

SeaTac Shuttle, LLC, PO Box 2895 Oak Harbor, WA 98277
360-679-4003

October 24, 2003

BY FEDEX

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S Evergreen Park DR SW
Olympia, WA 98504-7250

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Subject: Docket No. TC-030489
Application No. D-079145

Dear Ms. Washburn:

Attached for filing are an original and 19 copies each of the following:

1. Applicant's Response to Motion of Wickkiser International Companies, Inc to File a Reply Responding to Events Outside the Record Raised by Applicant's Answer.
2. Applicant's Response to Wickkiser International Companies, Inc.'s Motion to Strike Applicant's Citations of Events Outside the Record.

Sincerely,



John J. Solin

Cc: w/enc: Mr. David Rice (via US Mail)

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**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

Docket No. TC-030489
Application No. D-079145
APPLICANT’S RESPONSE TO
WICKKISER INTERNATIONAL
COMPANIES, INC. MOTION TO REPLY

I. NAME AND ADDRESS OF RESPONDING PARTY

The responding party’s name and address are:
SEATAC SHUTTLE, LLC
PO BOX 2895
OAK HARBOR, WA 98277

II. RULES AND STATUTES RELEVANT TO THIS PLEADING

This answer involves RCW 81.68.040, WAC 480-09-425.

III. SUMMARY OF RESPONSE TO MOTION TO REPLY

Wickkiser International Companies, Inc. (WIC) has filed a MOTION TO STRIKE
APPLICANT’S CITATIONS OF EVENTS OUTSIDE THE RECORD (Motion to Strike). If
such motion is granted then no further review is necessary of the disputed citations.

1 **IV. BACKGROUND**

2 On April 7, 2003, the Applicant filed an application to provide airporter service
3 between Oak Harbor and Seattle-Tacoma International Airport (“SeaTac Airport”), with
4 intermediate pickup points on SR20 and SR525 in South and Central Whidbey Island. The
5 proposed authority overlaps one city, namely Oak Harbor, with that of Airporter Shuttle, which
6 presently provides service between Oak Harbor and SeaTac Airport by traveling North and East
7 through points including Anacortes and Mount Vernon and along Interstate 5. Airporter Shuttle
8 filed a protest against the Applicant’s application on April 24, 2003.

9 Administrative Law Judge Karen Caille convened evidentiary hearings on June
10 24, 2003 and July 2, 2003 to hear witnesses, receive exhibits, and listen to oral arguments
11 regarding the proposed service. At the hearing, Airporter Shuttle clarified that it was only
12 protesting the Applicant’s request to serve the Oak Harbor/SeaTac route, not with intermediate
13 points in central and south Whidbey Island. Judge Caille issued an Initial Order on September 8,
14 2003 granting the Applicant’s application. On September 28th, Airporter Shuttle filed a petition
15 for administrative review. The applicant filed an Answer to the petition on October 8th.
16 The Commission Staff also filed an Answer supporting the initial order and recommending
17 denial of WIC petition for review on October 8th. Then on October 20th, Airporter
18 Shuttle filed two motions, a Motion to Strike Applicant’s Citations of Events Outside the Record
19 And a Motion to Reply. This response is in response to Airporter Shuttle’s Motion to Reply.

20 **V. THE COMMISSION SHOULD NOT ALLOW WIC TO REPLY TO THE**
21 **EVIDENCE OUTSIDE THE RECORD CITED BY APPLICANT**

22 Applicant has stipulated to all references to evidence outside the record be
23 stricken and disregarded by the Commission in its response to WIC’s Motion to Strike.
24 *Applicant’s Response to Wickkiser International Companies, Inc. Motion to Strike Applicant’s*
25 *Citations of Events Outside the Record, Docket TC-040389, para. V.*

1 No further review or argument is therefore warranted. WIC allegations that the proceedings may
2 now be tainted are frivolous. When during the course of the hearing(s) either WIC or the
3 Applicant objected to certain testimony or evidence presented and that objection was upheld by
4 the ALJ then it was disregarded by the Commission and no further arguments were heard. WIC
5 would now have the Commission believe that the reviewing ALJ is incapable of weighing the
6 substance of Applicant's answer without regard to the stricken citations.

