

**Docket No. TC-200151 - Vol. II**

**WUTC v. Shuttle Express, Inc.**

**November 9, 2020**



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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND ) DOCKET TC-200151  
TRANSPORTATION COMMISSION, )  
)   
Complainant, )  
)   
vs. )  
)   
SHUTTLE EXPRESS, INC., )  
)   
)   
Respondent. )

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TELEPHONIC EVIDENTIARY HEARING, VOLUME II

Pages 19-63

ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

November 9, 2020

9:33 a.m.

Washington Utilities and Transportation Commission  
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1 LACEY, WASHINGTON; NOVEMBER 9, 2020

2 9:33 A.M.

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4 P R O C E E D I N G S

5

6 JUDGE HOWARD: Let's be on the record. Good  
7 morning. Today is Monday, November 9th, 2020. The time  
8 is 9:33 a.m. This case is captioned the Washington  
9 Utilities and Transportation Commission versus Shuttle  
10 Express Incorporated in Docket TC-200151.

11 My name is Michael Howard, and I am an  
12 administrative law judge presiding over today's hearing.

13 Let's take appearances from the parties and  
14 then we will talk about how we're going to proceed this  
15 morning.

16 Could we start with Shuttle Express?

17 MR. SHERRELL: Jimmy Sherrell, J-i-m-y,  
18 S-h-e-r-r-e-l-l, Shuttle Express.

19 JUDGE HOWARD: Okay. Can we have an  
20 appearance for Staff?

21 MR. FUKANO: Apologies, I was muted. Good  
22 morning, Judge Howard. This is Harry Fukano, Assistant  
23 Attorney General. With me is co-counsel, Assistant  
24 Attorney General Jeff Roberson, and we are here on  
25 behalf of Commission Staff this morning.

1 JUDGE HOWARD: Thank you, Mr. Fukano.  
2 And could we have an appearance for Public  
3 Counsel?

4 MS. SUETAKE: Thank you, Your Honor. My  
5 name is Nina Suetake, and I am here -- Assistant  
6 Attorney General for Public Counsel Unit.

7 JUDGE HOWARD: Thank you.

8 I'm sure I will accidentally mute myself at  
9 some point today too, which is part of the process.

10 Thank you, everyone. Since we're doing this  
11 hearing today over Microsoft Teams software, I just want  
12 to remind everyone to be aware of background noise and  
13 that you should mute your computer microphone or your  
14 phone if you're calling in when you are not speaking.

15 If you need to object or raise an issue,  
16 please identify yourself when you're not -- when you're  
17 speaking if I'm not already calling on you, and we  
18 should make an effort not to talk over each other so the  
19 court reporter can make a clear record of our hearing  
20 today.

21 Before we begin, I want to make a note about  
22 the scope of this hearing. As we discussed at the  
23 prehearing conference and as I noted in the prehearing  
24 conference order, Shuttle Express stipulated that it  
25 does not contest the violations of WAC Chapter 480-30

1 which are alleged in the complaint in Order 01 in this  
2 docket. And I take this prehearing conference order as  
3 controlling this case going forward, so this hearing is  
4 limited to determining the appropriate remedy for the  
5 violations alleged in the complaint in Order 01.

6 And also before we begin, I want to pose a  
7 question and allow each of the parties an opportunity to  
8 respond. So Shuttle Express appealed the last major  
9 enforcement action against it to superior court and this  
10 was in the Dockets TC-160516 and 161257. And I see that  
11 the settlement is described in the exhibit submitted as  
12 MP-1, but I don't see the settlement agreement itself.

13 Does the settlement limit my ability in any  
14 way to consider the violations found in the final order  
15 in those dockets when determining the appropriate remedy  
16 in this case? And I just want to give each of the  
17 parties a chance to state their position on that issue.

18 Could I turn first to Staff?

19 MR. FUKANO: Yes, Staff is not aware of any  
20 limitations contained in the settlement agreement that  
21 would otherwise limit the information [phone  
22 interference] Commission in this proceeding.

23 JUDGE HOWARD: Public Counsel, do you --  
24 would you like to respond?

25 MS. SUETAKE: Thank you, Your Honor. Public

1 Counsel is also unaware of any limitation in the  
2 settlement agreement. Sorry, I am hearing some echo.

3 JUDGE HOWARD: Mr. Sherrell, would you like  
4 to respond on this issue?

5 MR. SHERRELL: I guess I don't quite  
6 understand what you're asking.

7 JUDGE HOWARD: Well, just kind of to clarify  
8 my question, there -- there was that settlement  
9 agreement when your company appealed to superior court  
10 the -- the findings in the 2016 dockets assessing  
11 penalties against Shuttle Express. And do you -- do you  
12 believe that settlement agreement keeps me from -- in  
13 any way -- from considering the violations that the  
14 Commission found in -- in that docket in that earlier  
15 case in -- in terms of determining the -- the level of  
16 penalty to impose in this case?

17 MR. SHERRELL: No, I don't oppose.

18 JUDGE HOWARD: Okay. Thank you. I just  
19 wanted to address that before we begin here.

20 So in terms of a roadmap for today, we're  
21 going to begin by taking testimony from Staff's witness,  
22 Mathew Perkinson, since Staff is the party alleging the  
23 underlying violations. We'll then take testimony from  
24 Public Counsel's witness, Ms. Laycock, and finally we  
25 will provide Mr. Sherrell an opportunity to testify on



1 behalf of the company.

2 At the end of the hearing, the parties will  
3 have an opportunity to provide a closing -- an oral  
4 closing statement. I'm -- I'm not planning necessarily  
5 on providing a separate opportunity for an opening  
6 statement before we begin. Would any party wish to  
7 provide an opening statement, though?

