Service Date: November 25, 2020

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. SHUTTLE EXPRESS, INC., Respondent.	DOCKET TC-200151 ORDER 04 INITIAL ORDER ASSESSING PENALTY; SUSPENDING PENALTY

BACKGROUND

1 On May 15, 2020, the Washington Utilities and Transportation Commission (Commission) entered Order 01, a Complaint against Shuttle Express, Inc., (Shuttle Express or Company) alleging violations of WAC 480-30 (Order 01). Order 01 alleges that Shuttle Express violated WAC 480-30-056(3)(a)(i)(A) on 4,024 separate occasions by failing to include the schedule or route operated in 4,024 trip records. Furthermore, Order 01 alleges that Shuttle Express violated WAC 480-30-346(2)(d) on 198 separate occasions by stopping at points not included in the time schedule for the routes operated; violated WAC 480-30-276(2) on 19,091 separate occasions by failing to provide service in accordance with its filed time schedules; and violated WAC 480-30-056(3)(a)(i) by failing to maintain daily trip records of those trips. Order 01 requests that the Commission impose a penalty of up to $409,030 against Shuttle Express for these violations.

2 On May 27, 2020, the Commission entered Order 02, Granting Motion to Continue Answer Due Date. The Commission granted Shuttle Express additional time to answer the complaint due to delays related to the COVID-19 pandemic.

3 On June 30, 2020, counsel for Commission staff (Staff)[1] contacted the presiding officer on behalf of the parties to inform the Commission that the parties reached a settlement in

[1] In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the

Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.

principle and to request that the Commission suspend the deadline for Shuttle Express to respond and for any potential further proceedings to allow the Parties to memorialize their settlement.

4 On July 1, 2020, the Commission issued a notice suspending the procedural schedule and providing a deadline for filing settlement documents. At the request of the parties, the Commission issued notices on July 27, 2020, and again on August 20, 2020, continuing the deadline for filing settlement documents.

5 The parties were unable to reach a settlement, and on September 11, 2020, the Commission noticed a prehearing conference.

6 The Commission convened a virtual prehearing conference on September 29, 2020. During the conference, Shuttle Express CEO Jimy Sherrell stipulated that the Company did not contest the violations alleged in Order 01.

7 On September 30, 2020, the Commission entered Order 03, Prehearing Conference Order and Notice of Hearing (Order 03), set for November 9, 2020. Order 03 memorialized the Company's stipulation to the violations as alleged in Order 01 and indicated that the hearing would be focused on determining the appropriate remedy for these violations.

8 At the hearing, Sherrell testified that Shuttle Express suspended operations on March 27, 2020.[2] Although Shuttle Express initially intended to resume operations, the Company determined eight months later that it was unable to resume services.[3] Sherrell maintained that there was no money left in the Company.[4]

9 Sherrell indicated that Shuttle Express was directing customers to Bayview Limo, and "they are now called Shuttle Express No. 2."[5] However, Sherrell indicated that he did not have any ownership interest in Bayview Limo, and he did not receive any funds for allowing Bayview Limo to use this trade name.[6] Sherell also testified that Shuttle Express

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presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

[2] Sherrell, TR 30:3-17.

[3] *Id.*

[4] 33:8-9.

[5] Sherrell, TR 31:4-8.

[6] Sherrell, TR 38:1-3.

would be applying to transfer a portion of its authority in the Everett area to another company.[7] Otherwise, Shuttle Express was not intending to transfer any of its authority and was simply requesting that the Commission cancel its operating authority.[8]

10 Staff then offered testimony from Mathew Perkinson, assistant director of the Transportation Safety division. Perkinson testified that circumstances had changed since Staff prepared the original investigation report, which recommended a penalty of $409,030.[9] Perkinson noted that the Company requested to transfer a portion of its authority to Wickkiser International Company, Inc., and that it also requested the Commission cancel its remaining authority under its auto transportation certificate and charter certificate.[10] Perkinson also noted the continuing COVID-19 pandemic and its impact on the passenger transportation industry.[11]