7 **A. Citations Not Key to Applicant's Answer**

8 WIC alleges that the disputed citations in Applicant's Answer are key to
9 Applicant's Answer and must be challenged. *Wickkiser International Companies, Inc. Motion to*
10 *Strike Applicant's Citations of Events Outside the Record, Docket TC-040389 P 3 ll 13-15.* This
11 is a gross misrepresentation of the facts. The disputed portions speak directly to the veracity of
12 WIC and not to the conditions and facts under which the Initial Order was granted. The
13 Commission properly found that the service provided by WIC was not to the satisfaction of the
14 Commission and that the Applicant met all of the statutory requirements of the issuance of a
15 Certificate of Public Convenience and Necessity without any reliance upon any information
16 contained in Applicants Answer.

17 **B. False Claims in Attachment A to the Motion**

18 In its Attachment A to the Motion to Reply, WIC alleges that its actions as
19 described in Applicants Answer were "... **THE INEVITABLE RESULT OF THE INITIAL**
20 **ORDER'S GRANT OF THE APPLICANT'S APPLICATION.**" However, all of the
21 evidence of its actions which WIC desires to be stricken from Applicant's Answer and that it be
22 allowed to reply to, **OCCURRED BEFORE THE INITIAL ORDER WAS GRANTED.**
23 *Reply of Wickkiser International Companies, Inc. to events outside the record improperly*
24 *discussed in the Applicant's Answer, Docket TC-040389, P 1, ll 14-18.*
25 Therefore the Initial Order had no bearing what-so-ever on the actions which WIC has
26 acknowledged occurred, in its Motions, despite its representations to the contrary.

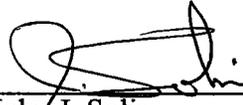
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VI. CONCLUSION

The Motion to File a Reply should be denied. WIC has filed a Motion to Strike and Applicant as stipulated to the key issue of that Motion. There is therefore no coherent reason why once having been stricken from the record, with the consent of the Applicant, WIC should now examine and argue that stricken portion of the record. WIC cannot have it both ways.

The undersigned hereby declares that the foregoing statements are true and correct to the best of my knowledge.

DATED this 24th Day of October, 2003.

JOHN J. SOLIN


John J. Solin
Applicant, SEATAC SHUTTLE, LLC

1 I hereby certify that I served the foregoing APPLICANT'S ANSWER TO
2 WICKKISER INTERNATIONAL COMPANIES, INC. MOTION TO STRIKE
3 APPLICANT'S CITATIONS OF EVENTS OUTSIDE THE RECORD on:

4 David Rice, Attorney for Wickkiser
5 International Companies, Inc.,
6 d/b/a/ Airporter Shuttle
7 Miller Nash LLP
8 4400 Two Union Square
9 601 Union Street
10 Seattle, WA 98101-2352

11 by the following indicated method or methods:

- 12 by mailing full, true, and correct copies thereof in sealed, first-class postage-
13 prepaid envelopes, addressed to the attorneys as shown above, the last-known
14 office addresses of the attorneys, and deposited with the United States Postal
15 Service at Oak Harbor, Washington, on the date set forth below.

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

18 Executed at Oak Harbor, Washington, this 24th Day of October, 2003.

19 

20 John J. Solin
21 SEATAC SHUTTLE, LLC

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Docket No. TC-030489
Application No. D-079145
APPLICANT'S RESPONSE TO
WICKKISER INTERNATIONAL
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STRIKE APPLICANT'S CITATIONS OF
EVENTS OUTSIDE THE RECORD

I. NAME AND ADDRESS OF RESPONDING PARTY

The responding party's name and address are:

SEATAC SHUTTLE, LLC
PO BOX 2895
OAK HARBOR, WA 98277

II. RULES AND STATUTES RELEVANT TO THIS PLEADING

This answer involves RCW 81.68.040, WAC 480-09-736(19) and WAC
480-09-780(6).