8 MR. FUKANO: Commission Staff has no need to  
9 provide an opening statement, although it would have two  
10 clarifying questions when -- at an appropriate time.

11 JUDGE HOWARD: Okay. Ms. Suetake?

12 MS. SUETAKE: Public Counsel has no need for  
13 an opening statement.

14 JUDGE HOWARD: Mr. Sherrell, I'll let you --  
15 when it's your opportunity to testify, I will let you  
16 testify without an attorney posing questions to you, but  
17 would -- would you request any opening statement right  
18 now before we begin taking testimony?

19 MR. SHERRELL: Here we go. I hit the mute  
20 button. So this is a very narrow scope. All we're  
21 really talking about is penalties; is that correct?

22 JUDGE HOWARD: Yes. Yes, so would -- would  
23 you -- would you like to provide an opening statement or  
24 would you prefer to wait until your testimony?

25 MR. SHERRELL: Well, I think we can cut this

1 pretty short. I filed a 48030-186(2)(b) and it  
2 discontinues the service. So Shuttle Express will not  
3 be operating in the future. We shut down, suspended on  
4 March 27th, 2020. The way I look at it, there is not  
5 much we need to talk about. We no longer exist.  
6 Shuttle Express cannot reopen. So I think we can cut  
7 this pretty short.

8 JUDGE HOWARD: All right. Thank you. Okay  
9 thank you, Mr. Sherrell.

10 So, Mr. Fukano, you indicated Staff had a  
11 couple of questions before we begin?

12 MR. FUKANO: Yes, regarding the proposed  
13 exhibits submitted by Staff, I wanted to inquire whether  
14 the exhibit might be admitted by stipulation or whether  
15 you would want those admitted via witness through  
16 direct.

17 JUDGE HOWARD: Certainly. That was going to  
18 be the next thing I would -- I would ask about. Would  
19 the parties -- we have the exhibits submitted and  
20 they're MP-1 through MP-5. Are the parties able to  
21 stipulate to the admissibility of all of these exhibits?

22 Public Counsel, please go ahead.

23 MS. SUETAKE: We stipulate to the  
24 admissibility of these exhibits.

25 JUDGE HOWARD: Thank you.

1           Mr. Sherrell, would you also agree to these  
2 exhibits?

3           MR. SHERRELL: Yes, I agree.

4           JUDGE HOWARD: Okay. Thank you. Then I  
5 would admit Staff's Exhibits MP-1 through MP-5 into the  
6 record.

7           (Exhibits MP-1 through MP-5 admitted.)

8           MR. FUKANO: Thank you, Your Honor.

9           JUDGE HOWARD: Was there another question?

10          MR. FUKANO: Yes. Staff's recommended  
11 penalty in this proceeding potentially changes depending  
12 on the actions that the company or the course of the  
13 company going forward. I think we've heard this morning  
14 about some of the intent of the company, but Staff would  
15 suggest it may be appropriate for the company to testify  
16 first to explain its position going forward, which Staff  
17 could then incorporate into its recommendation. I  
18 believe we know where that's going, but I feel that may  
19 be appropriate.

20          JUDGE HOWARD: I think that would be a  
21 reasonable request. I think that could justify changing  
22 the order of the witnesses.

23          Ms. Suetake, do you have any concerns with  
24 that?

25          MS. SUETAKE: No, Your Honor. That would

1 actually make things easier for us as well.

2 JUDGE HOWARD: Okay. Mr. -- Mr. --  
3 Mr. Sherrell, would you be fine with testifying first  
4 and then you would --

5 MR. SHERRELL: Yes, I agree.

6 JUDGE HOWARD: Okay. And then you would  
7 have -- you would have an opportunity, of course, to --  
8 to examine Staff and Public Counsel's witness afterward.  
9 But yes -- so it sounds like you indicated yes to that.

10 So we will -- we will change the order of  
11 the witnesses, then, and we will have the company go  
12 first, then Staff, and then Public Counsel.

13 Does -- are there any other questions before  
14 we begin?

15 MR. FUKANO: None from Staff. Thank you,  
16 Your Honor.

17 MS. SUETAKE: None from Public Counsel.  
18 Thank you.

19 JUDGE HOWARD: All right. Mr. Sherrell,  
20 since you're not appearing with an attorney, I will  
21 allow you to testify on behalf of Shuttle Express  
22 without an attorney posing questions to you. We will  
23 then allow Staff and Public Counsel's attorneys to pose  
24 their questions. I will swear you in first.

25 (Jimmy Sherrell sworn.)

1 JUDGE HOWARD: Thank you. So, Mr. Sherrell,  
2 you may go ahead with your testimony.

3 MR. SHERRELL: Okay. So in March 27, 2020,  
4 we suspended service caused by airport restricting  
5 operations and overriding WUTC Commission regulations,  
6 and it cost us about 40 percent of our traffic. After  
7 that, COVID hit and that took the remaining away from  
8 us. So on March 27th I filed a suspension. Actually,  
9 it was filed by Kari Green, and our intent was, when we  
10 were negotiating our violations, that we would be able  
11 to resume service within a couple months.

12 After eight months of suspension, it was not  
13 possible for us ever to resume our services. So we  
14 filed a 48030-186(2)(b) discontinues the service, which  
15 is on file now. And going forward, Shuttle Express,  
16 after 34 years of operations, is unable to initiate  
17 service going forward.

18 And over the last eight months, we have  
19 worked with our clients, our different communities, eBay  
20 [sic], the people that we booked with, to switch them  
21 over to a company called Bayview Limo, and Bayview Limo  
22 is licensed by the Department of Licensing, DOL, and  
23 they have limo license, so they can do dedicated nonstop  
24 service, which is allowed, whereas if we try to do share  
25 rides, it's not allowed because of the distancing

1 regulations.