11 In light of these changed circumstances, Perkinson recommended that the entire penalty be suspended subject to conditions.[12] Describing his proposed conditions, Perkinson noted, "First, the company would be liable for the entire $409,030 penalty if it, or a reincarnation of the company, as a term that's used in 49 CFR 386.73, operates as an auto transportation company without a Commission certificate of convenience and necessity within three years of the effective date of the Commission's order."[13] Second, Perkinson proposed that the Company would be liable for $54,000, or one-eighth of the penalty, if the Company or a reincarnation of the Company applies for an auto transportation certificate within three years of the effective date of the Commission's order.[14] Third, Perkinson proposed that the Company or a reincarnation of the Company would be liable for $355,000 of the total penalty amount if the Company commits a repeat violation of any of the violations at issue in Staff's complaint in this docket, as set out in Order 01.[15] Perkinson then discussed the Commission's Enforcement Policy and the relevant factors

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[7] Sherrell, TR 32:1-3. *See also* Sherrell TR 35:6-25.

[8] *Id.*

[9] Perkinson, TR 42:1-24. *See generally* Perkinson, Exh. MP-1 (Investigation Report).

[10] *Id.*

[11] *Id.*

[12] Perkinson, TR 43:4-5.

[13] Perkinson, TR 48:8-13.

[14] Perkinson, TR 48:15-20.

[15] Perkinson, TR 48:22-25.

for considering when to suspend a penalty, explaining how these factors supported his recommendation.[16]

12 The Office of Public Counsel (Public Counsel) then offered testimony from regulatory analyst Sarah Laycock. Laycock also recommended that the Commission impose a $409,030 penalty, suspended subject to conditions. As Laycock explained, "Because the company has filed a request to permanently discontinue all regulated service and cancel its license, Public Counsel recommends that the UTC assess a penalty of $409,030 that would only go into effect if Shuttle Express requests authority to operate again or the owners and operators of the company, Jimy and Karen Sherrell, seek authority to operate a shuttle company or similar transportation company."[17] Laycock continued, "Upon receiving new authority to operate, the penalty will go into effect and will be suspended for two years from the effective date of the new authority. The suspended penalty will then be waived if no violations occur during the suspension period."[18] Thus, Laycock recommends that the suspension period should begin when Shuttle Express or a new company owned by Sherrell establishes service or receives authority to operate from the Commission.[19]

13 The parties then gave oral closing statements at the hearing. In its closing statement, Staff argued that the Commission should impose a $409,030 penalty and suspend the entire penalty for a period of three years subject to the conditions as recommended by Perkinson.[20] Staff's penalty recommendation did not apply to "Shuttle Express No. 2" as discussed by Sherrell at the hearing.[21]

14 In its closing statement, Public Counsel argued for imposing the $409,030 penalty subject to the conditions as recommended by Laycock.[22] Public counsel noted that its recommendation was similar to Staff's but differed as to the time period.[23]

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[16] Perkinson, TR 43:6-49:5.

[17] Laycock, TR 53:3-10.

[18] Laycock, TR 53:11-15.

[19] *See* Laycock, TR 53:18-22.

[20] Staff, TR 56:7-57:5.

[21] Staff, TR 58:7-11.

[22] Public Counsel, TR 58:16-60:5.

[23] Public Counsel, TR 59:21-22.

15 In its closing statement, Shuttle Express maintained that "should another operator begin, they want to do share ride or scheduled service, that those two entities can be combined, and I just want it to be that [sic] for the record."[24] Shuttle Express indicated that it thanked Staff for its worked and agreed with all of the testimony.[25]

16 Jimy Sherrell, CEO of Shuttle Express, represents the Company, *pro se*. Harry Fukano and Jeff Roberson, Assistant Attorneys General, Olympia, Washington, represent Staff. Lisa Gafken, Nina Suetake, and Ann Paisner, Assistant Attorneys General, Seattle, Washington, represent Public Counsel.

