

TC-120323 Hearing 2013-08-01

Shuttle Express

August 1, 2013



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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)

Complainant,) Docket TC-120323

SHUTTLE EXPRESS, INC.,)

Respondent.)

EVIDENTIARY HEARING, VOLUME II

Pages 12 - 168

ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

9:31 A.M. AUGUST 1, 2013

Washington Utilities and Transportation Commission 1300 South Evergreen Park Drive Southwest Olympia, Washington 98504-7250

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EXAMINATION INDEX

Table listing examination details for Betty Young, George Nelson, Dean Deangelo, John Hagen, David Ray, and Cheryl Hendrickson, including examination types and page numbers.

ADMINISTRATIVE LAW JUDGE: ADAM E. TOREM

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EXAMINATION INDEX (Continued)

Table listing examination details for Cheryl Hendrickson and Jimmy Sherrell, including examination types and page numbers.

EXHIBIT INDEX

Table listing exhibit details including exhibit ID, date, and description (e.g., Staff Investigation of Shuttle Express, UTC Certificate, etc.).

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1 OLYMPIA, WASHINGTON; AUGUST 1, 2013
2 9:31 A.M.
3 -oOo-

4
5 JUDGE TOREM: Good morning. It is
6 Thursday, the 1st of August 2013. It's a little after
7 9:30 in the morning. This is the administrative
8 hearing for Docket TC-120323. This is a complaint by
9 the Washington Utilities and Transportation Commission
10 against Shuttle Express, Incorporated. I'm Adam
11 Torem, the administrative law judge presiding.

12 My understanding is that Commission Staff is
13 going to be putting on evidence to prove up four
14 different causes of action that were pled in a
15 complaint as of May 1st. Shuttle Express filed a
16 response May 28th, and we had a prehearing conference
17 back on June the 18th, setting a date last week for
18 the submission of witness lists, exhibit lists and the
19 actual documents.

20 I understand that exchange occurred to the
21 satisfaction of counsel for both sides, and that
22 there's one additional exhibit, and that counsel have
23 already agreed and stipulated to the admissibility of
24 all of the exhibits, including the extra one that will
25 be presented by Shuttle Express today.

1 carry the burden of proof on its four causes of
2 actions. There were about six witnesses, I think,
3 Mr. Sherrell, and you listed yourself as available as
4 a seventh witness. It looks like we have a group of
5 those witnesses here.

6 Is there any objection to witnesses staying in
7 the room for each other's testimony today?

8 MS. CAMERON-RULKOWSKI: Not from Staff,
9 Your Honor.

10 MR. SHERRELL: Not from Shuttle.

11 JUDGE TOREM: I'm just making sure that
12 everybody can get comfortable and stick around.

13 Exhibits. Staff has premarked two different
14 exhibits, I think BY-1 and BY-2.

15 Ms. Cameron-Rulkowski, if you will give me a
16 quick description of those for the record.

17 MS. CAMERON-RULKOWSKI: Certainly, Your
18 Honor.

19 The exhibit marked BY-1, that is the
20 investigation report from Staff that was the basis of
21 the complaint, and the -- and BY-2 is a Staff
22 investigation report from a prior investigation of
23 Shuttle Express involving one of those same rules.

24 JUDGE TOREM: Mr. Sherrell, I understand
25 from our previous discussion, you don't have any

1 So I am going to ask for appearances, and then
2 we will come back to the exhibits, quickly describe on
3 each side and the numbers we've assigned to them, get
4 those admitted to the record, and swear our first
5 witness, and get rolling along.

6 For Staff?

7 MS. CAMERON-RULKOWSKI: Present on
8 behalf of Commission Staff, Jennifer
9 Cameron-Rulkowski, assistant attorney general. My
10 address is 1400 South Evergreen Park Drive Southwest,
11 P.O. Box 40128, Olympia, Washington 98504-7250. My
12 telephone number is (360) 664-1186 and my fax number
13 is (360) 586-5522. My e-mail address is
14 jcameron@utc.wa.gov.

15 JUDGE TOREM: And for Shuttle Express?

16 MR. SHERRELL: My name is Jimmy Sherrell.

17 JUDGE TOREM: Mr. Sherrell, can you
18 spell your name for the court reporter?

19 MR. SHERRELL: J-I-M, one M, Y,
20 S-H-E-R-R-E-L-L, and I reside at 800 Southwest 16th
21 Street, Renton, Washington 98057. My phone number is
22 (206) 930-6057. My e-mail is jimysh@attglobal.net.

23 JUDGE TOREM: Excellent.

24 So we have one witness listed for Staff,
25 Ms. Betty Young, and she's here today. Staff will

1 objection to the entirety of these multipage reports
2 coming in as evidence?

3 MR. SHERRELL: That's true, I do not
4 have any objection.

5 JUDGE TOREM: So I will admit BY-1 and
6 BY-2 at this time. I've got a copy for records
7 center, as well my own copy.

8 Turning, Mr. Sherrell, to your exhibits. You
9 had submitted, I think, seven exhibits previously, and
10 as I mentioned, one new one today. We've just labeled
11 those as SE-1 through 8. We will add the "SE" onto
12 your items and that's how we will identify them in the
13 official exhibit list.

14 Did you want to explain what each of these are
15 for the record?

16 MR. SHERRELL: Exhibit 1 is just our
17 Utility and Transportation Commission certificate.

18 JUDGE TOREM: This is C-975.

19 MR. SHERRELL: C-975, yes.

20 JUDGE TOREM: Exhibit 2?

21 MR. SHERRELL: Exhibit 2 is the Shuttle
22 Express vehicle list. Exhibit 3 is the Shuttle
23 Express driver list. Exhibit 4 is the Shuttle Express
24 daily dispatch report. Exhibit 5 is WAC 480-30-356.
25 Exhibit 6 is Shuttle Express Independent Contractor

1 Agreement. Exhibit 7 is Shuttle Express Certificate
2 of Liability Insurance covering independent
3 contractors while under Shuttle Express dispatch.
4 Exhibit 8 will be DriveCam.

5 JUDGE TOREM: Okay.

6 Ms. Cameron-Rulkowski, you have had a chance
7 to review these eight exhibits?

8 MR. SHERRELL: Yes, Your Honor.

9 JUDGE TOREM: If I understand correctly,
10 you have no objections to these being admitted into
11 the record?

12 MR. SHERRELL: That's correct, Your
13 Honor.

14 JUDGE TOREM: Okay. Well, that takes
15 care of those exhibits. I will admit SE-1 through
16 SE-8. So we have ten total exhibits admitted.

17 How would you like to proceed, with brief
18 opening statements or do you want to go straight to
19 witness testimony?

20 MS. CAMERON-RULKOWSKI: I have a very,
21 very brief opening statement, and then I am prepared
22 to call Ms. Young and put on Staff's case.

23 JUDGE TOREM: Okay.

24 Mr. Sherrell, are you prepared with an opening
25 statement as well today? You don't have to be. I am

1 Staff's recommendation as to the penalty.

2 That concludes Staff's opening.

3 JUDGE TOREM: Okay.

4 Ms. Young, if you will stand and raise your
5 right hand, I will swear you in.

6
7 BETTY YOUNG, witness herein, having been
8 first duly sworn on oath,
9 was examined and testified
10 as follows:

11
12 JUDGE TOREM: Thank you.