2           So in essence, going forward, at this time,  
3 Shuttle Express has moved out of its office,  
4 discontinued its office. We spent the last six months  
5 working with Bayview helping them with carrying service  
6 forward to the people that were using Shuttle Express,  
7 and they are now called Shuttle Express No. 2 under the  
8 LLC.

9           So we've got really good response from the  
10 travelers when they call in to direct them to this  
11 dedicated service, and we actually offer an economy, we  
12 actually offer them economy black car service because of  
13 our share ride. Because the people using the share ride  
14 are used to not paying as much money as dedicated black  
15 service or dedicated services. So they've been happy.  
16 We haven't had any complaints from them, zero.

17           So the transition has been really good, and  
18 we keep continuing to work with Bayview if they have any  
19 inquiries working with the past Shuttle Express and  
20 we've been taking care of that.

21           And so Shuttle Express basically does not  
22 exist anymore. It is being supported. People are being  
23 supported, the travelers, by Bayview Limo, and we've  
24 worked really close with them over the last six months.  
25 So there's no transfer of license, period. We were just

1 going to discontinue all of the licenses. I know Bel  
2 Air has applied for our license in Everett and that's up  
3 to them. We are not doing any transfers.

4 So we're just going to surrender all three  
5 of our licenses, which is share ride, schedule, and  
6 charter. And so that pretty well wraps up Shuttle  
7 Express for the past 34 years.

8 And I would like to say that the  
9 Commissioners made every attempt to keep us alive when  
10 they held three meetings, work sessions, and then  
11 changed some regulations to allow us to use independent  
12 contractors and small cars and they -- the airports  
13 stepped right on top of the UTC, which cuts the law of  
14 1979 that was passed in which they oversee WUTC, which  
15 is wrong. It's absolutely wrong to have that happen.

16 So Shuttle Express cannot fight the airport,  
17 and the con- -- and the virus and not having any  
18 traffic. We went from 400 passengers a day to ten. Our  
19 bottom line is 70,000 service -- if nobody moves or does  
20 anything. So we've used our PPP, we've used or SBA  
21 emergency funds to keep going this far, and then we've  
22 moved everything so the traveling public wasn't hurt by  
23 us shutting down. So there is nothing more we can do.

24 And we've had a stellar reputation. And  
25 looking at the other operators in the past, Shuttle

1 Express was a premier. We had regulations, we had  
2 scheduling, we had training, we had everything. So --  
3 and you won't find another operator out there that does  
4 what we were doing in the past.

5 And it's been related by other people within  
6 the UTC also and noted throughout the agency or  
7 throughout the U.S. as being a premier operator. So I'm  
8 done. That's bottom line, and there's no money left in  
9 the company.

10 So I do recognize that when I first asked to  
11 reach an agreement, that the UTC, you -- you guys did  
12 reach forward and we were trying to keep Shuttle going  
13 and suspend the -- the penalty for a year in which we  
14 could make it back when the courtesy can start up again.  
15 That won't happen, we can't do it, this has gone on two  
16 months --

17 MR. FUKANO: Pardon me, Judge. I just  
18 wanted to raise a quick reminder that any discussion  
19 during settlement is confidential. So I would ask that  
20 any comment about the specifics of the settlement be  
21 struck from the record.

22 MR. SHERRELL: And I didn't give any  
23 specifics on it so -- I just admitted that Staff did  
24 work with us in trying to reach a settlement.

25 JUDGE HOWARD: Could the -- could the court



1 reporter read back the last portion of that testimony  
2 where there was any discussion about the settlement?

3 (Section read.)

4 JUDGE HOWARD: I will -- I will grant the  
5 objection to strike the testimony that was just read  
6 from the record, just in the interest of keeping  
7 settlement discussions confidential.

8 Mr. -- Mr. Sherrell, you may -- you may  
9 continue.

10 MR. SHERRELL: Yeah, I agree with you  
11 striking that. No objection to that, and I am basically  
12 finished.

13 JUDGE HOWARD: Thank you, Mr. Sherrell.  
14 Do we have any questions from Staff?

15 MR. FUKANO: A few brief questions from  
16 Staff.

17

18 E X A M I N A T I O N

19 BY MR. FUKANO:

20 Q. Good morning, Mr. Sherrell. How are you this  
21 day?

22 A. You know, that's -- in this year, it's probably  
23 the hardest year of my life I've been around. So to  
24 answer that question, it's we're hanging on and trying  
25 to do everything we can. We -- in fact, we haven't

1 taken a day off for eight months until this last week,  
2 so, you know, that's how we're doing. And I think the  
3 whole country's that way. So other than that, we're  
4 still alive and we're still going forward, so we're --  
5 we're blessed.

6 Q. And I just wanted to ask you a few questions  
7 about the other proceedings or -- before the Commission  
8 involving Shuttle Express.

9 You mentioned that there was a transfer of  
10 authority from Shuttle Express to Wickkiser, correct?

11 A. I originally proposed that, and it doesn't  
12 matter to me one way or the other. I'm just going to  
13 surrender my licenses. So if -- if the Commission wants  
14 to do a transfer, I -- I really don't want to do a  
15 transfer. I'd just surrender my licenses. That's a  
16 change that I've made recently after talking to our  
17 attorney and looking at what's going off it's -- I think  
18 it's easier for them just to go ahead and do it. But  
19 that's up to them so...

20 Q. And so just to clarify, then, does the company  
21 oppose the transfer of the partial authority to  
22 Wickkiser?

23 A. No, we do not oppose it. I'd rather work with  
24 the Commission, Wickkiser, whatever works better. So  
25 it's hard for me to give an opinion on it. It's just

1 that we can't operate.