DISCUSSION AND DECISION

17 Before transporting passengers and their baggage for compensation in the state of Washington, an auto transportation company must apply for a certificate of public convenience and necessity from the Commission.[26] If another auto transportation company already serves the same territory and it objects to the application, the Commission will only grant the certificate if the existing company is not providing service to the satisfaction of the Commission.[27]

18 The Commission has broad authority to regulate the practices of auto transportation companies.[28] This includes the authority to regulate the services provided by the companies and supervising them in "all other matters affecting the relationship between such companies and the traveling and shipping public."[29]

19 The Commission sets forth these rules in WAC Chapter 480-30. As relevant here, WAC 480-30-056(3)(a)(i) requires an auto transportation company to maintain complete and accurate customer service records, including daily trip records, by route or unit of equipment. WAC 480-30-056(3)(a)(i)(A) specifically requires an auto transportation company to include the schedule operated as part of a daily trip report.

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[24] Shuttle Express, TR 60:10-20.

[25] *Id.*

[26] RCW 81.68.040.

[27] *Id.*

[28] RCW 81.68.030.

[29] *Id.*

20 WAC 480-30-346(2)(d) requires an auto transportation company's filed time schedules to "show the route served, including the exact location of each regular stop, each flag stop, and any point to which service is provided."

21 WAC 480-30-276(2) requires an auto transportation company to "provide service along all routes, and to all points, listed on the company's filed time schedules. Further, an auto transportation company must make a good faith effort to operate in compliance with the times of arrival and/or departure shown on the company's filed time schedule."

22 As discussed above, Shuttle Express admits the violations as alleged in Order 01 in this docket. There is no dispute that Shuttle Express violated WAC 480-30-056(3)(a)(i)(A) on 4,024 separate occasions by failing to include the schedule or route operated in 4,024 trip records; violated WAC 480-30-346(2)(d) on 198 separate occasions by stopping at points not included in the time schedule for the routes operated; and violated WAC 480-30-276(2) on 19,091 separate occasions by failing to provide service in accordance with its filed time schedules.[30]

Penalty Amount

23 The Commission considers several factors when deciding on the type of enforcement action to take or the level of penalty to be imposed.[31] These include how serious or harmful the violation is to the public; whether the violation was intentional; whether the company self-reported the violation; whether the company promptly corrected the violation; the number of violations; the number of customers affected; the company's past performance regarding compliance; the company's existing compliance program; and the size of the company.[32]

24 Due to the size of the penalty recommended by both Staff and Public Counsel, we address each of these factors in turn.

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[30] The fourth and last cause of action in Order 01 is presented in the alternative. Paragraph 33 of Order 01 states that "if Shuttle Express demonstrates that it did in fact provide scheduled service during some or all of the 19,091 instances identified by Staff, then Shuttle Express necessarily and alternately violated WAC 480-30-056(3)(a)(i) by failing to maintain daily trip records of those trips." Because Shuttle Express has stipulated to the violations as alleged in Order 01, it is not necessary to reach this in-the-alternative fourth cause of action.

[31] Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

[32] Enforcement Policy ¶ 15.

25 The first factor is how "serious or harmful the violation is to the public."[33] In this case, the Commission has not received any complaints from the public regarding the violations at issue in Order 01.[34] To the extent the public was harmed, we observe that the harm appears to be from a lack of regular, scheduled service. WAC 480-30-276(2) requires that an auto transportation company provide service along all routes, and to all points, listed on the company's filed time schedule. While the Company's tariffs would require 19,344 trips between December 2019 and January 2020, the Company only completed 253 of these trips, *i.e.* 1.3 percent of the required trips.[35] The public therefore did not have the benefit of regular scheduled service in Shuttle Express's service area.

26 The second factor is "[w]hether the violation is intentional."[36] Among other points, the Commission considers whether the company previously violated the same statute or regulation, and whether the company knew of and failed to correct the violation.[37] Here, the Commission previously held that Shuttle Express has "repeatedly and willfully violated Commission rules and regulations, will not provide auto transportation service to the Commission's satisfaction, and should be penalized for its most recent infractions."[38] Specifically with regards to combining scheduled and door-to-door service, the Commission observed:

> Scheduled service and door-to-door service are separate auto transportation services, and Commission rules treat them as such. The time schedules for scheduled service in a company's tariff must identify "any point to which service is provided." Adding door-to-door service points on a scheduled service route is **fundamentally inconsistent** with this requirement.[39]

Shuttle Express disregards this clear finding. During the investigation in this case, Shuttle Express asserted that it was combining scheduled and door-to-door service "as per Speedy Shuttle [sic] case."[40] The Company noted that it would only run scheduled

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[33] *Id.*

[34] *E.g.*, Laycock, TR 54:22-23.

