Exhibit No. DP-4
Dockets TC-143691, TC-160516,
TC-161257 (*consolidated*)
Witness: David Pratt

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re the Application of SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company	**DOCKETS TC-143691, TC-160516, TC-161257 (*consolidated*)**
SHUTTLE EXPRESS, INC., **Complainant,** **v.** **SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE,** **Respondent.**	
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE, **Complainant,** **v.** **SHUTTLE EXPRESS, INC.,** **Respondent.**	

EXHIBIT TO TESTIMONY OF

David Pratt

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Order 01 – Initial Order Approving and Adopting Settlement Agreement, TC-072228

March 17, 2017

[Service Date July 11, 2008]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET TC-072228
	)	ORDER 01
Complainant,	)	
v.	)	INITIAL ORDER APPROVING AND ADOPTING SETTLEMENT AGREEMENT
SHUTTLE EXPRESS, INC.,	)	
Respondent.	)	

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 pursuant to the notice at the end of this Order. This Order would approve and adopt the parties' Settlement Agreement which imposes a penalty of $9,500 on Shuttle Express, Inc. for its violation of Commission rules governing passenger transportation companies.*

MEMORANDUM

2 **PROCEEDINGS:** Docket TC-072228 involves the assessment of penalties by the Washington Utilities and Transportation Commission (Commission) against Shuttle Express, Inc. (Shuttle) for violation of WAC 480-30-213.[1]

3 **APPEARANCES.** Brooks E. Harlow, Seattle, Washington, represents Shuttle. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).

4 **BACKGROUND AND PROCEDURAL HISTORY.** Shuttle has held a certificate of public convenience and necessity (CPCN) as a passenger transportation company

[1]WAC 480-30-213 provides that "(1) The vehicles operated by a passenger transportation company must be owned or leased to the certificate holder [and] (2) The driver of a vehicle operated by a passenger transportation company must be the certificate holder or an employee of the certificate holder."

and a charter party carrier certificate (charter certificate) since 1989.[2] Staff received a letter from Shuttle's president, Jimy Sherrell, in August of 2004, alerting the Commission that Shuttle would be hiring its bus drivers as independent contractors under an owner-operator agreement in order to "sustain its market position."[3] Over the next several months, Commission Staff continued communicating with Shuttle regarding its use of independent contractor bus drivers.

5 On November 4, 2005, Staff sent a letter to Shuttle stating that the relationship between Shuttle and its independent contractors "would constitute a lease of [Shuttle's] certificate and other carrier property" in violation of state law.[4] Commission Staff instructed Shuttle that its options included: requesting a declaratory order regarding the legality of Shuttle's Owner-Operator agreement, filing an application to lease its certificate authority and other properties under the Owner-Operator agreement, or seeking revision of the statutes that prohibit Shuttle's proposed transaction.

6 In June 2007, Shuttle again informed Staff of its intent to utilize charter bus carriers as independent contractors within its business. Shortly thereafter, the Staff commenced an investigation into the matter.

7 Commission Staff completed its investigation in April 2008 and found that Shuttle's business relationship with its independent contractor bus drivers violated WAC 480-30-213(2). Staff found that Shuttle did not lease or rent any of the vehicles to the charter bus carriers.[5] The charter bus carriers leased their vehicles from Express Leasing, Inc., a wholly-owned subsidiary of Shuttle.[6] Staff concluded that Shuttle managed the operations of the charter bus carriers, and the carriers only worked for

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[2]Shuttle holds Certificate No. C-975 and charter certificate CH-171. *See, Staff Investigation of Shuttle Express, Inc.*, at 5.

[3]*Staff Investigation of Shuttle Express, Inc., at Appendix B.* Mr. Sherrell indicated that he could no longer afford to maintain a fleet of employee drivers and would need to add independent contractor bus drivers.

[4]*Id.*, at Appendix D. The November 4, 2005 letter specifically cites to RCW 81.12.020 which requires that, with one exception, public transportation service companies receive Commission authorization before selling, leasing, assigning or disposing of any properties necessary to the performance of its public duties; RCW 81.12.030 which provides that any unauthorized sales, leases, assignments, or other dispositions shall be void; RCW 81.68.040 which prohibits an auto transportation company from operating without having previously obtained a CPCN; and RCW 81.68.070 entitled 'Public Service Law Invoked,' which was repealed in 2007 by 2007 c 234 § 102.

[5]*Staff Investigation*, at 14.