2 Q. Understood.

3 And, again, just by way of clarification, does  
4 the company intend to have any transfer go into effect  
5 before any cancellation of the company's operating  
6 authority?

7 A. I'm thinking. No, we are not going to transfer  
8 on our initiative before we surrender the certificates.

9 However, if Wickkiser works with the Commission  
10 and it would be better to transfer a license, then we're  
11 amenable. I just want to do the best thing for the  
12 public and whatever works easy for the Commission.

13 Q. Thank you. Appreciate the clarification.

14 And turning to the cancellation docket, Shuttle  
15 Express has submitted an application to voluntarily  
16 cancel its Commission authority in Docket 200887; is  
17 that correct?

18 A. I have not seen the docket, but I know it's  
19 filed and that is correct. I just don't know the number  
20 on it.

21 Q. And just to clarify, the Commission has not yet  
22 acted on the company's request for cancellation,  
23 correct?

24 A. That is correct.

25 MR. FUKANO: Thank you very much. No

1 further questions.

2 JUDGE HOWARD: Do we have any questions from  
3 Public Counsel?

4 MS. SUETAKE: Your Honor, with Staff  
5 questions, we do not have any additional questions.

6 JUDGE HOWARD: Thank you.

7 Mr. Sherrell, I might just ask a clarifying  
8 question. You referred to Shuttle Express No. 2, could  
9 you just explain a bit more what that is referring to?

10 MR. SHERRELL: Yes, I will. So the  
11 traveling -- let me just give you a quick background.  
12 The traveling public is used to dealing with Shuttle  
13 Express 34 years. So for people going forward and using  
14 Shuttle Express, the name means a lot to them in how  
15 they seek to service out. So Bayview has an LLC that  
16 says Shuttle Express 2. So that's how they will be  
17 operating, so I gave them basically our name and  
18 didn't -- they can file under the assumed business name.  
19 Let me back up and say that. So Shuttle Express 2, so  
20 that way it works when people seek out Shuttle Express  
21 and I -- hopefully I answered that question.

22 JUDGE HOWARD: Thank you, yes.

23 And then do you -- just to clarify a little  
24 bit more, do you -- do you have any ownership interest  
25 in Bayview?

1           MR. SHERRELL: I do not have any ownership  
2 in Bayview and I have not received any funds for any  
3 transfer with Bayview. My whole intent was to keep  
4 airport transportation going in the future. Bayview has  
5 suffered tremendously. They're only carrying like ten  
6 people a day. A big day is 30. So by me giving Bayview  
7 all of our business and our name and everything that I  
8 can, it's in my hopes that Bayview can stay alive going  
9 forward. So there have been no exchange of funds,  
10 period.

11           JUDGE HOWARD: Thank you. That would be all  
12 the clarifying questions I would have.

13           Mr. Sherrell, would you -- would you like to  
14 make any statement in response to the questions you were  
15 asked by Staff or Public Counsel?

16           MR. SHERRELL: No, I think Staff asked some  
17 very good questions and hopefully I answered it. If  
18 not, I'd like to clarify anything that is misunderstood.

19           JUDGE HOWARD: All right. Thank you,  
20 Mr. Sherrell. I think I'll take that as your testimony  
21 being concluded.

22           We will then turn to Staff's witness, Mathew  
23 Perkinson. Mr. Perkinson, are you on the line?

24           MR. PERKINSON: Yes, Your Honor, I'm here.

25           JUDGE HOWARD: I will swear you in and then

1 I'll allow Staff's attorney to -- I'm sorry. To -- to  
2 present your testimony.

3 (Mathew Perkinson sworn.)

4 JUDGE HOWARD: Thank you.

5 Staff, you may proceed.

6 MR. FUKANO: Thank you, Your Honor.

7

8 E X A M I N A T I O N

9 BY MR. FUKANO:

10 Q. Good morning, Mr. Perkinson.

11 A. Good morning.

12 Q. Please state your name and spell your last name  
13 for the record.

14 A. It's Mathew Perkinson, P-e-r-k-i-n-s-o-n.

15 Q. And who is your employer?

16 A. The Utilities and Transportation Commission.

17 Q. And how long have you worked for the Commission?

18 A. I've been with the Commission since 2011.

19 Q. And what is your current role with the  
20 Commission?

21 A. Assistant director transportation safety.

22 Q. And what are your responsibilities in that role?

23 A. As it relates to this docket, I review motor  
24 carrier safety passenger compliance investigations and  
25 make sure that they're done properly and consistent with

1 the Commission's enforcement policy.

2 Q. And what qualifications, experience, or training  
3 do you have for that role?

4 A. I've been involved in the motor carrier safety  
5 program for several years in a variety of positions. As  
6 a safety investigator myself, certified to perform  
7 intrastate and interstate compliance reviews and  
8 investigations and then also served as supervisor of the  
9 Motor Carrier Safety Program.

10 Q. Thank you.

11 I'd like to turn to the matter at issue in  
12 today's hearing. Are you familiar with the company  
13 called Shuttle Express?

14 A. Yes.

15 Q. And how are you familiar with Shuttle Express?

16 A. The company is regulated by the Commission as an  
17 auto transportation company and a charter.

18 Q. And what is the current status of Shuttle  
19 Express' auto transportation operation?

20 A. As Mr. Sherrell described, the company suspended  
21 its operations in March 2020 following the COVID-19  
22 pandemic. The company also has a transfer application  
23 in the door with the Commission and a request to cancel  
24 its operating authority also pending before the  
25 Commission.