[35] Perkinson, MP-1 at 17 (Investigation Report).

[36] Enforcement Policy ¶ 15.

[37] *Id.*

[38] *Shuttle Express, Inc., v. Speedishuttle Washington, LLC, d/b/a Speedishuttle Seattle*, Docket TC-143691 (consolidated) Order 20/13/10 ¶ 9 (November 17, 2017).

[39] *Id.* ¶ 36 (emphasis added).

[40] Perkinson, MP-1 at 16 (Investigation Report).

service when there are "advanced reservations or volume dictates."[41] This is not a reasonable interpretation of the Commission's order in *Speedishuttle*, which found that combining these services was "fundamentally inconsistent" with Commission regulations.[42] It is not a reasonable interpretation of WAC 480-30-276(2), either, which requires the Company to provide regular service at all stops listed in its schedule. The Company is instead disregarding the Commission's regulations and rules, as it has on many prior occasions. In fact, at the conclusion of the hearing in this case, Shuttle Express CEO Sherrell asserted that "should another operator begin, they want to do share ride or scheduled service, that those two entities can be combined, and I just want it to be that [sic] for the record."[43] This is further evidence of Shuttle Express's intent to violate Commission regulations. Based on the Company's history of noncompliance and willful disregard for previous Commission orders, we find that the violations in this case were intentional.

27 The third factor is whether the company reported the violation itself.[44] Shuttle Express did not self-report any of the violations at issue.[45]

28 The fourth factor is whether the company was cooperative and responsive.[46] Staff's Investigation Report maintains that Shuttle Express was relatively cooperative, but the Company sometimes answered questions in a way that appeared "purposefully vague."[47] We observe that Shuttle Express answered at least some investigation questions in an unclear manner.[48] However, Shuttle Express did not obstruct or otherwise fail to cooperate with the investigation.

29 The fifth factor is whether the company "promptly corrected the violations and remedied the impacts."[49] Shuttle Express has ceased operations and seeks to relinquish its

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[41] *Id.*

[42] *Speedishuttle, Id.* ¶ 36

[43] Shuttle Express, TR 60:10-20.

[44] Enforcement Policy ¶ 15.

[45] Perkinson, MP-1 at 19 (Investigation Report).

[46] Enforcement Policy ¶ 15.

[47] Perkinson, MP-1 at 19.

[48] *See, e.g.*, Perkinson, Exh. MP-1 at 14 (Investigation Report) ("Shuttle Express's position on the meaning of the 'DTA' tag appeared to change over the course of their responses.").

[49] Enforcement Policy ¶ 15.

certificates. Yet the Company did not actually seek to correct the violations at issue. Shuttle Express continues to maintain that it may combine scheduled and door-to-door service.[50] Shuttle Express did not seek to promptly correct these violations, and the violations were remedied only by the Company ceasing operations.

30 The sixth factor is the number of violations at issue.[51] Staff documented 23,313 violations of WAC Chapter 480-30 during a two-month period.[52] This is a significant number of violations.

31 The seventh factor is the number of customers affected.[53] As noted above, Shuttle Express failed to provide 19,091 scheduled service trips, which would be required by its tariff.[54] It is difficult, if not impossible, to ascertain the exact number of customers affected.

32 The eighth factor is the likelihood of recurrence.[55] There is an extremely high likelihood that Shuttle Express, or any future company owned by Sherrell, will violate Commission regulations. Even after the Commission's clear findings in *Speedishuttle*, Sherrell insists that the Company was not violating Commission regulations by combining scheduled service with door-to-door service.[56] At the conclusion of the hearing in this case, Sherrell again asserted that "should another operator begin, they want to do share ride or scheduled service, that those two entities can be combined, and I just want it to be that [sic] for the record."[57]

33 The ninth factor is the company's "past performance regarding compliance, violations, and penalties."[58] This factor weighs heavily in this case. Over a 12-year period, the

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[50] Shuttle Express, TR 60:10-20.

[51] Enforcement Policy ¶ 15.

[52] Perkinson, Exh. MP-1 at 19 (Investigation Report).