13 If you can state and spell your first and last
14 name for the record.

15 THE WITNESS: My first name is Betty,
16 B-E-T-T-Y, last name Young, Y-O-U-N-G.

17 JUDGE TOREM: Ms. Cameron-Rulkowski.

18
19
20 DIRECT EXAMINATION

21 BY MS. CAMERON-RULKOWSKI:

22 Q Good morning, Ms. Young.

23 A Good morning.

24 Q Please state the name of your employer.

25 A The Washington Utilities and Transportation

1 going to allow Staff to make its brief introduction,
2 and then if you care to respond as to what you think
3 the evidence might show, that would be fine, or you
4 can wait until after Ms. Young's testimony and then
5 tell me what evidence Shuttle Express wants to put on
6 in sequence.

7 MR. SHERRELL: Your Honor, I would like
8 to wait until I hear.

9 JUDGE TOREM: Okay. So we will have
10 Staff put on its case first. We will start with an
11 opening from Ms. Cameron-Rulkowski.

12 MS. CAMERON-RULKOWSKI: Thank you, Your
13 Honor.

14 In this complaint proceeding, there are two
15 issues. The first issue is whether the violations
16 alleged in the complaint occurred, and the second
17 issue is, assuming that violations occurred, what the
18 appropriate penalty should be.

19 Staff's evidence will show that Shuttle
20 Express committed the violations alleged in the
21 complaint and that the violations weren't meaningful
22 penalties [sic]. Staff will make a recommendation
23 regarding an appropriate penalty. While Staff bears
24 the burden of proving that the violations occurred,
25 the Company bears the burden of refuting the basis of

1 Commission.

2 Q And in what position are you employed by the
3 Commission?

4 A I'm a compliance investigator.

5 Q Please describe briefly your responsibilities
6 as they pertain to this matter.

7 A Okay. I conduct compliance investigations
8 into the operating and safety practices of regulated
9 transportation companies, as well as companies that
10 appear to be providing regulated services without the
11 proper authority. I also recommend enforcement action
12 against companies that appear to be violating
13 Commission laws and rules.

14 Q Have you ever investigated Shuttle Express?

15 A Yes.

16 Q How many investigations of Shuttle Express
17 have you conducted?

18 A Two.

19 Q Approximately when did these investigations
20 take place?

21 A The first took place in -- between 2007 and
22 2008, and the most recent was 2012 through 2013.

23 Q What prompted your most recent investigation
24 of Shuttle Express?

25 A In December 2011, Shuttle Express filed in

1 Docket TC-112072 to increase its rates. As Commission
2 Staff was reviewing that increase request, it found
3 revenues and expenses associated with independent
4 contractors that had been hired by Shuttle Express.
5 Commission Staff at that time was uncertain whether
6 the independent contractor program as it appeared
7 violated Commission rules or not, so the matter was
8 referred to me and Transportation Safety Enforcement
9 for investigation.

10 Q Did you document your investigation?

11 A I did.

12 Q And is the documentation of your investigation
13 in the exhibit marked as BY-1?

14 A Yes. It's titled "STAFF INVESTIGATION OF
15 SHUTTLE EXPRESS, INC.," and it's dated March 2013.

16 Q And I have a few questions now that relate to
17 this investigation report. Please turn to the Shuttle
18 Express exhibit marked as SE-6.

19 A Is that the same as Exhibit 6?

20 Q Yes, it is.

21 A Okay. Yes.

22 Q Can you please identify this exhibit?

23 A Yes, it is the Shuttle Express, Inc.
24 Independent Contractor Agreement, updated May 22nd,
25 2009.

1 Q And does the agreement in Shuttle Express's
2 Exhibit 6 appear to be the same document contained in
3 your investigation report at Appendix D, which begins
4 on Page 58?

5 A Yes.

6 Q All right. I would like to ask you some
7 questions about the rules at issues.

8 With regard to WAC 480-30-213(2), the vehicle
9 and driver rule, can you please identify where in your
10 report that you discuss violation of that rule?

11 A Yes, that is discussed on Pages 19 and 20.

12 Q And with regard to WAC 480-30-216(6), can you
13 please identify where in your report that you discuss
14 violation of that rule?

15 A Yes, that's on Page 20.

16 Q And with regard to WAC 480-30-456, fair use of
17 customer information, can you please identify where in
18 your report you discuss violation of that rule?

19 A That is on Page 20 and 21.

20 Q The complaint also alleges that Shuttle
21 Express violated a Commission order. Do you discuss
22 this violation in your investigation report?

23 A Yes.

24 Q Can you please identify where in your report
25 that you discuss violation of the Commission order?

1 A It's actually in various places in the report.
2 I have that noted as Page 3, Page 19, Page 23, Page 24
3 and Page 25.

4 Q Can you please summarize the order very
5 briefly?

6 A The order in this case or the violation of the
7 previous order?

8 Q Can you please summarize the order in
9 TC-072228?

10 A Sure. The order in that docket approved a
11 settlement agreement between Shuttle Express and
12 Commission Staff and assessed a penalty of \$9,500
13 against Shuttle Express for violations of Washington
14 Administrative Code, or WAC 480-30, I believe it was
15 213(2), and within the settlement agreement, Shuttle
16 Express committed to complying with Commission rules
17 and laws going forward.

18 Q And is that the same rule that you just
19 identified that you discussed in your investigation
20 report at Pages 19 to 20?

21 A Yes.

22 Q Can you please briefly summarize the
23 violations of -- can you please briefly summarize the
24 violations of the order that you identified in the
25 current investigation?

1 A In the current investigation, Shuttle Express
2 violated that previous Commission order by hiring
3 independent contractor drivers that were not employees
4 of the company to conduct multistop service on Shuttle
5 Express's regulated routes. Shuttle also violated the
6 previous Commission order by violating other
7 Commission laws and rules that it had committed to
8 follow.

9 Q Thank you.

10 In your investigation report, do you discuss
11 penalizing Shuttle Express?

12 A Yes.

13 Q And can you please identify where in your
14 report you discuss penalties?

15 A Yes, that's discussed on -- from Pages 21
16 through 25.

17 Q With regard to the order that we were just
18 discussing, was it related to your 2007, 2008
19 investigation of Shuttle Express?

20 A Yes, the Commission's order was the outcome of
21 the proceeding that resulted from the Staff
22 investigation.

23 Q And what prompted the investigation of Shuttle
24 Express that you conducted in 2007 to 2008?

25 A In June 2007, Shuttle Express staff contacted

1 our motor carrier safety staff with questions
2 about expanding its charter services at that time to
3 include independent contractor drivers. So
4 subsequently, six different companies or independent
5 contractors applied to the Commission and received
6 charter and exertion authority. Part of the process
7 with getting the authority is that our motor carrier
8 staff goes out and inspects the vehicles. At that
9 point, motor carrier staff was concerned about the
10 operating practices of the new charter drivers, or the
11 independent contractors, and the matter was referred
12 to me for further investigation.

