

SERVICE DATE
FEB 27 1992

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application D-75275 of)	ORDER M. V. C. NO. 1947
)	
SAN JUAN AIRLINES, INC.)	
d/b/a SHUTTLE EXPRESS)	
)	
for an extension of authority)	
under C-975.)	
)	
.)	
)	
EVERGREEN TRAILS, INC., a)	DOCKET NO. TC-900407
Washington corporation, d/b/a)	
Grayline of Seattle,)	
)	
Complainant,)	
)	
vs.)	COMMISSION DECISION AND
)	ORDER GRANTING REHEARING;
)	DENYING STAY; ORDERING
)	CONSOLIDATION
SAN JUAN AIRLINES, INC., a)	
Washington corporation,)	
d/b/a Shuttle Express,)	NOTICE OF HEARING
)	(March 31, 1992)
Respondent.)	
.)	

Two proceedings are involved here. Both involve carriers who conduct certificated bus operations offering airporter service to the public in the City of Seattle. One, Docket No. TC-900407, is a complaint by Evergreen Trails, Inc., d/b/a Grayline of Seattle, against San Juan Air Lines, d/b/a Shuttle Express.¹ The complaint was filed in April 1990, and was resolved by final Commission order on November 6, 1990. Complainant now petitions for rehearing.

The second proceeding, Docket No. D-75275, is an application in which Shuttle Express seeks to operate throughout King, Pierce, and Snohomish Counties. If granted, this would expand the carrier's territory and would remove several restrictions from its certificate. One of those restrictions, imposed as a result of the complaint, forbids service to named downtown Seattle hotel properties. Evergreen, the complainant-petitioner in TC-900407, is a protestant and party to D-75275.

¹For convenience, we will refer to the parties as Evergreen and Shuttle Express.

Complaint proceeding; Rehearing.

After an extensive hearing in the complaint proceeding, the Commission found that the respondent had violated its certificate by providing drive-up service to certain hotels named in complainant's certificate, depriving complainant of business. The Commission therefore reluctantly restricted respondent's permit against service to those certain named properties that Evergreen serves.

Now, Evergreen petitions for rehearing of the complaint proceeding. It contends that Shuttle Express continues to conduct operations in violation of its permit and in violation of the restrictions established in that order. It cites its investigators' purported experiences to support the petition: of twenty-six requests for service, respondent allegedly violated the permit restrictions on twenty-four occasions. Evergreen asks further restriction of respondent's permit, to prohibit service in what it defines as downtown Seattle.

Shuttle Express opposes rehearing, contending that the petition's allegations are false, that it does not demonstrate statutory grounds for action, and that the proposed remedy is not proper. Shuttle Express requests a prehearing conference under WAC 480-09-460 to allow certain discovery.

The Commission has previously found that an allegation of unauthorized airporter operations in violation of a prior Commission order provides a sufficient basis for rehearing. Order M. V. C. No. 1371, In re Tacoma Suburban Lines, Inc., App. No. D-2408 (September 1982). The Commission found that allegations of changed conditions not contemplated in the Commission order -- operations in violation of the order in the proceeding to be reheard -- supported the petition. The same principle applies here.

While the subject of this petition could have been raised in an independent complaint, a petition for rehearing is an appropriate means to bring the issues to the Commission in a context that allows a complete decision. The Commission believes that the petition for rehearing should be granted under RCW 81.04.200, and that the Commission should set the matter for hearing.

Discovery.

Respondent seeks a prehearing conference for discovery purposes under WAC 480-09-460; its motion should be denied. Discovery other than subpoena is not allowed, except under WAC 480-09-480 in certain types of cases. This complaint proceeding does not on its face meet the criteria stated in the rule for

proceedings in which discovery is available. It is only a complaint alleging violation of permit authority and asking imposition of sanctions. The request does not demonstrate why cross-examination and rebuttal are not sufficient for the respondent's purposes or that complainant's operating results are relevant to the proceeding. The Commission encourages the parties to exchange information voluntarily, because that will speed the process and reduce case-related expenses. The request for prehearing conference should be denied.