1 Q. And are you familiar with the investigation of  
2 Shuttle Express at issue in this docket?

3 A. Yes.

4 Q. And how are you familiar with that  
5 investigation?

6 A. As I mentioned previously, I review all the  
7 motor carrier safety investigations and this is one of  
8 those.

9 Q. And did you review the investigation that has  
10 been admitted as Exhibit MP-1?

11 A. Yes.

12 Q. Based on your understanding, what issue or  
13 issues related to Shuttle Express, the investigation  
14 regarding Shuttle Express, are being considered today?

15 A. So as Judge Howard mentioned, the company  
16 admitted the violations identified in the Staff's  
17 investigation report. We're here today to discuss the  
18 appropriate penalty for those violations.

19 Q. And just a moment ago, you mentioned you had  
20 reviewed the Staff investigation report, correct?

21 A. Yes.

22 Q. Did the investigation report include a penalty  
23 recommendation?

24 A. Yes.

25 Q. And what was that penalty recommendation?



1           A.     The penalty recommendation in Staff's  
2 investigation report is \$409,030 for violations of  
3 Commission regulations. I'd be happy to go over those  
4 if you'd like.

5           Q.     Certainly.

6                     Broadly, have circumstances changed since Staff  
7 made its original penalty recommendation?

8           A.     Yes.

9           Q.     And without getting too much into the specifics  
10 yet, how have circumstances -- how have circumstances  
11 changed since the original penalty recommendation?

12          A.     A couple of things have occurred. The company,  
13 as I've already discussed, admitted to extend a portion  
14 of its authority and transfer another portion of its  
15 rights under its certificate from Shuttle Express to  
16 Wickkiser International Company, Inc., doing business as  
17 Airport Shuttle.

18                     The company submitted a request to cancel the  
19 remaining portion of its auto transportation certificate  
20 numbers B-000975 and cancel its charter certificate,  
21 certificate numbers CH-000171. And then one other  
22 circumstance that I don't know that it's changed but  
23 it's continued, has been the COVID-19 pandemic and the  
24 impact to the passenger transportation industry.

25          Q.     And based on these changed circumstances, does

1 Staff have an updated or revised penalty recommendation?

2 A. Yes.

3 Q. And what is that recommendation?

4 A. Staff would recommend that the entire penalty be  
5 suspended with conditions.

6 Q. And I'd like to discuss the reasoning for  
7 revised penalty recommendation. What, if anything, did  
8 you review as part of your reconsideration of Staff's  
9 recommended penalty?

10 A. The Commission's enforcement policy in Docket  
11 A-120061.

12 Q. And does that policy contain enforcement penalty  
13 factors?

14 A. Yes.

15 Q. And how many factors does the policy contain?

16 A. There are 11 enforcement factors.

17 Q. And did Staff consider each factor when revising  
18 its penalty recommendation?

19 A. Yes.

20 Q. On balance, after reviewing and applying the  
21 penalty factors, did you determine that the penalty  
22 factors favored a relatively higher penalty or favored  
23 mitigating a penalty?

24 A. I would say that the factors were mixed, but  
25 there were certain -- there were certain factors that

1 highlight that the company knew or should have known  
2 about the violations and support of higher penalty;  
3 factor two, which is whether the violations were  
4 intentional or not; factor six, the number of the  
5 violations; factor nine, the company's past performance;  
6 and factor 10, the company's compliance program.

7 Q. And you mentioned before that the factors were  
8 mixed, were there any factors that favored mitigating a  
9 penalty?

10 A. Yeah, there were a number of factors. Factor  
11 one, which was harm to consumers, and the Commission  
12 didn't receive consumer complaints as described in the  
13 Staff's investigation report. Factor five was corrected  
14 violations or remedied the violations. The company  
15 hasn't, per se, remedied the violations, but it is  
16 shutting its doors, which in essence resolves the issue.  
17 Factor seven, the number of customers affected; and then  
18 factor eight, again, company closing down probably  
19 reduces -- it should reduce the likelihood of  
20 recurrence.

21 Q. And does the Commission enforcement policy also  
22 contain factors whether -- regarding whether to suspend  
23 some or all of the penalty?

24 A. Yes.

25 Q. And how many suspension factors are there?

1 A. There are five factors.

2 Q. Did you consider those factors as part of your  
3 revised penalty recommendation?

4 A. Yes.

5 Q. Let's discuss some of those factors.  
6 What is the first suspension factor?

7 A. The first factor would be whether or not this is  
8 a first-time penalty for this or a similar violation.

9 Q. And what was Staff's conclusion with regard to  
10 that factor?

11 A. Staff believes that this factor does not support  
12 suspension of the penalty. This is not the first time a  
13 violation or penalty that the company's received.

14 Q. And what is the second suspension factor?

15 A. Whether or not the company has taken a --  
16 specific actions to remedy the violations and avoid the  
17 same or similar violations in the future.

18 Q. And what was Staff's conclusion regarding the --  
19 regarding this factor?

20 A. This factor supports a suspended penalty.  
21 Again, the company is shutting down.

22 Q. And what is the third suspension factor?

23 A. Whether or not the company agrees to specific --  
24 to a specific compliance plan.

25 Q. And what was Staff's conclusion regarding this

1 factor?

2 A. I would say, again, the factor supports  
3 suspended penalty.

4 Q. And can you explain why?

5 A. Yeah. Same answer; the company is closing its  
6 doors.

7 Q. What is the fourth suspension factor?

8 A. Whether or not the company and the Commission  
9 have an agreement to reinvestigate at a later time to  
10 check on the company's compliance.

11 Q. And what was Staff's conclusion regarding this  
12 factor?

13 A. This factor essentially doesn't apply. If the  
14 company shuts down, there's no need to reinvestigate  
15 Shuttle Express.