13 Q And did you document your investigation?

14 A I did.

15 Q And the documentation of your investigation,
16 is that contained in the exhibit marked BY-2?

17 A Yes.

18 Q And during your recent investigation, did you
19 consider the 2007 to 2008 investigation?

20 A I did.

21 Q And can you please explain a little bit about
22 how you did consider that?

23 A Yes. Because the current investigation showed
24 that Shuttle Express had violated the previous
25 Commission order, it was important to consider that

1 A I do.

2 JUDGE TOREM: For clarity, which Page 30
3 are we in, BY-1 or 2?

4 MS. CAMERON-RULKOWSKI: BY-1.

5 At this time, Staff would like to reserve its
6 recommendation until after Shuttle Express has
7 presented its case. May I please recall Ms. Young at
8 that time?

9 JUDGE TOREM: That will be fine.

10 MS. CAMERON-RULKOWSKI: Thank you, Your
11 Honor.

12 JUDGE TOREM: Any other questions for
13 Ms. Young at this time from Staff?

14 MS. CAMERON-RULKOWSKI: That completes
15 Staff's direct examination of Ms. Young.

16 JUDGE TOREM: Mr. Sherrell, you have a
17 right to cross-examine this witness about anything she
18 has testified to, or in fact for the exhibits that she
19 has put into the record, if you have individual
20 questions about either of the investigations.

21 C R O S S - E X A M I N A T I O N

22 BY MR. SHERRELL:

23 Q Ms. Young, I think you did a very nice job
24 putting these reports together.
25

1 previous investigation in my analysis. As part of the
2 enforcement work that I do, I follow the Commission's
3 enforcement policy. Through its enforcement policy,
4 the Commission looks at several factors, specific
5 factors, to determine whether and how to take
6 enforcement action against particular companies.

7 One of those factors is the Company's history
8 with violations and penalties and compliance. The
9 Commission tends to take a much harder line with
10 companies that have previous violations or histories
11 of noncompliance or repeat violations or previous
12 penalties.

13 Q Thank you.

14 A Uh-huh.

15 Q And are you familiar -- I'll ask you to refer
16 now to Page 30 of your investigation report.

17 A Uh-huh. Okay.

18 Q Are you familiar with RCW 81.68.040, which is
19 referenced on Page 30 of your investigation report?

20 A Yes.

21 Q In your opinion, do you think that a failure
22 to comply with rules and statutes enforced by the
23 Commission could have a bearing on whether an auto
24 transportation carrier is providing service to the
25 satisfaction of the Commission?

1 A Thank you.

2 Q I'll say that right off the top. That was a
3 lot of work, I recognize that.

4 I guess one of the things that bothered me in
5 the -- first of all, does Shuttle Express have any
6 complaints with the Commission?

7 A Consumer complaints?

8 Q Yes.

9 A Not that I'm aware of.

10 MR. SHERRELL: That was one of my
11 questions that I wanted to ask. For the record, there
12 is no complaints with the Utility Commission from our
13 consumers. I just wanted to make that one point.

14 Q On Page 11 --

15 MR. SHERRELL: And that would be the
16 report that you sent me, the evidence.

17 MS. CAMERON-RULKOWSKI: You are
18 referring to BY-1?

19 MR. SHERRELL: The exhibit. The only
20 one I received was Exhibit 1 or 2.

21 MS. CAMERON-RULKOWSKI: That would be
22 BY-1.

23 MR. SHERRELL: BY-1, okay.

24 MS. CAMERON-RULKOWSKI: I'm sorry, what
25 was the page number?

1 JUDGE TOREM: 11, I think.
 2 MR. SHERRELL: Page 11.
 3 Q We were -- stated in there that we were not
 4 responsive to a request from Staff, and I, myself,
 5 replied back that -- a reply and said, If there's any
 6 questions, please give me a call.
 7 So would you agree that when we are
 8 communicating with Internet, via e-mail, that there is
 9 no personal interpretation with it and it can be
 10 interpreted different ways and that my intent may have
 11 been not to put Staff off, but to answer --
 12 MS. CAMERON-RULKOWSKI: Your Honor, I'm
 13 sorry, I'm going to object.
 14 MR. SHERRELL: Okay.
 15 MS. CAMERON-RULKOWSKI: This is starting
 16 to sound like testifying.
 17 JUDGE TOREM: Mr. Sherrell, if you want
 18 to testify later as to Shuttle Express's conduct,
 19 that's one thing. Is there a question for Ms. Young?
 20 MR. SHERRELL: No, that's fine. Okay.
 21 (Pause in the proceedings.)
 22 JUDGE TOREM: Any other questions that
 23 are on the list there that you think are worth asking
 24 at this time?
 25 MR. SHERRELL: A lot of it just covers

1 our testimony.
 2 JUDGE TOREM: Okay, and that's fine.
 3 This is your opportunity to question her about the
 4 testimony she just gave. I understand Ms. Young will
 5 be called back, and we will reopen Staff's case as to
 6 an ultimate recommendation, once they have heard your
 7 testimony as well, on the penalty amount. So you will
 8 have an additional opportunity to question her on
 9 whatever the recommendation might be toward the end of
 10 today's hearing.
 11 MR. SHERRELL: I would like to state
 12 that --
 13 JUDGE TOREM: Well, state or question?
 14 We are going to get to your case shortly.
 15 MR. SHERRELL: Yeah, okay. I don't have
 16 any questions.
 17 JUDGE TOREM: Ms Young, I have a couple
 18 of questions, just so I understand the basis of the
 19 complaint --
 20 THE WITNESS: Sure.
 21 JUDGE TOREM: -- and how Staff reached
 22 its conclusions.
 23
 24
 25

1 EXAMINATION
 2 BY JUDGE TOREM:
 3 Q WAC 480-30-213(2) is the one is that requires
 4 the drivers to be employees of the certificate holder?
 5 A Correct.
 6 Q And that was the case in the previous
 7 investigation, as well as the current one leading to
 8 this complaint, correct?
 9 A Yes.
 10 Q How does the Commission define "employee" and
 11 how does the Commission define "independent
 12 contractor"?
 13 A I don't know that the Commission defines
 14 "independent contractor" in its rules per se. My -- I
 15 actually don't know how the Commission defines
 16 "employee," but I believe that it would mean someone
 17 that is hired by the Company, on the payroll of the
 18 company, paid by the Company as an employee, not
 19 someone that is self-employed and has their own
 20 separate business. As I understand, these independent
 21 contractors all have their own Unified Business
 22 Identifier number, they are all their own independent
 23 companies.
 24 In the contract between the independent
 25 contractors and Shuttle Express, there is a very clear

1 delineation of who the -- that they are not employees
 2 of Shuttle Express, that they are actually their own
 3 employees, the independent contractors.
 4 So in terms of how the Commission defines it,
 5 I don't believe it's defined in rule, but that's my
 6 own interpretation.
 7 Q So the basis, though, for your assessment here
 8 and the investigation was the distinction you just
 9 drew, that Shuttle Express has employees and Shuttle
 10 Express has defined folks to be self-employed
 11 independent contractors?
 12 A Correct.
 13 Q And that's also more in evidence in your
 14 report and the -- I think it was Appendix D to your
 15 report, that had the Shuttle Express independent
 16 contractor agreement; is that right?
 17 A Correct. And it's -- the contract in my
 18 current investigation report is substantially similar
 19 to the one in the previous Staff investigation report.
 20 It actually appears in both places, and you can
 21 cross-reference the two. There have been some subtle
 22 changes to it, going from one type of service to the
 23 limo driver/for-hire driver kind of model.
 24 There's some subtle differences, but a lot of
 25 the contract is substantially the same, especially the

1 part about -- it's very clear that these people are
2 not employees of Shuttle Express.