The request to stay the application; consolidation.

Evergreen seeks a stay of proceedings in application D-75275, in which the respondent seeks removal of the restriction, until the Commission decides the issues on rehearing. Issues in the application proceeding include Shuttle Express' fitness to conduct the operations, whether Evergreen provides service in the territory to the Commission's satisfaction, and whether a grant of overlapping authority would be consistent with the public interest. Those issues are identical with or closely related to the ultimate issues in the complaint. The applicant has undertaken to prove that there is unmet public need for service. If that is so, a delay would operate to the public's detriment. The Commission does not believe that a stay is consistent with the public interest.

The Commission also believes that hearing the issues on a single record would provide a more comprehensive record for decision and could improve the quality of its decision.

The Commission therefore denies the request for a stay and, because of the identical or related facts and principles of law, orders that the proceedings be consolidated for hearing pursuant to WAC 480-09-610. The Commission recognizes that other portions of the application will deal with other issues of need and the performance of other carriers. Therefore, it will set the initial hearing session for the purpose of hearing applicant's operating testimony and cross examination thereof and for petitioner's direct evidence and cross examination thereof. The parties can conference at the initial hearing session to determine the order of proof for the balance of the proceeding. Complainant, Evergreen, and applicant, Shuttle Express, shall prepare their direct evidence for the opening hearing session and submit it in writing, filing it with the Commission and serving it on other parties at least 14 days prior to the initial hearing session.

NOTICE OF HEARING

Evergreen Trails, Inc., d/b/a Grayline of Seattle, holder of Certificate No. C-819, filed a complaint in Docket No. TC-900407 on April 25, 1990, against San Juan Airlines, Inc.,

d/b/a Shuttle Express. That complaint was resolved by final Commission order M. V. C. No. 1893 on November 6, 1990. On January 7, 1992, the complainant moved to reopen the complaint proceeding on the basis that the respondent failed to comply with the terms of the Commission order and that it continues to violate terms of its certificate. Respondent answered the petition on January 27, 1992. A more detailed account of the dispute is reflected in the pleadings, which are on file and available for inspection at the offices of the WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, CHANDLER PLAZA BUILDING, 1300 S EVERGREEN PARK DRIVE SW FY-11, OLYMPIA WASHINGTON 98504-7250. The Commission has determined to grant the petition for rehearing.

San Juan Airlines, Inc., d/b/a Shuttle Express, filed Application No. D-75275 on August 9, 1991, seeking an extension of authority to conduct airporter service within King, Pierce, and Snohomish counties. Inter alia, the application would remove restrictions against service placed on the permit as a result of the initial application and as a result of the Commission order in the complaint proceeding, Docket No. TC-900407. The applicant also must prove that it is fit, willing, and able to conduct the requested operations. Notice of hearing was issued in the application proceeding on December 3, 1991, for a hearing on January 15, 1992. That hearing session was canceled upon the filing of the petition for rehearing in Docket No. TC-900407. Issues and pertinent statutes and regulations affecting the application proceeding are stated in the December 3, 1992 hearing notice and are incorporated herein by this reference.

The hearing set in this notice is being held under Part IV of the Administrative Procedure Act, chapter 34.05 RCW. Relevant statutes include, but are not limited to, RCW 34.05.422, .413, .449, .452, .440 and .419. The Commission has jurisdiction over this matter pursuant to Title 81 RCW, under which it regulates the rates, services, and practices of persons furnishing auto transportation services in the State of Washington. Statutes and rules cited by the parties include RCW 34.05.413, 81.04.110, 81.04.210, 81.68.030; rules cited include WAC 480-09-400(2); 480-09-820(1). In addition, rules involved include those within Chapter 81.68 RCW and Chapter 480-30 WAC relating to the charges and practices of auto transportation companies. Chapter 480-09 WAC, governing procedures before the Commission, and Chapter 34.05 RCW, governing administrative procedures of agencies within the State of Washington, also are involved.