[53] Enforcement Policy ¶ 15.

[54] Perkinson, Exh. MP-1 at 19 (Investigation Report).

[55] Enforcement Policy ¶ 15.

[56] *See* Perkinson, Exh. MP-5 at 3 (Shuttle Express Response to UTC Staff Data Request No. 2) (asserting that Shuttle Express was "not blatantly violating" regulations).

[57] Shuttle Express, TR 60:10-20.

[58] Enforcement Policy ¶ 15.

Company has repeatedly offered services in a manner that violates and disregards Commission rules. To briefly summarize:

- On July 11, 2008, the Commission approved and adopted a settlement agreement between Shuttle Express and Staff. As part of the settlement agreement, Shuttle Express: (1) admitted its independent contractor driver program violated WAC 480-30-213(2), (2) agreed to pay a penalty in the amount of $9,500, and (3) agreed to comply with all applicable rules and statutes enforced by the commission in the settlement agreement.[59]

- On April 14, 2011, the Commission amended Shuttle Express's certificate to remove the restriction of using vehicles no larger than seven passenger vans. The Commission observed, "We are troubled that Shuttle Express has been exceeding the limitation in its Certificate, but this is not an enforcement proceeding."[60]

- On March 19, 2014, the Commission found that Shuttle Express: (1) violated WAC 480-30-213(2) on 5,715 occasions between October 2010 and September 2011, by operating a "rescue service," (2) did not violate WAC 480-30-456 by providing customer information to independent contractors, and (3) violated Order 01 in Docket TC-072228. The Commission assessed a $60,000 penalty.[61]

- On December 13, 2013, the Commission granted Shuttle Express a temporary exemption from certain rules and allowed the Company to provide a "rescue service" with independent contractors. The Commission noted the Company's "history of disregarding" the Commission's rules prohibiting reliance on independent contractors.[62]

- On November 17, 2017, the Commission found, among other points, that Shuttle Express violated WAC 480-30-213 on 35,351 occasions when it used independent contractors; violated WAC 480-30-391 by failing to obtain commission approval to pay commissions to hotel personnel; may not combine door-to-door and scheduled service except when it is unable to provide transportation at the time and place specified in the reservation that the Company has accepted for a given

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[59] *WUTC v. Shuttle Express, Inc.*, Docket TC-072228, Order 01 ¶ 11 (July 11, 2008).

[60] *In re Application of Shuttle Express, Inc.*, Docket TC-091931, Order 05 ¶ 20 (April 14, 2011).

[61] *WUTC v. Shuttle Express, Inc.*, Docket TC-120323, Order 04 ¶ 7 (March 19, 2014).

[62] *In the Matter of the Petition of Shuttle Express, Inc.*, Docket TC-132141 Order 01 ¶ 9 (December 13, 2013).

passenger; and should be penalized $120,000.[63] Shuttle Express appealed this order to Superior Court, and the parties stipulated to a suspension of half of the outstanding penalty amount.[64]

Shuttle Express thus consistently disregards Commission rules for the provision of auto transportation services.

34 The tenth factor is the company's existing compliance program.[65] The Commission is more likely to take enforcement action against a company if the Commission has previously identified problems with the company's compliance program.[66] Although Shuttle Express has maintained a compliance program,[67] the compliance program does not prevent Sherrell from offering services or modifying services in a manner that is inconsistent with Commission regulations. Sherrell knowingly violates Commission regulations regardless of any compliance program. For example, in 2014, Sherrell testified: "I chose to put it [the rescue service] in place, hoping that it would be ignored, and it wasn't, so I paid a fine and I discontinued the service."[68] Sherrell continues to disregard the Commission's regulations and findings, indicating that the compliance program is inadequate.

35 The eleventh and final factor is the size of the company.[69] The Commission should not assess penalties disproportionate to a company's revenues.[70] In 2018, Shuttle Express employed 80 drivers, operated 75 vehicles, and reported a gross revenue of $5,510,935.[71] However, since March 2020, Shuttle Express has ceased operating, and Sherrell maintains that the Company does not have the resources to resume operations.[72] This

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[63] *Shuttle Express, Inc., v. Speedishuttle Washington, LLC, d/b/a Speedishuttle Seattle,* Docket TC-143691 (consolidated) Order 20/13/10 ¶ 9 (November 17, 2017).