3 Q So is it Commission Staff's position, then,
4 that anytime Shuttle Express dispatches somebody for
5 regulated service, and it's in a vehicle operated by
6 them under their certificate, it has to be an employee
7 of the company?

8 A That's what the Commission's rules require,
9 yes.

10 Q If an independent contractor drives, for
11 whatever reason, it's a violation of this particular
12 rule. Is that the Commission's position?

13 A If the independent contractor driver is
14 providing regulated service, yes. The independent
15 contractors can provide other service, which is
16 completely fine under their limo license or under
17 their for-hire authority. That's regulated through
18 the Department of Licensing. However, once it
19 switches over into share ride service on Shuttle
20 Express's regulated routes, that's where it violates
21 Commission rules.

22 Q And so for this particular first cause of
23 action, it's as simple as that from the Commission's
24 point of view?

25 A That's correct.

1 Q If you are an independent contractor driving
2 regulated service, it's a violation?

3 A Correct.

4 Q On the second cause of action there's a
5 description of reserve equipment.

6 A Uh-huh.

7 Q I know your report goes into this in some
8 detail. WAC 480-30-216(6) just talks about
9 maintaining sufficient reserve equipment to ensure a
10 reasonable operation of established routes and fixed
11 time schedules. Can you, in your own words, tell me,
12 sum up what does that really mean for a company of
13 Shuttle Express's size?

14 A In my personal opinion, and through my
15 investigation, it means that Shuttle Express should
16 always have enough vehicles available and on hand to
17 provide any type of regulated service that it is
18 called to provide. So I believe -- I don't know the
19 exact rule off the top of my head, but there is an
20 obligation to serve -- by any auto transportation
21 company, they are obligated to serve any customer in
22 their service territory that requires service. This
23 particular requirement in the rule says they must have
24 vehicles on hand at all times to provide that service.

25 Q And at peak operating times, whether it's for

1 Shuttle Express or any of the other auto
2 transportation companies regulated by the Commission,
3 does that mean they have to have plus or minus a
4 certain percentage of vehicles that cover that peak,
5 or how do you measure that?

6 A That is outside my area of my expertise, so I
7 would not know how to answer that question. I believe
8 the Commission requires sufficient vehicles. Whatever
9 that means in the -- in the Commission's
10 interpretation.

11 I believe in my interpretation, it would mean
12 you have enough vehicles to serve the public, and you
13 wouldn't need to call for other vehicles by other
14 companies, unless you have some sort of
15 Commission-approved service agreement, which is also
16 allowed in the rules, or some Commission-approved
17 lease of your certificate which would allow you to
18 share that service with another company.

19 Q You mentioned that it would mean not having to
20 call another company. Is that essentially what's
21 going on in this case, why the Commission is bringing
22 the second cause of action?

23 A I'm sorry, could you rephrase the question?

24 Q Sure. In this case, the allegations are that
25 Shuttle Express is using independent contractors to

1 provide, I think it's termed rescue service, and then
2 perhaps some other additional upgrade, a luxury
3 service, which was not the subject of your report.

4 A Uh-huh.

5 Q So when you say they have enough to serve, you
6 are suggesting that the reason we are here on the
7 second cause of action is because Shuttle Express is
8 relying on nonemployees, independent contractors, to
9 provide this buffer or having enough to serve; is that
10 correct?

11 A That's how it appears to Staff, yes.

12 Q So when you said not having to call on another
13 company, that would also mean not having to call on
14 independent contractors?

15 A Yes.

16 Q And the third cause of action is WAC
17 480-30-456, and that was the sharing of customer
18 information. I think it was name, address and
19 telephone number as specified in the WAC?

20 A Correct.

21 Q If I understood correctly from your report,
22 that was essentially a de facto violation. By hiring
23 an independent contractor, the Company had to share
24 that information, to let them know when they needed to
25 pick the person up. And so that was added as another

1 violation that just had to happen if you were sharing
2 information with independent contractors?

3 A Without the customer's approval in writing,
4 which is what the Commission's rules require. So that
5 is correct.

6 Again, if Shuttle Express had provided these
7 services in its own vehicles, this would -- this
8 violation wouldn't exist, because it can certainly
9 share customer information among its own employees.
10 If someone needs a rescue pickup, you send your own
11 car and driver out. There's no violation there. If
12 you share that with an outside company, that you don't
13 have a customer's permission to share that information
14 with in writing, as the rule requires, creates the
15 violation.

16 Q Now, what's, in your mind, the general
17 intention of that particular rule?

18 A It's privacy of customer information, it's
19 protection of customer information. It's making sure
20 that the customer is aware that their personal
21 information, including name, address, phone number,
22 flight information, is all kept protected and safe by
23 the Company that they are originally transacting
24 business with. And a customer has to give informed
25 consent, which I believe in writing is -- is probably

1 the opportunity, Your Honor. No.

2 JUDGE TOREM: Okay.

3 Ms. Young, thank you for your testimony. We
4 will recall you shortly, or at some point this
5 afternoon, I imagine.

6 THE WITNESS: Okay.

7 JUDGE TOREM: Mr. Sherrell, you have a
8 number of witnesses listed. Some of them are
9 scheduled to call in at the eleven o'clock hour.

10 MR. SHERRELL: That's true, yes.

11 JUDGE TOREM: So we have about an hour
12 until then. My recommendation is that we take a break
13 before 11:00 and see what kind of testimony we can put
14 on between now and then.

15 Who would you like to call as your first
16 witness?

17 MR. SHERRELL: May I make a statement
18 before we --

19 JUDGE TOREM: Sure, if you want to do
20 your opening now that would be fine too.

21 MR. SHERRELL: Yes.

22 JUDGE TOREM: Go ahead, sir. And this
23 will be in the form not of testimony, but just what
24 you think the evidence will show that you are going to
25 put on.

1 the most reliable way of ensuring that the customers
2 had informed consent. I think that's the Commission's
3 intent behind this rule. That would be my guess.

4 Q In your mind, then, it's not only for customer
5 privacy and safety, it's not just an antimarketing or
6 sale of information sort of regulation?

7 A I think that's true, yes.

8 Q Okay.

9 And the Commission order I think speaks for
10 itself, so I don't have any questions on that part of
11 the investigation or this complaint.

12 A Okay.

13 Q And we will get into the recommendation for
14 penalty later, so I will hold my questions in that
15 regard.

16 A Okay.

17 JUDGE TOREM: Mr. Sherrell, does that
18 raise any additional questions that you might have in
19 cross-examination for this witness?