16 Q. And what is the fifth suspension factor?

17 A. Whether or not there are other circumstances  
18 that warrant suspension.

19 Q. And what was Staff's conclusion regarding this  
20 factor?

21 A. That there are other circumstances that support  
22 a suspended penalty. As previously mentioned, the  
23 COVID-19 pandemic and its impacts to the transportation  
24 safety -- transportation -- passenger transportation  
25 industry, and then Shuttle Express suspending its

1 operations, it has no doubt suffered a loss of revenue  
2 since March 2020, and that it admits that the violations  
3 occurred I think were all factors that support  
4 suspension.

5 Q. And on balance, after reviewing and applying the  
6 penalty suspension factors, did Staff determine that the  
7 factors favored either relatively large or a relatively  
8 smaller suspended penalty?

9 A. Staff believes that the five suspension factors  
10 support a large suspended portion of penalty.

11 Q. And you mentioned earlier that Staff's  
12 recommendation is to suspend the entire \$409,030  
13 penalty; is that correct?

14 A. Yes.

15 Q. How long -- does Staff have a recommendation  
16 about how long the penalty should be suspended for?

17 A. Three years.

18 Q. Does Staff have any recommendations about terms  
19 associated with the waiver of the suspended penalty?

20 A. Yes.

21 Q. And what are those recommendations?

22 A. Staff recommends that the Commission establish  
23 three conditions on the waiver of the suspended penalty.  
24 If the company violates a term of the suspension, the  
25 company would be liable for some or all of the suspended

1 penalty amount depending on which condition is breached  
2 or violated. And then any remaining portion of the  
3 suspended penalty could be waived three years after the  
4 effective date of the Commission's order. And I'd be  
5 happy to go over those three conditions.

6 Q. Excellent.

7 What is the first condition?

8 A. First the company would be liable for the entire  
9 \$409,000 penalty if it or a reincarnation of the company  
10 as a term that's used in 49 CFR 386.73 operates as an  
11 auto transportation company without a Commission  
12 certificate of convenience and necessity within three  
13 years of the effective date of the Commission's order.

14 Q. And what is the second condition?

15 A. The company or reincarnation, again, will be  
16 liable for approximately \$54,000 or one-eighth of the  
17 penalty amount if the company applies for an auto  
18 transportation certificate of convenience and necessity  
19 within three years of the effective date of the  
20 Commission's order.

21 Q. And what is the third condition?

22 A. The company, again, or a reincarnation, will be  
23 liable for approximately \$355,000 of the penalty amount  
24 if the company commits a repeat violation of any of the  
25 violations at issue in Staff's complaint in this docket.

1 Q. So to summarize, what again is Staff's revised  
2 penalty recommendation?

3 A. So in summary, Staff recommends suspending the  
4 entire penalty for a period of three years subject to  
5 the three conditions just explained.

6 Q. Does this conclude your testimony?

7 A. Yes, it does.

8 MR. FUKANO: Thank you. No further  
9 questions.

10 JUDGE HOWARD: Thank you.  
11 Do we have any questions from Public  
12 Counsel?

13 MS. SUETAKE: No, Your Honor. Public  
14 Counsel has no questions for Staff.

15 JUDGE HOWARD: Do we have any questions from  
16 Shuttle Express for Mr. Perkinson?

17 MR. SHERRELL: Shuttle Express has no  
18 questions.

19 JUDGE HOWARD: Well, thank you for your  
20 testimony, Mr. Perkinson. I don't have any follow-up  
21 questions myself.

22 Mr. Fukano, would Staff rest its case at  
23 this point?

24 MR. FUKANO: Yes, Your Honor. Nothing  
25 further from Staff.



1 JUDGE HOWARD: Okay. Ms. Suetake, you may  
2 call your witness.

3 MS. SUETAKE: Public Counsel calls Sarah  
4 Laycock to the stand.

5 JUDGE HOWARD: Ms. Laycock, will you raise  
6 your right hand and I will swear you in?

7 (Sarah Laycock sworn.)

8 JUDGE HOWARD: Thank you.

9 You may proceed.

10 MS. SUETAKE: Thank you, Your Honor.

11

12

E X A M I N A T I O N

13 BY MS. SUETAKE:

14 Q. Please state your name for the record and spell  
15 your last name.

16 A. My name is Sarah Laycock, L-a-y-c-o-c-k.

17 Q. And who is your employer?

18 A. The Public Counsel Unit of the Washington State  
19 Attorney General's Office.

20 Q. And what is your occupation?

21 A. I am regulatory analyst for the Public Counsel  
22 Unit.

23 Q. And how long have you been with -- regulatory  
24 analyst for Public Counsel Unit?

25 A. My current employment as a regulatory analyst of

1 Public Counsel began in November of 2017.

2 Q. What training have you received for this  
3 position since joining Public Counsel?

4 A. I completed the basic practical regulatory  
5 training for the electric industry in May of 2018 for  
6 the Center for Public Utilities at New Mexico State  
7 University and also completed the Public Utilities  
8 Reports Guide Principles of Public Utilities Operations  
9 and Management course in May of 2018.

10 Q. What types of matters and issues have you  
11 represented Public Counsel?

12 A. Since joining the Attorney General's Office, I  
13 testified on a variety of proceedings including electric  
14 and gas rate cases, water, telecommunications, and  
15 electric utility complaint cases. Most recently, I have  
16 been involved in the PSE Colstrip case, Colstrip sale  
17 case, the near acquisition, and the PSE billing  
18 complaint. Additionally, I have participated in  
19 conservation and IRP training groups along with work  
20 groups such as carbon and electricity market work group.

