. These events cited in the Answer occurred in August and September 2003, after the record closed in this proceeding on July 2, 2003. The Applicant's claims about these events, which are a central part of its

1 Answer, are misleading and outrageous. Airporter Shuttle needs to reply to the Applicant's
2 inappropriate arguments to undo the damage the Applicant has caused.

3 **IV. BACKGROUND.**

4 On April 7, 2003, the Applicant filed an application to provide airporter service
5 between Oak Harbor and Sea-Tac Airport, with intermediate pickup points on SR 20 and SR25
6 in south and central Whidbey Island. The proposed authority partially overlaps with the service
7 territory of Airporter Shuttle, which provides service between Oak Harbor and Sea-Tac Airport.
8 Airport Shuttle filed a protest against the Applicant's application on April 24th.

9 Administrative Law Judge Karen Caille convened evidentiary hearings on
10 June 24th and July 2nd to hear witnesses, receive exhibits, and hear oral argument regarding the
11 Applicant's proposed service. The record closed at the conclusion of the July 2nd hearing and
12 Judge Caille has not allowed the parties to submit additional evidence. Judge Caille issued an
13 Initial Order granting the application on September 8th.

14 On September 29th, Airporter Shuttle filed a petition for administrative review
15 asking the Commission to overturn the Initial Order's grant of the Applicant's proposed service.
16 The Applicant filed an Answer to Airporter Shuttle's petition on October 8th. The Applicant's
17 Answer contains numerous inappropriate arguments about events that occurred after the record
18 closed, including Airporter Shuttle's decision to drop Anacortes as an intermediate stop on its
19 Oak Harbor/SeaTac Airport route, which occurred in August 2003 (Answer at 11, ll. 10-14),
20 Airporter Shuttle's related tariff filing made September 3, 2003 (Answer at 11, ll. 10-19; Answer
21 at 14, ll. 1-3, Answer at 15, ll. 10-14), and alleged subsequent Commission actions. Answer
22 at 11, ll. 16-21. This Motion responds to those improper references.

23 **V. THE COMMISSION SHOULD ALLOW AIRPORTER SHUTTLE TO REPLY TO**
24 **THE EVIDENCE OUTSIDE THE RECORD CITED BY THE APPLICANT.**

25 The Commission should allow parties to reply to an answer where the answer
26 contains new material requiring a response:

1 The request [to file a reply to an answer] must be filed within 10 days after
2 service of the answer to which it is directed. During a hearing, the presiding
3 officer may shorten the time for requesting leave to apply or may rule from the
4 bench on such request. The party requesting leave to reply may attach a proposed
5 reply to the request. Requests should address whether the answer raises new
6 material requiring response, or other reason why a reply is necessary.

7 WAC 480-09-425(3)(b). In this case, Airporter Shuttle is entitled to reply because the
8 Applicant's Answer raised new material that occurred after the record closed. As noted above,
9 the record in this case closed on July 2, 2003, the last day of evidentiary hearings. The
10 Applicant's Answer refers to events that occurred in August and September 2003, which are
11 listed above. These events are not in the record and should never have been in the Answer.

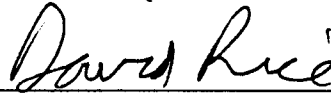
12 By citing these events outside the record, the Applicant has now done irreversible
13 damage to this proceeding. Airporter Shuttle has contemporaneously filed a Motion to Strike the
14 offending statements from the Answer, but that alone is not enough. That is because the
15 Applicant has made these events a key part of its Answer. The Applicant's inappropriate
16 statements thus require a response from Airporter Shuttle or this entire proceeding will be
17 tainted. Airporter Shuttle needs to explain why the conclusions that the Applicant has drawn
18 from these events are irrational and misleading. The attached Reply fully addresses these issues.
19 See Attachment A. If the Commission denies Airporter Shuttle's Motion to Reply to this
20 evidence, then the Commission's Final Order will be vulnerable on appeal, as a reviewing court
21 can never be certain whether or not the Commission took the inappropriate events into account in
22 reaching its conclusions.