20 MR. SHERRELL: No, I just thank you for
21 your input.

22 JUDGE TOREM: Let me go back to
23 Ms. Cameron-Rulkowski and see if my questions raise
24 anything that require redirect examination.

25 MS. CAMERON-RULKOWSKI: Thank you for

1 MR. SHERRELL: Yes.

2 JUDGE TOREM: And then if you want to
3 give sworn testimony, I will swear you in to do that
4 at any time.

5 MR. SHERRELL: Okay.

6 I do not feel that Staff understands, or the
7 Commission understands door-to-door service, as
8 opposed to scheduled service, and that the violations
9 that have been imposed, there's three that are
10 definitely not violations, and one is a violation that
11 we were forced into, to provide public-needed --
12 necessity. And I believe that because we are such a
13 young company within the Commission, that the
14 Commission really doesn't understand door-to-door
15 service and what it implies and what it takes to serve
16 the public. So because we are forced to violate part
17 of the Commission rules, which we've been doing for 25
18 years, I think it's an oversight of the Commission, of
19 not knowing how to regulate us.

20 And my testimony today will -- the people
21 testifying today will substantiate Shuttle Express's
22 position, and briefly go over the differences, and
23 address all four counts of the violation.

24 JUDGE TOREM: Okay. Thank you.

25 MR. SHERRELL: Okay.

1 MS. CAMERON-RULKOWSKI: Who would you
2 like to call as your first witness?

3 MR. SHERRELL: I would like to call
4 George Nelson.

5 JUDGE TOREM: Mr. Nelson, if you could
6 sit and pull that little microphone extension, the
7 phone, close enough so anybody on the bridge line can
8 hear you.

9 THE WITNESS: Okay.

10 JUDGE TOREM: And then we will see if we
11 can get the court reporter to be able to see you, that
12 will make it easier on her. I will ask you in just a
13 moment to stand and I will swear you in.

14
15 GEORGE NELSON, witness herein, having been
16 first duly sworn on oath,
17 was examined and testified
18 as follows:

19
20 JUDGE TOREM: If you can state your
21 first and last name and spell both for the record.

22 THE WITNESS: George Nelson,
23 G-E-O-R-G-E, N-E-L-S-O-N.

24 JUDGE TOREM: Mr. Sherrell will direct
25 questions your way.

1 on our grid, and then we route them together into
2 trips geographically, efficiently, so we can get the
3 most people on each vehicle possible, to make our
4 operation run more efficient and to ensure that the
5 guests will get to the airport or at home in a timely
6 manner.

7 Q Are these routes and trips different every day
8 or are they same?

9 A Oh, they are different every day.

10 Q Every hour?

11 A Yes.

12 Q When you were here in 2008, did you -- were
13 you routing and dispatching at that time?

14 A Yes, I was.

15 Q At that time were we using independent
16 contractors and vans with charter licenses to provide
17 the same service as the Shuttle Express employee
18 drivers?

19 A Yes, we were.

20 Q When you planned the day, routed the day, did
21 you use the independent contractors and employees the
22 same?

23 A Yes, we did. Yes.

24 Q Explain that a little bit to me.

25 A How we start our day or our shift is you look

1 THE WITNESS: Okay.

2
3 DIRECT EXAMINATION
4 BY MR. SHERRELL:

5 Q Okay if I call you George?

6 A That's okay, Mr. Sherrell.

7 Q How long have you been at Shuttle Express?

8 A I've been at Shuttle Express since 2005, so
9 eight years.

10 Q Were you here in 2008, when we were running
11 independent contractors in vans?

12 A Yes, I was.

13 Q And what is your job at Shuttle Express?

14 A Right now I'm a dispatch supervisor.

15 Q And what does that entail?

16 A A lot. Organizing the dispatch office, making
17 sure all the routes are put together efficiently,
18 making sure we have the dispatching staff to cover all
19 of our duties, making sure -- working with John Hagen,
20 making sure we have enough drivers and vans on the
21 road, and dispatching all of our reservations for
22 guests.

23 Q Would you describe for the Commission routes
24 and trips, what that means?

25 A Okay. What we do is we get the reservations

1 at the inbounds, that is to the airport, that are
2 coming up, and you match them up with the vehicles
3 that are available at that time at the airport or that
4 are available in that geographical area, where the
5 pickup begins.

6 Q Did you make any distinction between using an
7 IC in a van with a charter license or a --

8 A No, no, it was whoever was up next and where
9 they were at, where they were vacant at to do the next
10 job.

11 Q Just to help the reporter, let me finish the
12 question.

13 Do you currently route reservations?

14 A Yes, I do.

15 Q Since 2008, have you routed or planned to use
16 an independent contractor in our operation?

17 A You're talking about the current -- the town
18 car/limousine independent contractors, right?

19 Q Yes, since 2008 --

20 A Okay.

21 Q -- going forward to --

22 A Yeah, I just want to make sure I understood.

23 No, we do not. They are set up to do their --
24 the IC work, the limousines, town cars and SUVs.

25 Q So do you totally separate independent

1 contractor operations and business from Shuttle
2 Express --

3 A Yes. Actually, we have two --

4 Q -- door-to-door --

5 A -- different stations in the dispatch office.

6 One station does the ICs, the other station does the
7 employee van drivers.

8 Q So independent contractors are dispatched
9 totally separate from regulated share ride --

10 A Yes.

11 Q -- patrons?

12 Do you use any independent contractors today
13 for Shuttle Express work?

14 A Yes.

15 Q How do you use them?

16 A We use them in that rescue situation for
17 inbound to the airport, if we have a van that's
18 assigned a three- or four-stop, if the vehicle breaks
19 down. Or if it's a reservation error on the second or
20 third stop and the fourth stop is going to be in
21 jeopardy of not getting to the airport in time to make
22 the flight, and if we have an IC in the area who is
23 vacant, we will assign that vehicle, ask him to do
24 that.

25 Q Talk about your expertise in dispatch for just

1 a second. Were you recently promoted in dispatch?

2 A Yes, I was.

3 Q What's your position?

4 A Dispatcher supervisor.

5 Q So it could be said that you have excellent
6 knowledge of Shuttle Express operations in dispatching
7 and routing?

8 A Absolutely.

9 Q In your opinion, is using the ICs' limos/town
10 cars today similar, or even anything like using the
11 ICs that were in vans with a charter license in 2008?

12 A For -- no, because the IC charters were doing
13 door-to-door work, and they would be assigned just
14 like the employees were, wherever they were vacant and
15 next up to go.

16 Q In your opinion, and from your past
17 experience, is rescue service a necessity to serve the
18 public?

19 A Absolutely.

20 MR. SHERRELL: Your Honor, I have
21 another witness that will go into more detail on some
22 of this. This was mainly to point out the difference
23 of what happened in 2008 and what's occurring today.
24 I would like to end my questions at this time on that.