[64] *Shuttle Express, Inc., v. WUTC,* No. 17-2-06582-34 Stipulation and Order of Dismissal (May 11, 2018).

[65] Enforcement Policy ¶ 15.

[66] *Id.*

[67] *See* Perkinson, Exh. MP-5 at 3 (Shuttle Express response to UTC Data Request No. 2).

[68] *WUTC v. Shuttle Express, Inc.*, Docket TC-120323, Order 04 ¶ 30 (March 19, 2014).

[69] Enforcement Policy ¶ 15.

[70] *Id.*

[71] Perkinson, Exh. MP-1 at 20 (Investigation Report).

[72] Perkinson, Exh. MP-3 (Shuttle Express Request to Discontinue All Service).

factor is relevant in determining the amount of the penalty, and, as we discuss below, whether to suspend the penalty.

36 These factors from the Commission's Enforcement Policy must guide the decision as to the appropriate penalty for the Company. As Staff witness Perkinson testifies, the factors in this case are mixed.[73] On the one hand, we do not have evidence of serious harm to the public. On the other hand, Shuttle Express willfully and intentionally violates Commission rules.

37 Staff seeks to account for these mixed factors in its recommendation. As Staff's Investigation Report notes, the law would allow a penalty of up to $23,313,000 against Shuttle Express for the violations at issue in this case.[74] Staff recommends a lower penalty of $403,090 in light of the circumstances.

38 Shuttle Express did not explicitly contest this recommended penalty amount or request a lower penalty at the hearing.[75] However, Sherrell did note that the Company was ceasing operations, relinquishing its certificates, and that the was "no money left" in the Company.[76]

39 We find that a penalty of $150,000 appropriate reflects the Commission's Enforcement Policy. Shuttle Express repeatedly and willfully violated Commission regulations. However, the primary harm to the public was the Company's decision to combine scheduled service and door-to-door service and its failure to provide regular service in accordance with its schedules. The Commission did not receive any complaints from the public, and there is no clear evidence regarding the number of customers affected. Even if Shuttle Express continued to have the same levels of revenues as it did in 2018, the evidence does not demonstrate a level of serious harm to the public sufficient to support a penalty of $403,090. Shuttle Express did not violate driver safety regulations or other provisions that would trigger any mandatory minimum "per-violation" penalties.

40 Furthermore, we note that the recommended penalty of $403,090 would be more than three times the $120,000 penalty the Commission last assessed against the Company in

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[73] Perkinson, TR 43:20-44:6.

[74] Perkinson, Exh. MP-1 at 20 (Investigation Report).

[75] *See* Sherrell, TR 60:20-23 ("I salute the Staff for the work they've done and I agree with all the testimony.").

[76] Sherrell, TR 33:5-9.

Speedishuttle.[77] In its Final Order in that case, the Commission adopted the $120,000 penalty that was assessed in the Initial Order.[78] The Initial Order discussed the Enforcement Policy factors, and noted that Shuttle Express's reliance on independent contractors raised significant safety concerns because the Commission could not determine whether the independent contractors were properly licensed and insured.[79] In this case, we conclude it is appropriate to assess a penalty of $150,000 in light of Shuttle Express's ongoing contumacy, its failure to follow the Commission's findings in *Speedishuttle*, and the number of violations at issue. Because there is no evidence that Shuttle Express's violations in this case raise safety concerns or otherwise posed serious risks to the public, we determine that a higher penalty is not warranted.

Penalty Suspension

41 The Commission considers several factors when deciding whether to suspend all or part of a penalty. These include whether this is a first-time violation; whether the company has taken specific actions to remedy the violation; whether the company agrees to a compliance plan; whether the company and Staff agree to a follow-up investigation; and whether other circumstances exist that warrant suspending the penalty.[80]

42 Shuttle Express has knowingly and repeatedly violated Commission rules for more than a decade. The Commission clearly rejected the Company's attempts to combine scheduled and door-to-door service in 2017,[81] but nonetheless the Company has continued this practice. The Company also failed to maintain trip records and has failed to provide service at scheduled stops. This history of noncompliance would normally weigh against suspending any portion of the penalty.