III. SUMMARY OF RESPONSE TO MOTION TO STRIKE

Applicant agrees with Wickkiser International Companies, Inc. (WIC) that
Applicant did inadvertently include evidence that was outside the record in its answer to WIC's

1 Petition for Administrative Review. Applicant therefore has no objection to certain sections of
2 its answer being withdrawn from consideration by the Commission in its deliberations.

3 However, Applicant does dispute WIC's gross removal of relevant testimony in its over
4 zealousness. *Applicants Answer to WIC's Petition for Administrative*
5 *Review, Docket TC-030489 P15 ll 10-14.*

6 Second, Applicant objects to WIC's argument of the facts not in the record within its motion.
7 WIC attempts to plead its motion to reply within this motion to strike. ¹

8
9 **IV. BACKGROUND**

10 On April 7, 2003, the Applicant filed an application to provide airporter service
11 between Oak Harbor and Seattle-Tacoma International Airport ("SeaTac Airport"), with
12 intermediate pickup points on SR20 and SR525 in South and Central Whidbey Island. The
13 proposed authority overlaps one city, namely Oak Harbor, with that of Airporter Shuttle, which
14 presently provides service between Oak Harbor and SeaTac Airport by traveling North and East
15 through points including Anacortes and Mount Vernon and along Interstate 5. Airporter Shuttle
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17 Administrative Law Judge Karen Caille convened evidentiary hearings on June
18 24, 2003 and July 2, 2003 to hear witnesses, receive exhibits, and listen to oral arguments
19 regarding the proposed service. At the hearing, Airporter Shuttle clarified that it was only
20 protesting the Applicant's request to serve the Oak Harbor/SeaTac route, not with intermediate
21 points in central and south Whidbey Island. Judge Caille issued an Initial Order on September 8,
22 2003 granting the Applicant's application. On September 28th, Airporter Shuttle filed a petition
23 for administrative review. The applicant filed an Answer to the petition on October 8th.

24 _____
25 ¹ Airporter Shuttle has contemporaneously filed a Motion to Reply.

1 The Commission Staff also filed an Answer supporting the initial order and recommending
2 denial of WIC petition for review on October 8th. Then on October 20th, Airporter
3 Shuttle filed two motions, a Motion to Strike Applicant's Citations of Events Outside the Record
4 And a Motion to Reply. This Response is in response to Airporter Shuttle's Motion to Strike.

5 **V. THE COMMISSION SHOULD DISREGARD THE APPLICANT'S SPECIFIC**
6 **REFERENCES TO EVENTS OUTSIDE THE RECORD**

7 The Commission should disregard the specific references to events outside the
8 record. As with any inappropriate evidence set before the Commission, the opposing party may
9 object to its entrance or the Commission may do so of its own volition.

10 The Judge at hearing or in review shall disregard such evidence if the objection is sustained and
11 no further discussion of it is warranted. Applicant stipulates that the following evidence offered
12 in its answer should be so disregarded but that all other content of its Response should be
13 considered, including those sections erroneously stricken by WIC in its Redacted Answer of
14 Applicant:

15 Disregard [~~strike through~~ portions] of Applicants Answer to WIC's Petition for Administrative
16 Review. **Bold** portions must remain.

17 **P11 II 9-24**

18 ~~Additionally, the Petitioner, despite its assertions to the contrary in its petition and in its sworn~~
19 ~~testimony at hearing, does not consider the Anacortes market key to its routing. In fact, on~~
20 ~~August 11, 2003, Petitioner eliminated the Oak Harbor to Anacortes and return trip routing from~~
21 ~~its schedule. In a filing before the commission on September 3, 2003, *Tariff revision #10*~~
22 ~~*Wiekker International Companies, Inc., Docket TC-031417(T)*. Petitioner finally made formal~~
23 ~~notice and application for the changes, after the fact. These actions appear to be in violation of~~
24 ~~the code and if proven will show a clear disregard for Petitioner's sworn testimony, the law and a~~
25 ~~lack of respect for the Commission. A formal investigation was instituted by the Commission~~
26

