

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application TC-111306 of)	DOCKET TC-111306
)	
MILLER SCHMER, INC., d/b/a)	
SEATTLE EXPRESS)	ORDER 02
)	
For Extension of Authority under)	
Certificate No. C-1052, For a)	
Certificate of Public Convenience and)	INITIAL ORDER APPROVING
Necessity to Operate Motor Vehicles in)	SETTLEMENT AGREEMENT
Furnishing Passenger and Express)	
Service as an Auto Transportation)	
Company)	
)	
.....)	

1 *Synopsis. This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective as described in the notice at the end of this Order. If this Initial Order becomes final, the parties’ proposed Settlement Agreement will be approved and the request of Miller Schmer, Inc., d/b/a Seattle Express for the extension of its certificate No. C-1052 will be granted as modified by the language of the Settlement Agreement.*

MEMORANDUM

2 **NATURE OF PROCEEDING.** On July 20, 2011, Miller Schmer, Inc., d/b/a Seattle Express (Seattle Express), filed with the Washington Utilities and Transportation Commission (Commission) an application to extend its Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company to include passenger service between cruise line terminals 66 and 91 in Seattle and the Seattle-Tacoma International Airport. Notice of the Application was published in the Commission’s weekly Docket of August 2, 2011. On August 31, 2011, Shuttle Express, Inc., d/b/a Shuttle Express (Shuttle Express), filed a protest to the Application.

3 **PROCEDURAL HISTORY.** The Commission convened a prehearing conference in this matter, along with three other applications from other companies seeking to provide transportation services to the cruise line terminals on the Seattle Waterfront (Dockets TC-111446, TC-111619 and TC-111643), at Olympia, Washington, on Tuesday, November 22, 2011, before Administrative Law Judge (ALJ) Martin Lovinger.

4 The Commission initially determined that this docket should be consolidated with Dockets TC-111446, TC-111619 and TC-111643, but Seattle Express requested separate consideration and to hold proceedings on its application in abeyance pending any action in the upcoming session of the Legislature on proposed legislation that would remove regulation of airport shuttles from the jurisdiction of the Commission. No other party objected, and the request was granted. A status conference among the parties in this matter took place on February 23, 2012. At that time Seattle Express and Shuttle Express asked that further proceedings on the application be held in abeyance pending an agreed proposed settlement that they anticipated reaching in the next few weeks. Commission Staff (Staff)¹ did not object to continuing the matter. This matter was continued and another status conference was set for March 15, 2012. On March 14, the status conference was cancelled and the parties were required to file either a settlement agreement and sufficient supporting documents or a status report by March 28, 2012. On March 28, 2012, the parties filed a Settlement Agreement, attachments, and a supporting Narrative.

5 **PARTY REPRESENTATIVES.** David W. Wiley, Seattle, Washington, represents Seattle Express. Brooks E. Harlow, McLean, Virginia, represents Shuttle Express. Jennifer Cameron-Rulkowski, Olympia, Washington, represents Commission Staff.

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

6 **SETTLEMENT.** All parties in this matter have signed the Settlement Agreement,² which has three provisions relating to the issue before the Commission. First, Seattle Express agrees to revise the description of its proposed service and thereby restricts the authority it requests, as follows:

*From hotels in the cities of Tukwila or Sea-Tac to the Sea-Tac Airport with a required intermediate stop at Cruise Terminal 66 or 91 on a single-fare ticket.*³

Second, based on this proposed modification, Shuttle Express agrees to withdraw its protest to Seattle Express' application. Third, the parties agree that the proposed service, as modified, is necessary, will be a convenience to the public, and is not objectionable to Shuttle Express under RCW 81.68.040.⁴

7 In addition, the parties have submitted written statements from Benita Corley, Director of Sales at the Clarion Hotel in SeaTac, Washington and Katherine Kertzman, Executive Director of Seattle Southside, a tourism information center for SeaTac and Tukwila, indicating that the proposed service is something they want to offer their clients and visitors. They believe it is safe, cost-effective and reliable and addresses an existing need with a transportation problem that can be confusing for travelers dealing with cruise ships and flight schedules.⁵

8 **Evaluation of Settlement.** WAC 480-07-750(1) states in part: "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

² Settlement Agreement p. 6.

³ Settlement Agreement p. 2.

⁴ Settlement Agreement p. 3.

⁵ Settlement Agreement Attachment B.

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

9 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

10 The terms in the Settlement Agreement are consistent with law and policy, and reasonably resolve all issues in this proceeding. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Seattle Express has narrowed its request for an extension of authority to a very narrow field of consumers who want to travel from SeaTac or Tukwila hotels to the cruise terminals and then be picked up at the cruise terminals and taken to Sea-Tac Airport. Those consumers are not well-served under current shuttle arrangements.

11 The interests of Shuttle Express, on the other hand, are protected by the changed wording. As the Narrative points out, the amended wording requires a passenger to travel on a single-fare ticket, restricting ridership to those customers who intend to travel from a SeaTac or Tukwila hotel to the Sea-Tac Airport only via the cruise terminals. Shuttle Express will continue to have authority to provide service directly between those hotels and the airport and thus agreed that Seattle Express should be authorized to serve the limited passenger base it has proposed.

12 Staff agrees that Seattle Express' amended request is for service that is needed and would provide a public convenience. Staff also agrees that Shuttle Express, the existing auto transportation company serving the territory, has agreed to withdraw its objection to Seattle Express' application, and therefore under RCW 81.68.040, the Commission can issue the certificate extension Seattle Express seeks. All parties

agree that this Settlement Agreement will avoid expense, inconvenience, uncertainty, and delay.

- 13 **Commission Decision:** The Settlement Agreement is approved without condition. Seattle Express' Auto Transportation Certificate No. C-1052 will be extended in accordance with the terms set forth in the Settlement Agreement.

ORDER

THE COMMISSION ORDERS:

- 14 (1) The Settlement Agreement is approved without condition; and
- 15 (2) The application of Miller Schmer, Inc. d/b/a Seattle Express to amend its certificate to provide service from hotels in the cities of Tukwila or SeaTac to the Sea-Tac Airport with a required intermediate stop at Cruise Terminal 66 or 91 on a single-fare ticket is granted.

Dated at Olympia, Washington, and effective April 3, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARTIN LOVINGER
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **seven (7)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250