23 VI. CONCLUSION AND PRAYER FOR RELIEF

24 The Commission cannot entirely eliminate the damage caused by the Applicant's
25 error. However, it can mitigate some of the damage by allowing Airporter Shuttle to respond to
26 the baseless charges. For this reason, Airporter Shuttle requests the Commission to grant
Airporter Shuttle leave to file the attached Reply, which addresses the inappropriate events that
should never have been included in the Applicant's Answer.

1
2 DATED this 20th day of October, 2003.

3 MILLER NASH LLP

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5 _____
6 Brooks E. Harlow
7 WSB No. 11843
8 David L. Rice
9 WSB No. 29180

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Attorneys for Wickkiser International Companies,
Inc., d/b/a Airporter Shuttle

MOTION OF WICKKISER INTERNATIONAL COMPANIES,
INC. TO FILE A REPLY RESPONDING TO EVENTS OUTSIDE
THE RECORD RAISED BY THE APPLICANT'S ANSWER - 4
SEADOCs:163220. 1

MILLER NASH LLP
ATTORNEYS AT LAW
TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

1 I hereby certify that I served the foregoing MOTION OF WICKKISER
2 INTERNATIONAL COMPANIES, INC. TO FILE A REPLY RESPONDING TO EVENTS
3 OUTSIDE THE RECORD RAISED BY THE APPLICANT'S ANSWER on:


4 Mr. John Solin
5 Sea Tac Shuttle, LLC d/b/a
6 Sea Tac Shuttle
7 558 Pebble Beach Dr.
8 Coupeville, WA 98239

9 by the following indicated method or methods:

- 9 by **faxing** full, true, and correct copies thereof to the attorneys at the fax numbers
10 shown above, which are the last-known fax numbers for the attorneys' offices, **and**
11 by **mailing** full, true, and correct copies thereof in a sealed, first-class postage-
12 prepaid envelope, addressed to the attorneys as shown above, the last-known office
13 addresses of the attorneys, and deposited with the United States Postal Service at
14 Seattle, Washington, on the date set forth below.
- 13 by **mailing** full, true, and correct copies thereof in sealed, first-class postage-
14 prepaid envelopes, addressed to the attorneys as shown above, the last-known
15 office addresses of the attorneys, and deposited with the United States Postal
16 Service at Seattle, Washington, on the date set forth below.
- 15 by sending full, true, and correct copies thereof via **overnight courier** in a sealed,
16 prepaid envelope, addressed to the party shown above, on the date set forth below.
- 17 by causing full, true, and correct copies thereof to be **hand-delivered** to the
18 attorneys at the attorneys' last-known office addresses listed above on the date set
19 forth below.

19 The undersigned hereby declares, under the penalty of perjury, that the foregoing
20 statements are true and correct to the best of my knowledge.

21 Executed at Seattle, Washington, this 20th day of October, 2003.

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23 
24 _____
25 Carol Munnerlyn, Secretary
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ATTACHMENT A

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4 **BEFORE THE**
5 **WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**
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7 In re Application of

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

10 For Certificate of Public Convenience and
11 Necessity in Furnishing Passenger and
12 Express Service.

Docket No. TC-030489

Application No. D-079145

REPLY OF WICKKISER INTERNATIONAL
COMPANIES, INC. TO EVENTS OUTSIDE
THE RECORD IMPROPERLY DISCUSSED
IN THE APPLICANT'S ANSWER

13
14 The Applicant alleges that Wickkiser International Companies, Inc. ("Airporter
15 Shuttle") contradicted its position in this docket by eliminating Anacortes as an intermediate stop
16 from Airporter Shuttle's Oak Harbor/Sea-Tac Airport route, but nothing could be further from
17 the truth.¹ First, the Initial Order forced Airporter Shuttle into making this change by granting
18 the Applicant's application. Airporter Shuttle still strongly believes that it cannot economically
19 serve Oak Harbor without also serving Anacortes and that the Oak Harbor market is too small to
20 support both Airporter Shuttle and the Applicant. Now that the Initial Order has granted the
21 application, Airporter Shuttle does not want to be the airporter forced out of Oak Harbor. To
22 retain as many Oak Harbor customers as possible, Airporter Shuttle dropped Anacortes from its
23 Oak Harbor/SeaTac Airport route to reduce transit time. Second, Airporter Shuttle is simply
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25 ¹ Airporter Shuttle's contemporaneously filed Motion to Strike explains that these events are not in the
26 record and deserve no consideration.