21 Q. What is the purpose of your testimony in this  
22 proceeding?

23 A. I am testifying to describe Public Counsel's  
24 interest in the proceeding and our penalty  
25 recommendation.

1 Q. And what merit material did you review in  
2 preparation for this hearing?

3 A. In preparing for the hearing, I reviewed Staff's  
4 complaint, the investigation report and its attachments,  
5 data requests, Shuttle Express's request for temporary  
6 suspension, which is Docket TC-200323, the company's  
7 application for voluntary cancellation, which was Docket  
8 TC-200887, the prior complaint order in consolidated  
9 Dockets TC-143691, TC-160516, and TC-161257, Wickkiser's  
10 application for transfer, which was docket TC-200824,  
11 and finally the enforcement policy, Docket A-120061.

12 Q. Thank you.

13 And what is your understanding of the state of  
14 the company right now?

15 A. In March of this year, the company requested to  
16 temporarily suspend all UTC-regulated operations due to  
17 the pandemic. Shuttle Express stated that they were  
18 unable to continue to operate and that it intended to  
19 surrender all of its operating licenses.

20 On October 28th of this year, the company filed  
21 its official request for voluntary cancellation of all  
22 services from the effects of COVID, including a  
23 financial impact on the company. The application is  
24 currently pending.

25 Q. Okay. And given your understanding of the

1 company's current circumstances, what is Public  
2 Counsel's recommendation at this time?

3 A. Because the company has filed a request to  
4 permanently discontinue all regulated service and cancel  
5 its license, Public Counsel recommends the UTC assess a  
6 penalty of \$409,030 that would only go into effect if  
7 Shuttle Express requests authority to operate again or  
8 the owners and operators of the company, Jimmy and Karen  
9 Sherrell, seek authority to operate a shuttle company or  
10 similar transportation company.

11 Upon receiving new authority to operate, the  
12 penalty will go into effect and will be suspended for  
13 two years from the effective date of the new authority.  
14 The suspended penalty would then be waived if no  
15 violations occur during the suspension period.

16 Q. Can you explain when the two-year suspended  
17 penalty would take into effect -- would take effect?

18 A. Sure. The two-year suspension period would only  
19 start upon the company either reestablishing service or  
20 reincarnating as a new company. Upon receiving new  
21 authority to operate, the two-year clock would start  
22 running.

23 Q. And how did Public Counsel come to the \$409,030  
24 penalty?

25 A. Public Counsel agreed with the \$409,030 penalty

1 amount that Staff recommend in the initial complaint  
2 given the recurring nature of the violations and to  
3 deter future violations.

4 Q. And why does Public Counsel recommend a  
5 suspended penalty structure?

6 A. Public Counsel recommends the suspended penalty  
7 to prevent the company from simply applying to resume  
8 operations once the pandemic no longer impacts for them  
9 and to act as a deterrent against future violations if  
10 service is resumed. Public Counsel recommends a  
11 two-year suspension period because this is a sufficient  
12 period of time for the company to demonstrate that it  
13 can operate in full compliance with the UTC rules and to  
14 raise as an efficient deterrent against rule violations.

15 Q. Why does Public Counsel recommend suspending the  
16 entire penalty with no payment required at this time?

17 A. Public Counsel recommends suspending the whole  
18 penalty because of the pandemic and the economic impacts  
19 that it's had on the company. The penalty would simply  
20 be punitive with no deterrent value to require payment  
21 now if the company is completely shut down.  
22 Additionally, there were no customer complaints  
23 regarding these violations.

24 Q. And having heard -- just heard Staff's  
25 recommended penalty, does Public Counsel object to their

1 recommendation?

2 A. No, Public Counsel does not object to Staff's  
3 recommendation. The primary terms are substantially  
4 similar to Public Counsel's recommendations and Staff's  
5 recommendation imposes the full penalty upon the company  
6 as a suspended penalty and does not require any payment  
7 at this time.

8 MS. SUETAKE: Thank you. That is all my  
9 questions and Ms. Laycock is available for  
10 cross-examination.

11 JUDGE HOWARD: Okay. Do we have any  
12 questions from Staff?

13 MR. FUKANO: No questions from Staff.

14 JUDGE HOWARD: Mr. Sherrell, do you have any  
15 questions for Public Counsel's witness?

16 MR. SHERRELL: Shuttle Express has no  
17 questions.

18 JUDGE HOWARD: Ms. Suetake, does Public  
19 Counsel rest its case at this point?

20 MS. SUETAKE: Yes, Your Honor. Public  
21 Counsel rests its case.

22 JUDGE HOWARD: Thank you for your testimony,  
23 Ms. Laycock. You are excused.

24 With the testimony concluded, I will give  
25 each party an opportunity for closing oral statement --

1 an oral closing statement. I will -- first -- I will do  
2 this in the normal order we would normally -- we would  
3 follow in these proceedings. So I will -- I will go  
4 with Staff, Public Counsel, and then the company.

5 So, Mr. Fukano, would you like to proceed?

6 MR. FUKANO: Yes, thank you, Your Honor.

7 As has been noted, Shuttle Express does not  
8 contest the violations alleged in Staff's complaint in  
9 this docket, but rather this hearing is about  
10 determining the appropriate penalty for these admitted  
11 violations. After considering the Commission's  
12 enforcement policy guidelines and circumstances of the  
13 company, Staff recommends that the Commission impose a  
14 \$409,030 penalty and suspend that entire penalty for a  
15 period of three years subject to three conditions.

16 First, that the entire penalty be imposed if  
17 Shuttle Express is found to be operating as an auto  
18 transportation carrier without reapplying for Commission  
19 authority within three years of the final order  
20 effective date.

21 Second, that 450,000 of the suspended  
22 penalty be imposed if Shuttle Express is granted an auto  
23 transportation certificate of convenience, the necessity  
24 within three years of the final order effective date.