Shuttle.[7] Staff also found that the vehicles driven by the charter bus carriers displayed Shuttle's name, and Shuttle compensated the carriers for providing transportation services authorized under Shuttle's authority. Furthermore, Staff asserted that Shuttle provided both reservation and dispatching services for the charter bus carriers, and the fare tickets used by the charter bus carriers showed Shuttle's name.[8]

8 Staff confirmed that Shuttle has a CPCN which authorizes it to offer passenger transportation services, while none of the charter bus carriers have an auto transportation certificate from the Commission.[9] As a result, Staff found that Shuttle and the carriers violated WAC 480-30-213(2) when Shuttle used drivers who were not within its employ to transport passengers under Shuttle's CPCN. Staff found a total of 95 violations of the regulation from September 1-30, 2007.[10] On April 28, 2008, Staff filed a Notice of Penalties Incurred and Due for Violations of Laws and Rules (Notice of Penalties) which assessed a $9,500 penalty against Shuttle for the regulatory violations discussed above.

9 Shuttle filed its Response to the Notice of Penalties and requested that the Commission set the matter for hearing.[11] Shuttle disputed Staff's interpretation of WAC 480-30-213(2) and specifically Staff's view that the independent contractors were not Shuttle employees pursuant to the referenced regulation.

10 On June 4, 2008, Staff informed the Commission that the parties had reached a settlement in principle on the matter. On July 3, 2008, the parties filed a settlement agreement and narrative supporting settlement agreement with the Commission.

11 **SETTLEMENT AGREEMENT:** In the Settlement Agreement, Shuttle admits to the violation of WAC 480-30-213(2) in using independent contractor bus drivers and agrees to pay a penalty of $9,500 to the Commission because of this violation.[12] The penalty shall be paid over three months to begin on July 15, 2008, or the first day of the first month following the final order, whichever is later.[13] Each subsequent

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[6] *Id.*
[7] *Id.*, at 17.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] Shuttle originally filed its Response on May 22, 2008. On May 28, 2008, Shuttle filed its replacement Response with the Commission.
[12] *Settlement Agreement*, at 2.
[13] *Id.*, at 3.

installment shall be due on the first day of each month thereafter.[14] The first two monthly installments shall be in the amount of $4,000 each and the third monthly installment shall total $1,500.[15] Shuttle has a five-day grace period for each of the three installments, according to the Settlement Agreement, after which the full remaining balance shall be due.[16] Shuttle agrees to comply with all applicable rules and statutes of the Commission, including those addressed in this proceeding.[17]

12 Staff agrees not to pursue further penalties from Shuttle; its officers, directors, employees, and agents; or the six independent contractors for the violations of WAC 480-30-213(2) which occurred between June 16, 2007 and December 31, 2007.[18]

13 **DISCUSSION AND DECISION:** The Commission supports and encourages informal resolution of disputes, including settlement agreements.[19] In considering settlement agreements, the Commission "may accept the proposed settlement, with or without conditions, or may reject it."[20] The Commission must "determine whether a proposed settlement meets all pertinent legal and policy standards."[21] The Commission may approve settlements "when doing so is lawful, when 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."[22]

14 The parties' settlement agreement, attached to and made part of this Initial Order by this reference, fully resolves the issues pending in this docket. The issues are limited to whether Shuttle's business dealings with charter bus carriers constitute an employer/employee relationship, and, if not, whether such a business relationship rises to the level of violating WAC 480-30-213(2).

15 Early resolution of the parties' dispute conserves valuable party and Commission resources that would otherwise be devoted to litigating the regulatory violation and penalty assessment. The Settlement Agreement represents a reasonable compromise

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[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *See* RCW 34.05.060; WAC 480-07-700.
[20] *WAC 480-07-750(2).*
[21] *WAC 480-07-740.*
[22] *WAC 480-07-750(1).*

and is not opposed by any of the parties.[23] As the Narrative states, "[t]he Commission will receive the full amount of the penalty without expending resources on litigation."[24]

16 Shuttle accepts responsibility for its actions and agrees to comply with all applicable statutes and rules. Shuttle has since terminated its independent contractor program and has pledged to comply with WAC 480-30-213 on a prospective basis.[25] Shuttle will pay the $9,500 penalty originally assessed by Staff, beginning in late summer, "when it expects to have accumulated more revenue, which will delay payment of the penalty for less than one month, if at all."[26]

17 Consistent with WAC 480-07-750, the Commission finds that its approval and adoption of the Settlement Agreement is in the public interest, that the Settlement Agreement is supported by an appropriate record, and that approving the Settlement Agreement is lawful. The Commission concludes that it should approve and adopt the Settlement Agreement as the parties' resolution of the issues pending in this proceeding.