43 Yet we recognize the changed circumstances in this case. When a company surrenders its certificates, the Commission may withdraw an assessed penalty.[82] Here, Shuttle Express

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[77] *See Shuttle Express, Inc., v. Speedishuttle Washington, LLC, d/b/a Speedishuttle Seattle*, Docket TC-143691 (consolidated) Order 20/13/10 ¶ 93 (November 17, 2017)

[78] *See id.* ¶ 65 (adopting Initial Order's assessment of a $120,000 penalty).

[79] *Shuttle Express, Inc., v. Speedishuttle Washington, LLC, d/b/a Speedishuttle Seattle*, Docket TC-143691 (consolidated) Order 19/12/9 ¶ 135 (August 25, 2017).

[80] Enforcement Policy ¶ 20.

[81] *SpeediShuttle*, at ¶ 93.

[82] *See, e.g., WUTC v. Seventh Generation*, Docket TC-140414, Notice (June 25, 2015) (waiving suspended penalty after company voluntarily surrendered its certificate and was no longer in

has ceased operations and requested that the Commission cancel its certificates.[83] As Perkinson explained at the hearing, these were relevant considerations under the Enforcement Policy that support suspending the penalty.[84] Staff explained in its closing argument that when the Company is seeking to relinquish its authority, this "removes the policy need to incentivize future compliance."[85] Similarly, Public Counsel witness Laycock explained that penalizing the Company when it has shut down "would simply be punitive with no deterrent value."[86]

44 We therefore agree with Staff and Public Counsel that the entire penalty should be suspended. Imposing the penalty against Shuttle Express at this juncture would be punitive in nature. The penalty should be suspended for a specified period and then waived, subject to conditions set forth below.

Suspension Conditions

45 As noted above, Staff and Public Counsel propose different conditions for the suspended penalty. Staff witness Perkinson recommends: (1) the Company would be liable for the entire penalty if Shuttle Express − or a "reincarnation" of the Company as defined in 49 C.F.R. § 386.73 − operates as an auto transportation company without a required certificate within three years of the order; (2) the Company would be liable for one-eighth of the penalty if the Company or a reincarnation thereof applies for an auto transportation certificate within three years; and (3) the Company or a reincarnation of the Company would be liable for $355,000 of the total penalty amount if the Company commits a repeat violation of any of the violations at issue in the complaint.[87]

46 In contrast, Public Counsel witness Laycock recommends that a two-year suspension period begin only after Shuttle Express or another company owned by Jimy and Karen Sherrell seeks authority to operate from the Commission. The suspended penalty would then be waived if no violations occur during the two-year period.[88]

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business); *In re Big Sky Bus Lines, Inc*., Docket TE-160687, Notice Withdrawing Penalty (July 13, 2016) (withdrawing penalty against company that cancelled its certificate).

[83] Perkinson, Exh. MP-3 (Shuttle Express Request to Discontinue All Service).

[84] Perkinson, TR 45:14-46:6.

[85] Staff, TR 57:6-14.

[86] Laycock, TR 54:19-23.

[87] Perkinson, TR 48:8-25.

[88] Laycock, TR 53:3-10.

47 We agree with Staff and Public Counsel that the suspension conditions must address any future company owned by Sherrell. It is highly likely that Shuttle Express, or any future auto transportation company owned by Sherrell, will continue to violate Commission regulations. Sherrell himself made clear "for the record" that he believed that a future company could combine scheduled and door-to-door service,[89] which patently disregards a Commission final order.[90]

48 We do have concerns with the proposals advanced by the parties. Staff's conditions incorporate the term "reincarnation" as it is used in 49 C.F.R. § 386.73. This federal regulation is concerned with the standards that guide the Federal Motor Carrier Safety Administration (FMCSA) following an "out of service" order. It sets forth factors that the FMCSA may consider when determining that a company is a "reincarnation" of an earlier company. While we appreciate Staff's efforts to modify its proposal in light of the facts of the case, we are concerned that the Commission has not adopted this part of the federal regulations. The Commission only adopts parts of federal regulations by reference for vehicle and drive safety requirements and intrastate medical waivers.[91]

49 Furthermore, 49 C.F.R. § 386.73 only sets forth factors for determining when a company is a "reincarnation" of another company. This broad standard is not an appropriate condition for suspending the penalty in this case.