25 JUDGE TOREM: Okay.

1 Let me ask Ms. Cameron-Rulkowski if she has
2 cross-examination questions.

3 Mr. Nelson, if you will direct your attention
4 to Ms. Cameron-Rulkowski.

5 THE WITNESS: Absolutely.

6 MS. CAMERON-RULKOWSKI: I do, Your
7 Honor. Thank you.

8

9 CROSS - EXAMINATION

10 BY MS. CAMERON-RULKOWSKI:

11 Q Good morning, Mr. Nelson.

12 A Good morning.

13 Q Have you read Staff's investigation report
14 which is marked as BY-1?

15 A No, I haven't.

16 Q Are you familiar with the independent
17 contractor agreement that is Shuttle Express's
18 Exhibit 6?

19 A I don't know the full details to the
20 agreement. I understand that they are independent
21 from Shuttle Express and not employees.

22 Q All right. I may be able to ask this question
23 of another witness or I may call Mr. Sherrell at a
24 later time. Thank you.

25 JUDGE TOREM: Mr. Nelson, let me ask

1 just a couple questions so I understand the purpose of
2 your testimony.

3

4 EXAMINATION

5 BY JUDGE TOREM:

6 Q If I understand correctly, in 2008 you had
7 limos available and just worked them like any of the
8 other vans in the schedule?

9 A The limo vans, yes, that's correct.

10 Q So these independent contractors and
11 employees, if they were driving vans that you would
12 use for the multistop service, you scheduled them just
13 based on next up?

14 A That's correct.

15 Q And since 2008, you have taken a different
16 approach with them?

17 A For the --

18 Q For the --

19 A -- charter or the ICs that are currently
20 working for us now?

21 Q Yes, the independent contractors. What's your
22 approach since 2008?

23 A Well, the independent contractors we have now,
24 the limos, they are in a total different workstation,
25 all of their reservations are separated from the

1 door-to-door stuff, and we basically assign them the
2 same way as we do with door-to-door, just for their
3 independent contract work.

4 Q They don't get into your basic regulated
5 service day to day, they are not preplanned into your
6 schedule?

7 A No.

8 Q Before 2008, they were preplanned as a part of
9 the regulated fleet?

10 A That's correct.

11 Q So the distinction that I'm supposed to get
12 from your testimony is in 2008, you learned what the
13 Commission -- thought the Commission wanted was to
14 separate those two out in the schedule; is that
15 correct?

16 A For the ICs that we are currently dealing
17 with? Yes, we do not preplan any door-to-door
18 scheduled stuff. We just mainly use them for rescue
19 situations.

20 Q I think I understand the distinction of the
21 before 2008 and now.

22 A Okay.

23 JUDGE TOREM: Mr. Sherrell, any
24 follow-up questions?

25 MR. SHERRELL: I have none, Your Honor.

1 JUDGE TOREM: Ms. Cameron-Rulkowski, any
2 follow-up?

3 MS. CAMERON-RULKOWSKI: No, Your Honor.

4 JUDGE TOREM: Thank you, Mr. Nelson.

5 THE WITNESS: All right. Thank you.

6 MR. SHERRELL: Go run our business.

7 JUDGE TOREM: So it's now about 10:15.

8 I think we have time to do at least one more witness.

9 MR. SHERRELL: It will be short, Your
10 Honor. It will be Dean Deangelo.

11 JUDGE TOREM: Mr. Deangelo, will you
12 just stay standing and I will swear you in.

13
14 DEAN DEANGELO, witness herein, having been
15 first duly sworn on oath,
16 was examined and testified
17 as follows:

18
19 JUDGE TOREM: If you will spell your
20 first and your last name for the court reporter.

21 THE WITNESS: My name is Dean, D-E-A-N,
22 Deangelo, D-E-A-N-G-E-L-O.

23 JUDGE TOREM: Mr. Sherrell.

1 DIRECT EXAMINATION

2 BY MR. SHERRELL:

3 Q Dean, how -- can I call you Dean?

4 A Sure.

5 Q How long have you been with Shuttle Express?

6 A I've been here since the beginning of Shuttle
7 Express, in 1987, so another week it will be 26 years.

8 Q I think I need to adopt you.

9 In your tenure at Shuttle Express, what have
10 you done; what have been your job responsibilities?

11 A I ran the maintenance department for 22 years,
12 and I've been on the office side the last four, and
13 currently I am director of operations.

14 Q Under director of operations, do you deal with
15 independent contractors?

16 A I do.

17 Q What do you do with them?

18 A I interact with them in many different ways.
19 Issues that come up, I'll get statements from them, I
20 talk to them out in the field, see how things are
21 going. Kind of PR-type stuff between Shuttle Express
22 and the individual contractors.

23 Q Do you ever inspect the vehicles?

24 A I do, as -- I see them downtown all the time,
25 I see them at the piers. We gather and we talk about

1 stuff when I look at their cars. I even saw one drive
2 by and called them up and said, Hey, you've got a
3 headlight out. You know, things like that.

4 So -- and I -- back when the state patrol used
5 to do the town car inspections for the licensing, I
6 worked closely with the officers. They would come to
7 our building, and I would fix anything that needed to
8 be fixed with the vehicles that came up during the
9 inspections, and actually did the licensing on them
10 and all that stuff. I know exactly what the
11 inspection consisted of, so I can do that same thing,
12 just out in the street.

13 Q Background for independent contractors coming
14 into the company. Can you tell what the requirements
15 are for us entering into a contract with an
16 independent person?

17 A Basically, they have to have a business
18 license, UBI number, L&I insurance, current driving
19 abstract, driver's license, insurance certificate, all
20 of which is monitored yearly. Expiration dates, when
21 they come up, we actually pull referrals from drivers
22 if the paperwork is not all up to date and current.
23 That's been more of an issue since the change in
24 Department of Revenue taking over from the state
25 patrol and the Department of Licensing. It happens

1 almost every month, where we have to actually stop
2 referrals to an independent contractor due to whatever
3 the reason may be.

4 Drug testing, they are all enrolled in a --
5 they have to have a current clean test when they come
6 in, and then they have to all be enrolled in random
7 group testing also.

8 Q Are these vehicles licensed and inspected?

9 A They are. Yes, they are.

10 Q Actually not by the state, they are by the --

11 A Department of Revenue now, basically. It's
12 still the state.

13 Q That would be by the state, then. Okay.

14 A Yes.

15 Q And do you establish the number of IC, or
16 contracts that we will have in the company?

17 A I work closely with -- with Mr. Hagen in the
18 need. The need varies from time of year. Summertime
19 is busier. In the off-season it gets a little slower,
20 so we might not carry as many.

21 Q Do you ever adjust the number of cars upward
22 or ask for more cars to do rescue service, do you plan
23 on that?

24 A No.

25 Q Your answer was "no"?

1 the video and put in an employee's file and the
2 employee is coached or the IC is coached.

3 Q Have you ever discontinued a contract with an
4 independent contractor for driving safety?

5 A Yes, we have.

6 Q Do you conduct safety meetings with the
7 drivers, the independent contractors?

8 A We do.

9 Q How many?

10 A Once a quarter.

11 Q The independent contractors, when they are out
12 in the field and they do a rescue service, are they
13 monitored by dispatch?

14 A They are.

15 Q Do you know of any independent contractor that
16 has ever used guest information for marketing?

17 A They are not to contact the guest unless they
18 are -- information from us is given to them on a trip.

19 Q Have we ever dismissed anybody for trying to
20 move somebody from Shuttle Express reservations, using
21 town car service, to just their own independent
22 service?