25 Third, that the remaining \$355,030 suspended

1 penalty be imposed if Shuttle Express having been  
2 granted an auto transportation certificate commit the  
3 repeat violation of the violation at issue in Staff's  
4 complaint within three years of the final order  
5 effective date.

6           Staff's recommendation is informed not only  
7 by its review and application of the Commission's  
8 enforcement policy factors, but also by the  
9 understanding that penalties are generally intended to  
10 punish unlawful behavior and incentivize future  
11 compliance. While the company has admitted to the  
12 violations, the fact that the company is relinquishing  
13 its Commission operating authority removes the policy  
14 need to incentivize future compliance.

15           In balancing these circumstances, Staff  
16 argues that it is reasonable to impose the entire  
17 recommended penalty amount given the numerous admitted  
18 violations. While the company has stated, I believe, it  
19 was necessary to act in the manner as it did, Staff  
20 maintains that the public interest requires the company  
21 to comply with existing laws and regulation and in  
22 appropriate circumstances, utilize the channels made  
23 available to change the such regulation consistent with  
24 the Commission's prior direction in Docket TV-120323  
25 Order 4.



1           Notwithstanding, Staff also argues that it  
2 is reasonable to suspend the entire amount of penalties  
3 given the lack of consumer complaints about Shuttle  
4 Express during the period under review and the fact that  
5 the company will likely soon to -- will likely soon  
6 cease to operate under Commission regulation.

7           And Staff would also like to clarify that  
8 given the additional testimony today from the company  
9 regarding a Shuttle Express 2, that its penalty  
10 recommendations would only affect the Shuttle Express  
11 regulated by the Commission currently.

12           Consequently, Staff asks that the Commission  
13 adopt Staff's penalty recommendation. Thank you.

14           JUDGE HOWARD: Ms. Suetake, would you like  
15 to proceed?

16           MS. SUETAKE: Thank you, Your Honor. Public  
17 Counsel's penalty in this proceeding has been in flux  
18 throughout this proceeding, given the -- the very  
19 strange nature of this proceeding and how it's unfolded.  
20 And given the current state of the company, we are now  
21 currently recommending to impose the full \$409,030  
22 penalty, but only as a suspended penalty, which would go  
23 into effect only upon the reestablishment of service or  
24 reincarnation as a new entity.

25           Public Counsel also recommends that the

1 penalty upon reestablishment of service be held in  
2 suspension for two years on that new entity and would  
3 only be on a condition that the company commit no  
4 further violations within those two years.

5           This unusual structure was intended to  
6 recognize the fact that the current -- the company as  
7 currently operating will go -- will cease to operate due  
8 to the effects of the pandemic. And we wish to  
9 recognize the fact that the penalty provisions are not  
10 intended to be punitive on the company, but are  
11 primarily intended to deter future violations.

12           And due to that -- that factor, we -- and  
13 also in recognition of the fact that the company has  
14 repeatedly violated these same provisions, we felt that  
15 the public interest was serviced by holding the  
16 suspended penalties on newly reincarnated company  
17 assuming the same owners.

18           Public Counsel's recommendation is  
19 substantially similar to Staff's recommendation in that  
20 we've both recognized the need to suspend the penalty.  
21 Our -- the differences are upon the timeframe as to when  
22 that penalty will go into effect. Public Counsel does  
23 not have an objection to Staff's recommendation, but we  
24 do believe that there must be some penalty enforced upon  
25 the newly incarnated company. Sorry. Whether or not

1 the company -- or the Commission seeks to impose Staff  
2 or Public Counsel's penalty, we believe that both of  
3 these recommended penalties are in the public interest  
4 and are reasonable. And with that, Public Counsel has  
5 no further comments.

6 JUDGE HOWARD: Thank you.

7 Mr. Sherrell, would you like to give a  
8 closing statement?

9 MR. SHERRELL: Yes, I do. I would like to  
10 state that Shuttle Express has always seeked [sic] to  
11 operate within the regulations of the WUTC and supports  
12 its regulations. And I strongly encourage -- and I want  
13 it to be on the record -- that should another operator  
14 begin, they want to do share ride or scheduled service,  
15 that those two entities can be combined, and I just want  
16 it to be that for the record. Because otherwise, with  
17 the new culture that's going on in America right now,  
18 separating the two doesn't work and I have 34 years to  
19 justify.

20 So other than that, I'd say I -- I salute  
21 the Staff for the work they've done and I agree with all  
22 the testimony. Thank you.

23 JUDGE HOWARD: All right. Thank you all for  
24 your testimony today. I will take this testimony and  
25 initiate an order soon.

1           Before we adjourn, I'd like to request the  
2 parties waive the requirement to issue an order in ten  
3 days. I like to have the transcript available when I'm  
4 writing my decision and that could take around seven to  
5 10 days. I would anticipate that I'd issue an order  
6 within ten days of the date of receiving the transcript  
7 at the latest. Does -- do any of the parties have an  
8 objection to waiving that requirement?

9           MR. FUKANO: No objection from Staff.

10          MS. SUETAKE: No objection from Public  
11 Counsel.

12          MR. SHERRELL: No objection from Shuttle  
13 Express.

14          JUDGE HOWARD: All right. Thank you all.  
15 Does any party have anything further before we go off  
16 the record?

17          MR. FUKANO: Nothing further from Commission  
18 Staff. Thank you.

19          MS. SUETAKE: Nothing further from Public  
20 Counsel.

21          MR. SHERRELL: Nothing further from Shuttle  
22 Express.

23          JUDGE HOWARD: All right. Thank you all for  
24 attending the proceeding today and we are off the  
25 record. We are adjourned.

(Adjourned at 10:30 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON  
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.



Tayler Garlinghouse  
Tayler Garlinghouse, CCR 3358