50 It is more reasonable instead to base the suspension on Sherrell's ownership interest in any future company, much as Public Counsel recommends. Pursuant to 49 C.F.R. § 385.1005, "[t]wo or more motor carriers shall not use common ownership, common management, common control, or common familial relationship to enable any or all such motor carriers to avoid compliance, or mask or otherwise conceal non-compliance, or a history of non-compliance, with statutory or regulatory requirements [. . .] or with an order issued under such requirements." This regulation sets forth a clear standard for the Company, and is thus incorporated into our findings below.

51 With respect to Public Counsel's proposal, we are concerned that delaying the start of the two-year suspension period for an indefinite amount of time means that Staff will never be able to certify the Company's compliance with this order, as contemplated by WAC 480-07-915(8)(a). It is appropriate for the suspension period to begin with the effective

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[89] Shuttle Express, TR 60:10-20.

[90] *Speedishuttle Washington, LLC, d/b/a Speedishuttle Seattle*, ¶ 36.

[91] WAC 480-30-999(2).

date of this Order. If the Company complies with the terms of the suspension, then the penalty is waived, and the parties have the benefit of administrative finality.

52 With these considerations in mind, the entire $150,000 penalty against Shuttle Express is suspended for a period of five years and then waived, subject to the following conditions:

53 Shuttle Express is liable for the entire penalty if it operates as an auto transportation company without first obtaining the required certificate of public convenience and necessity from the Commission.

54 Shuttle Express is liable for the entire penalty if the Company again violates the requirements of WAC 480-30-056(3)(a)(i)(A), WAC 480-30-346(2)(d), or WAC 480-30-276(2).

55 Shuttle Express is liable for the entire penalty if, pursuant to 49 C.F.R. § 385.1005, Shuttle Express, Jimy Sherrell, or Karen Sherrell uses common ownership, common management, common control, or a common familial relationship to apply for authority with the Commission to operate as a passenger transportation company for the purpose of evading compliance with the terms of this Order.

56 Shuttle Express is liable for one-half of the penalty, or $75,000, if the Company, Jimy Sherrell, or Karen Sherrell, applies for a certificate to operate as a passenger transportation company.

FINDINGS AND CONCLUSIONS

57 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including auto transportation companies and charter party and excursion service carriers, and has jurisdiction over the parties and subject matter of this proceeding.

58 (2) Shuttle Express admits the violations of WAC chapter 480-30 as alleged in Order 01 in this docket.

59 (3) Shuttle Express violated WAC 480-30-056(3)(a)(i)(A) on 4,024 separate occasions by failing to include the schedule or route operated in 4,024 trip records.

60 (4) Shuttle Express violated WAC 480-30-346(2)(d) on 198 separate occasions by stopping at points not included in the time schedule for the routes operated.

61 (5) Shuttle Express violated WAC 480-30-276(2) on 19,091 separate occasions by failing to provide service in accordance with its filed time schedules.

62 (6) The Commission did not receive any complaints from the public regarding these violations.

63 (7) Shuttle Express has repeatedly and willfully violated Commission rules and regulations.

64 (8) The Commission should penalize Shuttle Express $150,000 for 4,024 violations of WAC 480-30-056(3)(a)(i)(A); 198 violations of WAC 480-30-346(2)(d); and 19,091 violations of WAC 480-30-276(2).

65 (9) Shuttle Express has ceased operations and requested that the Commission cancel its certificates.

66 (10) The $150,000 penalty should be suspended for a period of five years, and then waived, subject to the conditions set forth in paragraph 52 of this Order.

ORDER

THE COMMISSION ORDERS THAT:

67 (1) The Commission assesses a $150,000 penalty against Shuttle Express, Inc.

68 (2) The $150,000 penalty is suspended for a period of five years, and then waived, subject to the conditions set forth in paragraph 52, above.

Dated at Lacey, Washington, and effective November 25, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MICHAEL HOWARD
Administrative Law Judge

NOTICE TO PARTIES

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

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

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

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

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).