23 A Yes, we have.

24 Q Did you mention we were a PSC member?

25 A I didn't. Yes, we are a member. Actually,

1 A No.

2 MR. SHERRELL: I would like to offer our
3 Exhibit No. 8, SE-8.

4 JUDGE TOREM: I'm sure that's already
5 been admitted. You want to hand a copy to the
6 witness, is that what you are asking?

7 MR. SHERRELL: Yes.

8 Q Just briefly, Dean, if you would, just tell us
9 about DriveCam and how you use it and how you monitor
10 the drivers.

11 A DriveCam is a -- it's a digital camera that is
12 installed in every vehicle that we have on the road.
13 It constantly records. It's only -- it only saves
14 if -- side to side or backward/forward, G-forces
15 exceed a certain limit. Then they -- we have two
16 different types, DriveCam and iDrive. DriveCam has to
17 be downloaded by the driver, and then iDrive
18 automatically downloads through Wi-Fi when they come
19 into the lot. Then they are -- the video is reviewed.
20 You have an inside view and an outside view. The
21 videos are all reviewed.

22 If it's an issue of distracted driving, you
23 can see if they don't wear their seatbelts, hard
24 cornering, what have you, hard braking, the following
25 distance. All of that stuff is determined by watching

1 Steve Salens [phonetic] was one of the founding
2 members of the Puget Sound Limo Association and was
3 quite instrumental in rewriting the limo law.

4 Q Are the ICs covered by their own insurance and
5 company insurance, and if so, what is that?

6 A They all have their own insurance, and then
7 Shuttle Express carries a \$5 million rider on top of
8 that.

9 Q Is that only for when they are under dispatch
10 doing Shuttle Express work?

11 A Yes.

12 MR. SHERRELL: Thank you, Dean.

13 JUDGE TOREM: Cross-exam?

14 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

15
16 CROSS - EXAMINATION
17 BY MS. CAMERON-RULKOWSKI:

18 Q Good morning, Mr. Deangelo.

19 A Good morning.

20 Q I have a couple clarifying questions.

21 You testified about licensing of independent
22 contractor vehicles. Could you please clarify who the
23 licensing authority is?

24 A They go through the Department of Revenue, if
25 I'm not mistaken, now. They used to be the Department

1 of Licensing. And they get issued their -- they have
2 to have their vehicle inspected, and then -- which the
3 City of Seattle has taken that responsibility over
4 from the state patrol.

5 Q I'm sorry, I'm going to stop you. Did I just
6 hear the City of Seattle?

7 A Well, the City of Seattle regulatory agency
8 now, who also inspects the cabs, actually does limo
9 inspections, where it used to be the state patrol.

10 Q Thank you.

11 And are you familiar with the independent
12 contractor agreement that is Shuttle Express's
13 Exhibit 6?

14 A Somewhat, yes. Not totally.

15 Q And were you here in the room when Mr. Nelson
16 was testifying about dispatch activities?

17 A I was.

18 Q When he was describing how the dispatch of
19 independent contractor drivers currently works, is
20 that consistent with the independent contractor
21 agreement that is Exhibit 6?

22 A Correct.

23 Q What I want to be sure about is that we are
24 talking about one program.

25 A Sure, yes.

1 A Not -- no, no, they are not assigned, like I
2 said, unless it's a rescue. In the case of a rescue
3 maybe, but most of the rescues are just single stops.
4 As George stated, if it's a three- or four-stop pickup
5 and they have some issues, they will assign the town
6 car maybe the last stop, you know, if their flight
7 times are in jeopardy or they can't get another van to
8 the person.

9 Q Okay.

10 A But they are not assigned -- they are not
11 assigned more than one stop at all. It's -- they are
12 assigned independent contractor limo work.

13 Q Let's talk about just rescue trips.

14 A Okay.

15 Q When a vehicle is dispatched on a rescue, they
16 could, however, be dispatched on a multistop trip,
17 correct?

18 A They could, yes.

19 MS. CAMERON-RULKOWSKI: Thank you. I
20 have no further -- one moment, please.

21 (Pause in the proceedings.)

22 MS. CAMERON-RULKOWSKI: Thank you. I
23 have no further questions for Mr. Deangelo.

24 JUDGE TOREM: Mr. Sherrell, follow-up?

25 MR. SHERRELL: Yes.

1 Q And so his testimony was describing the
2 program that is also described in the independent
3 contractor agreement; is that right?

4 A Correct.

5 Q Thank you.

6 And I understand that you are familiar with
7 independent contractor operations from your position?

8 A Correct.

9 Q And are you generally familiar with the types
10 of trips that the independent contractors are
11 providing?

12 A Yes. I don't dispatch them or assign them or
13 any of that kind of stuff, but just in the
14 interactions. And again, if there's any issues with
15 any reservation, I can -- I actually do the follow-up
16 on most of those, so whether it be van drivers,
17 independent contractors, whatever.

18 Q And these trips that the independent
19 contractor drivers are providing, our understanding is
20 that they are multistop. Is that also your
21 understanding?

22 A Can you restate that?

23 Q Certainly. Is it your understanding that the
24 trips that the independent contractors are performing
25 are multistop?

1 R E D I R E C T E X A M I N A T I O N
2 BY MR. SHERRELL:

3 Q When the independent contractors' vehicles get
4 their license, are they inspected mechanically?

5 A Not -- not to the extent that I performed
6 inspections in -- in the shop on our vehicles. Is
7 that -- I think that's the direction we are going.
8 They don't take tires off, they don't check brakes,
9 they don't necessarily do a detailed multipoint
10 inspection.

11 Q Does the airport inspect the vehicles?

12 A They do, when they -- when they go to get
13 their airport sticker, they will do a walk-around and
14 they will check them as they come in to do their
15 trips.

16 Q Have you ever -- have you found any
17 independent contractor vehicles unsafe in your
18 inspections?

19 A No.

20 Q If you were to find one unsafe when you were
21 in the field, would you cancel the contract with them?

22 A Yes, they will automatically be taken off the
23 referral list and will not be offered any more work.

24 MR. SHERRELL: That's all I have, Your
25 Honor.

1 JUDGE TOREM: Okay.
2 Any further cross?
3 MS. CAMERON-RULKOWSKI: No, Your Honor.
4 JUDGE TOREM: I don't have any questions
5 for you, Mr. Deangelo. Thanks.
6 It's now a little after 10:30. Your next
7 scheduled witness will be at 11:00. I think you have
8 Mr. Hagen and you figured it would be about an hour?
9 MR. SHERRELL: Your Honor, I will
10 separate it into basically four different sections, so
11 we could do one section and see how our time goes, and
12 then do another, in the interest of getting done.
13 However you would like.
14 JUDGE TOREM: Let's do this. Let's go
15 ahead and use the time we have and press on between a
16 quarter till and 10 of, try and schedule our break
17 then so we are back, and you hopefully have your
18 witness on the phone at 11:00.
19 We will swear in Mr. John Hagen at this time.
20 Wherever we get to we will try to pause or break.
21 MR. SHERRELL: There will be some good
22 pauses.
23 JUDGE TOREM: And we will just reserve
24 all cross-examination until afterward.
25 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

1 out, so I was laid off there. In May of last year, I
2 got a call from Shuttle Express and I came back to
3 Shuttle Express. I've been there since -- so 22 years
4 overall.
5 Q And what is your main expertise with Shuttle
6 Express, current and what you developed into over the
7 years?
8 A Well, I think first is I -- you know, I've
9 done everything at Shuttle Express, expert dispatcher.
10 Even Community Transit, that is the same service, it's
11 a share ride service. The only difference is, is
12 clientele, and there is not an ending point, like an
13 airport, so it's the same kind of deal.
14 I -- I know more about share ride than anybody
15 else does in the state of Washington. I think it
16 would be hard to find somebody in the United States
17 who knows more about share ride because I've done it
18 for so long.
19 Did that answer your question?
20 Q Yes, it does.
21 Your duty -- are you privy to the financial
22 statements at Shuttle Express?
23 A Yes, I am.
24 Q Profit and loss?
25 A Yes, I am.