1 ~~into these alleged acts and has been completed. The findings are scheduled to be published~~
2 ~~within the next week. Whether or not a finding of violation is made, the fact remains that~~
3 ~~Petitioner has acted in contradiction to his testimony and his statements made in his Petition for~~
4 ~~Review *Petition for Administrative Review* p1, ll. 21-22, p2, ll. 5-7, p4, ll. 24-25, p4, ll. 18-20.~~
5 ~~TR. 392 l 25, TR. 393 ll 1-5. All arguments by Petitioner regarding population and the necessity~~
6 ~~of routing through Anacortes as an excuse for poor service are therefore irrelevant and~~
7 ~~disingenuous.~~

8
9 **P13 ll 26**

10 ~~However, despite its claims, even as of the date of its petition,~~

11 **P14 ll 1-4**

12 ~~Petitioner has completely refuted the necessity of its in-direct, inconvenient and non-expeditious~~
13 ~~service route by its actions and filing of Tariff Rev. No. 10 Doc. TC 031417 (T) on September~~
14 ~~3, 2003. Any and all claims by Petitioner that it must compromise service to the public because~~
15 ~~of economics are knowingly false and disingenuous.~~

16
17 **P15 ll 10-14**

18 **In the absence of any relevant testimony by the Petitioner's sole witness, the Petitioner's**
19 **admission that its service is an economic compromise, TR. 472 ll. 15-24 and its actions in**
20 **effect recanting its own testimony and Petition argument by filing Tariff Rev. No. 10, [the]**
21 **Petitioner has not proven its case of providing service to the satisfaction of the Commission.**

22
23 **VI. WIC'S ARGUMENTS AS TO THE FACTS OF THE DISPUTED EVIDENCE IN**
THE ANSWER ARE INNAPROPRIATE AND MUST BE DISREGARDED

24 Applicant has not disputed WIC's right to have certain portions of evidence
25 removed from Applicant's Answer to WIC's Petition for Administrative Review. However, if
26 the cited portions are removed from consideration then WIC *may not* argue them. WIC attempts

1 within this Motion to present its case for its MOTION TO REPLY which it filed
2 contemporaneously. It has tendered the illogical argument that certain facts presented by
3 Applicant in its Answer do not belong in the record but then proceeds to argue the merit and
4 conclusions of the sections not to be included in the record. Either they are in the record and
5 therefore should remain in Applicant's answer, or they are not, in which case WIC may not argue
6 them. Any such argument is only permitted if a MOTION TO REPLY is granted to WIC. Such
7 Motion has been filed but not granted. There is no place within the current Motion for this
8 discussion and such discussion, assertions, references and conclusions and any and all should be
9 disregarded by the Commission.
10

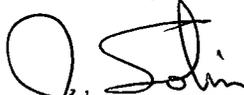
11 **VII. CONCLUSION**

12 The portions of Applicants Answer to WIC's Petition for Administrative Review cited in section
13 V of this Response to WIC's Motion to Strike should be disregarded by the Commission. WIC's
14 arguments as to merit or application of the portions to be disregarded are without foundation or
15 precedent and are inappropriately included in its Motion. They should be disregarded or
16 Applicant's original Answer (to Petition) should remain unmodified and accepted by the
17 Commission *in toto*.
18

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

21
22 DATED this 24th Day of October, 2003.

23 JOHN J. SOLIN

24 

25 John J. Solin
26 Applicant, SEATAC SHUTTLE, LLC

1 I hereby certify that I served the foregoing APPLICANT'S ANSWER TO
2 WICKKISER INTERNATIONAL COMPANIES, INC. MOTION TO STRIKE
3 APPLICANT'S CITATIONS OF EVENTS OUTSIDE THE RECORD on:

4 David Rice, Attorney for Wickkiser
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7 Miller Nash LLP
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19 
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21 John J. Solin
22 SEATAC SHUTTLE, LLC
23
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25
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Certificate of Service