FINDINGS OF FACT

18 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

19 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate the rates, rules, regulations, practices, and accounts of public service companies, including transportation companies.

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[23] *Narrative Supporting Settlement Agreement*, at 1, ¶ 2.
[24] *Id.*, at 4, ¶ 10.
[25] *Id.*
[26] *Id.*, at 4, ¶ 10.

20 (2) Shuttle is an auto transportation company and holds a certificate of public convenience and necessity under which it may transport passengers pursuant to RCW 81.68.010 *et seq*.

21 (3) Shuttle notified Commission Staff in 2004 and 2007 that it intended to initiate an independent contractor program with several charter bus carriers. Shuttle operated its independent contractor program from June 16, 2007, through December 31, 2007.

22 (4) Staff completed its investigation into Shuttle's independent contractor charter bus carriers program in April of 2008. On April 28, 2008, Staff filed a Notice of Penalty against Shuttle as a result of its investigation. In the Notice of Penalty, Staff cites to 95 violations occurring between September 1-30, 2007.

23 (5) Shuttle filed a Response to Staff's Notice of Penalty, requesting a hearing in this matter.

24 (6) On July 3, 2008, the parties filed a settlement agreement and narrative supporting settlement agreement resolving all of the issues in this case.

CONCLUSIONS OF LAW

25 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

26 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.

27 (2) WAC 480-30-213(2) mandates that the driver of a vehicle operated by a passenger transportation company must be the certificate holder or an employee of the certificate holder.

28 (3) If approved, the Settlement Agreement filed by the parties to this proceeding would result in the imposition of a $9,500 penalty for violation of WAC 480-80-213(2) and payment of the penalty by Shuttle Express, Inc.

29 (4) Approval and adoption of the Settlement Agreement is lawful, supported by an appropriate record, and is in the public interest.

30 (5) The Commission should approve the Settlement Agreement, attached as an appendix to this Order, and incorporated by reference as if set forth here, as a reasonable resolution of the issues presented.

31 (6) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order. *RCW Title 80.*

ORDER

THE COMMISSION ORDERS:

32 (1) The Settlement Agreement filed by the parties on July 3, 2008, which is attached as an appendix to this Order and incorporated by reference as if set forth in full here, is approved and adopted in full resolution of the issues in this proceeding.

33 (2) Shuttle Express, Inc. shall pay $9,500 in the manner prescribed in the Settlement Agreement as penalty for its violation of WAC 480-80-213(2).

34 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington and effective July 11, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. RUSSELL
Administrative Law Judge

NOTICE TO THE 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 (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 an answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, 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. You will be notified if this order becomes final.

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 (8) copies of any Petition or Answer must be filed by mail delivery to:

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

Appendix

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. SHUTTLE EXPRESS, INC., Respondent.	)	DOCKET TC-072228 SETTLEMENT AGREEMENT

1 This settlement agreement (Agreement) is entered into by both parties to this proceeding for the purpose of resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this Agreement are Shuttle Express, Inc. (Shuttle), and the Staff of the Washington Utilities and Transportation Commission (Staff) (collectively, "the Parties").

II. BACKGROUND

3 Shuttle is an auto transportation company[1] that holds a certificate of public convenience and necessity from the Washington Utilities and Transportation Commission (Commission) to transport passengers. In April of 2008, Staff completed an investigation into the allegation that Shuttle was contracting with six charter bus carriers as independent contractor drivers to provide passenger transportation services authorized under Shuttle's Commission certificate. Pursuant to Commission rule, WAC 480-30-213(2), the driver of a vehicle operated by a passenger transportation company must be the certificate holder or an

[1] Defined at RCW 81.68.010(3).

employee of the certificate holder. Staff determined that Shuttle was violating this rule by using independent contractor drivers.

4 Shuttle operated its independent contractor driver program[2] from June 16, 2007, to December 31, 2007, when it voluntarily terminated the program. Staff found that during the operations period it examined, from September 1 to September 30, 2007, Shuttle used the six drivers it had contracted with as independent contractors to provide passenger transportation 95 times, in violation of WAC 480-30-213(2).