REPLY OF WICKKISER INTERNATIONAL COMPANIES, INC.
TO EVENTS OUTSIDE THE RECORD IMPROPERLY
DISCUSSED IN THE APPLICANT'S ANSWER - 1
SEADOCs:163306. 1

1 protecting its property rights in its airporter certificate. The Initial Order ignored those rights
2 when it granted the Applicant's application without correctly applying the relevant statutory
3 criteria.

4 **I. BACKGROUND.**

5 On April 7, 2003, the Applicant filed an application to provide airporter service
6 between Oak Harbor and Sea-Tac Airport, with intermediate pickup points on SR 20 and SR25
7 in south and central Whidbey Island. The proposed authority partially overlaps with the territory
8 of Airporter Shuttle, which provides service between Oak Harbor and Sea-Tac Airport. Airport
9 Shuttle filed a protest against the Applicant's application on April 24th.

10 Administrative Law Judge Karen Caille convened evidentiary hearings on
11 June 24th and July 2nd to hear witnesses, receive exhibits, and hear oral argument regarding the
12 Applicant's proposed service. The record closed at the conclusion of the July 2nd hearing and
13 Judge Caille has not allowed the parties to submit additional evidence. Judge Caille issued an
14 Initial Order granting the application on September 8th.

15 On September 29th, Airporter Shuttle filed a petition for administrative review
16 asking the Commission to overturn the Initial Order's grant of the Applicant's proposed service.
17 The Applicant filed an Answer to Airporter Shuttle's petition on October 8th. The Applicant's
18 Answer contains numerous inappropriate references and arguments regarding events that
19 occurred after the record closed on July 2nd, including Airporter Shuttle's decision to drop
20 Anacortes as an intermediate stop, which occurred in August 2003 (Answer at 11, ll. 10-14);
21 Airporter Shuttle's tariff filing made September 3, 2003 (Answer at 11, ll. 10-19; Answer at 14,
22 ll. 1-3, Answer at 15, ll. 10-14); and alleged subsequent Commission actions. Answer at 11,
23 ll. 16-21. This Reply responds to those references to events outside the record.

1 **II. AIRPORTER SHUTTLE'S TARIFF FILING WAS THE INEVITABLE RESULT**
2 **OF THE INITIAL ORDER'S GRANT OF THE APPLICANT'S APPLICATION.**

3 The Applicant's Answer alleges that Airporter Shuttle's decision to drop
4 Anacortes from its Oak Harbor/Sea-Tac Airport route is "in contradiction" (see Answer at 11,
5 ll. 10-12) of Airporter Shuttle's position in this docket, but every conclusion the Applicant draws
6 from the service change is wrong. Airporter Shuttle made this change because the Oak Harbor
7 market will only support one airporter, and Airporter Shuttle wants to be that airporter. At the
8 evidentiary hearings in June and July 2003, Richard Johnson, general manager of Airporter
9 Shuttle, presented a service impact study ("Study") proving that there are not enough airporter
10 riders in Oak Harbor, a city of 40,000 people, to support both Airporter Shuttle and the
11 Applicant's service. See, Ex. 7. In fact, Oak Harbor actually does not have enough riders to
12 support one airporter. Airporter Shuttle carries an average of only 1.2 passengers per trip
13 boarding in Oak Harbor or traveling to Oak Harbor from Sea-Tac, which is not enough
14 passengers to cover expenses. Ex. 7 at 3. Airporter Shuttle service only makes money because it
15 makes an intermediate stop in Anacortes, where it can pick up additional passengers to help
16 cover Airporter Shuttle's operating costs. TR 392, ll. 20-24.