NOTICE IS HEREBY GIVEN That a public hearing on these consolidated matters will convene at the hour of 9:30 a.m. on March 31, 1992, in the COMMISSION DISTRICT OFFICE, WEST MEEKER SQUARE, 1313 W MEEKER AVENUE SUITE 121, KENT WA 98032. The purpose of the initial hearing session is the receipt of

applicant's prefiled testimony regarding its operations and its fitness, willingness, and ability to conduct the proposed operations, and cross examination thereof; and receipt of prefiled testimony from the complainant-petitioner and cross-examination thereof. The hearing may be recessed into a prehearing conference for the purpose of determining the order of proof and for other purposes. It is expected that the time and place for other hearing session or sessions will be set on the record.

NOTICE IS HEREBY GIVEN THAT ANY PERSON WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET IN THIS NOTICE, OR IN ANY OTHER PHASE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH THE TERMS OF RCW 34.05.440.

The names and addresses of all parties and their known representatives are shown on Appendix A, attached to this Order.

An administrative law judge from the Utilities and Transportation subdivision, will be designated to preside at the hearing. The subdivision is at OFFICE OF ADMINISTRATIVE HEARINGS, 2420 BRISTOL CT SW, MS FS-34, PO BOX 42489, OLYMPIA WASHINGTON 98504-2489, telephone (206) 753-6403.

O R D E R


THE COMMISSION ORDERS That the Petition for Rehearing filed by Evergreen Trails, Inc., in Docket No. TC-900407 is granted. Proceedings shall be had as provided in the Notice of Hearing included in this Order unless changed by letter from the Secretary of the Commission or the Office of Administrative Hearings.

THE COMMISSION FURTHER ORDERS That Docket No. TC-900407 and Application No. D-75275 are consolidated for hearing pursuant to WAC 480-09-610, as specified in the Order, and

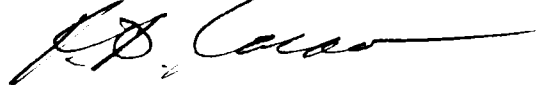
THE COMMISSION FURTHER ORDERS that Respondent's request for a prehearing conference for consideration of discovery issues is denied.

DATED at Olympia, Washington, and effective this ~~22nd~~ ^{23rd} day of February, 1992.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD D. CASAD, Commissioner



A. J. PARDINI, Commissioner

APPENDIX A

The names and addresses of all parties known to date are as follows:

<u>Party</u>	<u>Representative</u>
San Juan Airlines, Inc., d/b/a Shuttle Express 805 Lenora Seattle, WA 98121	<u>Application:</u> Jimmy Sherell, President, Applicant's address <u>Complaint:</u> Bruce A. Wolf, Atty. 5120 Columbia Center 701 Fifth Avenue Seattle, WA 98104-1005
Evergreen Trails, Inc., d/b/a Grayline of Seattle 720 South Forest Seattle, WA 98134	Clyde H. MacIver and Brooks Harlow, Attorneys 4400 Two Union Square 601 Union Street Seattle, WA 98101 (206) 622-8484
Orville J. Coombs and Diane J. Coombs, Everett Airporter Services Enterprises 6303 Swan's Trail Rd. Everett, WA 98205 (206) 258-1955	Not Known
Suburban Airporter, Inc. 2000-118th S.E. Bellevue, WA 98005 (206) 455-2353	Not Known
Bremerton-Kitsap Airporter, Inc. Kitsap-Seatac Airporter, Inc. P.O. Box 1255 Bremerton, WA 98310	James Sells, Attorney 510 Washington Av., Suite 300 Bremerton, WA 98310 (206) 479-4545

The Commission will appear in this proceeding through the OFFICE OF ATTORNEY GENERAL, 1400 SOUTH EVERGREEN PARK DRIVE SW, MS FY-11, OLYMPIA WA 98504-0128 (206) 753-6405.