5 Based on Staff's findings, the Commission assessed penalties of $9,500 against Shuttle on April 28, 2008. On May 22, 2008, Shuttle requested a hearing. The parties reached an agreement in principle to settle shortly thereafter and so informed the Commission on June 4, 2008.

III. AGREEMENT

6 The Parties have reached agreement on the issues raised in the above docket and present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

7 Shuttle admits that its independent contractor driver program violated WAC 480-30-213(2). The Parties agree that Shuttle will pay to the Commission penalties totaling $9,500.

[2] Shuttle's independent contractor driver program operated as follows: Shuttle managed the operations of independent contractor drivers who possess Commission charter carrier authority. These charter carriers worked only for Shuttle and drove vehicles they leased from Shuttle's subsidiary. The vehicles displayed the Shuttle name as did the fare tickets used by the charter carriers. Reservation and dispatching services for the charter carriers took place at Shuttle. Shuttle compensated the charter carriers for providing transportation services authorized under Shuttle's certificate.

8 The amount shall be ordered due and payable in three monthly installments beginning the first day of the first month after the Commission issues its order approving this Agreement, or on July 15, 2008, whichever occurs last. Each subsequent installment shall be due and payable on the first of each month, with a five-day grace period. If Shuttle fails to timely make any payment, the full remaining balance will be due and payable within 10 days. The amount of the first two installments shall be $4,000. The final installment shall be $1,500.

9 Shuttle agrees that it will comply with all applicable rules and statutes enforced by the Commission, including those at issue in this proceeding.

10 Staff agrees not to seek additional penalties for violation of WAC 480-30-213(2) from Shuttle; Shuttle's officers, directors, employees, and agents; or the six independent contractor drivers based on Shuttle's use of the six charter carriers for operation of its independent contractor driver program from June 16, 2007, the date Shuttle began operating the program, to December 31, 2007, the date Shuttle terminated the program. This Agreement does not preclude the Commission from pursuing penalties for violations of Commission rules and statutes unrelated to the subject matter of this Agreement at any time or for violations of any rules or statutes at issue in this proceeding with respect to independent contractor drivers not identified in Staff's investigation, or that occurred before June 16, 2007, the date Shuttle began operating the program, or after December 31, 2007, the date Shuttle terminated the program ("Unrelated Claims"). Nor does this agreement preclude Shuttle from asserting any defenses that it may have as to any unrelated claims.

IV. GENERAL PROVISIONS

11 The Parties agree that this Agreement reflects the settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement—including the admissions contained herein—is not binding unless and until accepted by the Commission. If the Commission does not accept this Agreement, including all of its terms and conditions without change, then the Parties shall be free to assert their pre-settlement positions and agree that neither this Agreement nor any statements or admissions contained herein shall be admissible or used for any purpose in this docket or any other proceeding for any purpose.

12 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

13 The Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements) and (2) to include in any news release or announcement a statement that the Staff's recommendation to approve the settlement is not binding on the Commission itself.

14 Nothing in this Agreement shall limit or bar any other entity from pursuing legal remedies against Shuttle or Shuttle's ability to assert defenses to such claims.

15 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission order fully adopting those terms. This Agreement shall not be construed against either party because it was a drafter of this Agreement.

16 The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

17 The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are as effective as original documents.

18 The Parties shall take all actions necessary as appropriate to carry out this Agreement.

19 In the event that the Commission rejects all or any portion of this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the Commission. Written notice must be served within 10 business days of the Order rejecting part or all of this Agreement. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and either party shall be entitled to seek reconsideration of the Order.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ROBERT M. MCKENNA
Attorney General

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
Counsel for the Washington Utilities and Transportation Commission

Dated: July 3rd, 2008.

SHUTTLE EXPRESS, INC.

JIMY SHERRELL
President

Dated: _____, 2008.

BROOKS E. HARLOW
Counsel for Shuttle Express, Inc.

Dated: _____, 2008.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ROBERT M. MCKENNA
Attorney General

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
Counsel for the Washington Utilities and Transportation Commission

Dated: _____, 2008.

SHUTTLE EXPRESS, INC.

~~JIMMY SHERRELL~~ JOHN D. ROWLEY JR.
~~President~~ Chief Operating Manager

Dated: JULY 2ND, 2008.

BROOKS E. HARLOW
Counsel for Shuttle Express, Inc.

Dated: July 2, 2008.