17 After participating in the June and July hearings, Airporter Shuttle became
18 concerned that the ALJ was not sensitive to the fact that Oak Harbor would not support two
19 airporters, and that the ALJ might grant the Applicant's application. This would have a
20 disastrous effect on Airporter Shuttle and ultimately the citizens of Oak Harbor, as it would force
21 at least one airporter out of the small market. Airporter Shuttle, however, wanted to ensure that
22 it was the airporter that remained in Oak Harbor. Consequently, Airporter Shuttle changed its
23 Oak Harbor/Sea-Tac operations to eliminate the intermediate stop in Anacortes. This change
24 substantially reduced the transit times between Oak Harbor and Sea-Tac Airport. Airporter
25 Shuttle expects that this change will help it retain riders between Oak Harbor and SeaTac
26 Airport. Airporter Shuttle still believes that it is not economically possible to run an airporter

1 between Oak Harbor and Sea-Tac without an intermediate stop at a population center like
2 Anacortes. See Tr. 392, ll. 20-24. This service change is an attempt to salvage the market for
3 Airporter Shuttle and provide the level of service the Initial Order found necessary to be to the
4 “satisfaction of the Commission.”

5 Because there is a rational explanation for Airporter Shuttle's service change, the
6 Commission should ignore the Applicant's speculative and unsupported accusations. See e.g.,
7 Answer at 11, ll. 15-17. The Applicant misinterpreted this change in the same way that it
8 misinterpreted the economics of the airporter market in Oak Harbor. Airporter Shuttle should
9 not be punished for reacting as best it can to the economically impossible situation created when
10 the Initial Order granted the Applicant's application.

11 **III. AIRPORTER SHUTTLE HAS A RIGHT TO PROTECT ITS PROPERTY**
12 **INTEREST IN A QUALIFIED MONOPOLY GRANTED BY THE**
13 **TRANSPORTATION STATUTES.**

14 The Applicant's claims about Airporter Shuttle's service change also show its
15 disregard for the fact that Airporter Shuttle has a property right at stake that the Initial Order has
16 deprived. Airporter certificates issued under RCW 81.68.040 like the one held by Airporter
17 Shuttle are property rights. Horluck Transportation v. Eckright, 352 P.2d 205, 207 (Wash.
18 1960). An airporter certificate entitles the holder not only to provide service to the locations
19 designated in its certificate, but also to be the only certificate holder until a new applicant
20 satisfies the statutory requirements under RCW 81.68.040. The Initial Order deprived Airporter
21 Shuttle of its property rights in its certificate by improperly applying the criteria under RCW
22 81.68.040.

23 The Initial Order correctly stated that the issues this case include whether “the
24 public convenience and necessity require the proposed service” and whether “an existing auto
25 transportation company [Airporter Shuttle] operating in the territory at issue provide service to
26 the satisfaction of the Commission.” Initial Order at ¶ 57. However, the Initial Order essentially
eliminated the second requirement by relying solely on the testimony of the Applicant's public

1 witnesses who said they wanted the new service and ignored the evidence that Airporter Shuttle
2 is providing service to the satisfaction of the Commission by serving the market in the only
3 economically viable way.

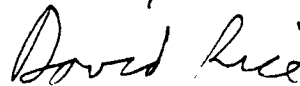
4 The Applicant now complains that Airporter Shuttle is taking actions to protect its
5 property interest (see Answer at 11, ll. 10-21) in being the only certificate holder in Oak Harbor.
6 But Airporter Shuttle has right to protect its property interest in light of the Initial Order's failure
7 to do so.

8 **IV. CONCLUSION**

9 Airporter Shuttle's elimination of Anacortes as an intermediate stop in its Oak
10 Harbor/SeaTac Airport route is the natural and inevitable result of the Initial Order's grant of the
11 Applicant's predatory application. Airporter Shuttle did not spend years developing its business
12 in Oak Harbor only to see it swept away by the Initial Order's error. If anything, Airporter
13 Shuttle's service change reinforces its contention that the Oak Harbor market cannot support two
14 airporters. However, because of the inefficiencies caused by the Initial Order, the deprivation of
15 property rights, and the other errors in the Initial Order, it should be reversed.

16 DATED this 20th day of October, 2003.

17 MILLER NASH LLP

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19 _____
20 Brooks E. Harlow
21 WSB No. 11843
22 David L. Rice
23 WSB No. 29180

24 Attorneys for Wickkiser International Companies,
25 Inc., d/b/a Airporter Shuttle
26