1
2 JOHN HAGEN, witness herein, having been
3 first duly sworn on oath,
4 was examined and testified
5 as follows:
6
7 JUDGE TOREM: If you can spell your
8 first and last name for the court reporter.
9 THE WITNESS: It's John Hagen, J-O-H-N,
10 H-A-G-E-N.
11 I'm a quiet speaker, so don't be shy, just to
12 ask me to speak up.
13
14 DIRECT EXAMINATION
15 BY MR. SHERRELL:
16 Q Is it okay if I call you John?
17 A Yes.
18 Q How long have you been at Shuttle Express?
19 A Well, I, as with Dean, helped start the
20 Company in 1987. I worked -- I started as reservation
21 agent, and I chose to leave the Company in December of
22 2007. I took a position -- a general manager position
23 at DART, which was a contract from Community Transit
24 to provide paratransit service. And then in -- I was
25 there for three and a half years. Public funding ran

1 Q And do you evaluate those statements every
2 month?
3 A Yes, I do.
4 Q And currently what is your main job with
5 Shuttle Express?
6 A My main job is to match our drivers to the
7 business. That's my main job.
8 Q So do you oversee routing and -- do you
9 oversee the routing of Shuttle Express?
10 A Yes, absolutely. When -- my title is revenue
11 manager at Shuttle Express. In matching business
12 to -- matching the drivers to the business -- not the
13 other way around, matching the drivers to the business
14 requires me to reach out and pretty much touch every
15 area of the operation, whether it's dispatch or the
16 independent contractors or whatever. It -- I have to
17 be involved in the routing, the planning, the
18 forecasting, the reviewing. Pretty much everything.
19 Q Are you aware of the number of vans that
20 Shuttle Express has -- I'm going to put this in the
21 same thing -- and the number of drivers?
22 A Yes.
23 Q Do you take part in the number of drivers that
24 Shuttle Express has?
25 A Yes, I do, in the hiring process, as well as

1 the day-to-day process.

2 Q Is there seasonality with Shuttle Express?

3 A Absolutely.

4 Q Can you talk about the seasonality a little
5 bit and what you do with the driver hiring?

6 A Sure. Shuttle Express is very seasonal and
7 it's -- it's very extreme. I guess we will start in
8 the winter. It's -- it's slow. We struggle every
9 January, February and March just to -- those are very,
10 very lean months. We have laid off drivers in that
11 period of time. And we're talking about drivers, not
12 independent contractors. So we have laid off drivers.
13 And then you have holidays which pop up and spring
14 breaks that pop up. For instance, spring break in
15 February for the grade school-type deal, we are at a
16 very low point of drivers at that point because it is
17 very slow and we can't keep the drivers on the
18 payroll. And then spring break -- winter break pops
19 up there and that's a big jump, families take off for
20 the week, and then it drops back down. And then we
21 start -- we start to slowly increase.

22 I want to say that this last January we -- we
23 ran under 1,000 people a day in our vans. And -- so
24 that's our low point, under 1,000 people. There are
25 days that we run 800 people, which is pretty low for

1 us. So it slowly climbs up and we start hiring. We
2 have to start planning and hiring in late March/April,
3 and continue that hiring process even through today.
4 Our last class is going on this week. So we go from
5 1,000 people there to days over 3,000 people in July
6 and August, and sometimes June. So June, July and
7 August we go up to 3,000 people. September is also
8 very busy. The second half of September it starts to
9 drop off and we start into the fall scenario, and
10 that's where it starts to slow back down again.

11 And then the holidays are just the holidays.
12 Anybody that has flown during the holidays know what
13 that's about. It's extremely busy on Thanksgiving and
14 at Christmas. In between those it's the slowest time
15 of the year.

16 So we are really doing this. We go up, down,
17 balance here. That's how our business goes. It's
18 very common.

19 Q So how do you handle a spike, say, during
20 Christmastime when we don't have a lot of drivers on
21 hand?

22 A We do -- well, we'll use overtime, extra
23 shifts. I am constantly -- what we do with driver
24 shifts is, is drivers have a shift, but I will move
25 that around according to business. I think that's

1 important to recognize, that that's how we handle a
2 lot of the spikes, because it's even spiky during the
3 day, not only seasonal. But I will move them around,
4 I will -- it's a daily, constant daily shift of needs,
5 our drivers to cover -- to cover the business.

6 Q Does Shuttle Express turn down any requests
7 for business from the traveling public?

8 A No.

9 Q Do you look at past years and try to figure
10 out some of the needs that might be coming up,
11 forecasting?

12 A Yeah, I do. I actually use -- especially
13 right now, we're very similar to last year. I am
14 always looking back at last year, and to the day, the
15 day and -- day of. Week, I guess you could say.
16 Monday to Monday kind of a thing to the last year to
17 forecast what's going to happen this year. And the
18 holidays, the days around the holidays, they can be
19 different. If the Fourth of July falls on a
20 Wednesday, people aren't really going to travel, but
21 if it falls on Friday, they are going to travel.

22 MS. CAMERON-RULKOWSKI: Your Honor, I
23 would like to make an objection at this point. I am
24 not hearing testimony that's relevant to the
25 allegations that Staff has presented in its complaint.

1 I see that this witness is scheduled for an hour, and
2 I haven't heard any testimony yet that is responsive
3 to the three causes of action that Shuttle Express has
4 listed him as a witness for. I would like to -- I
5 have some concern about staying within the scope of
6 this proceeding.

7 JUDGE TOREM: Mr. Sherrell.

8 MR. SHERRELL: Yeah, this is actually in
9 the scope because we have -- been alleged that we do
10 not have enough drivers, enough equipment to handle
11 the business. If we don't understand the parameters
12 of the business and what happens, then you can't
13 understand how much equipment you do need and whether
14 Shuttle does have or does not have enough equipment
15 and drivers. It actually speaks very strongly to the
16 case.

17 JUDGE TOREM: Ms. Cameron, anything
18 further on the objection?

19 MS. CAMERON-RULKOWSKI: One moment, Your
20 Honor.

21 (Pause in the proceedings.)

22 MS. CAMERON-RULKOWSKI: Your Honor, the
23 rule that Staff has alleged that Shuttle Express
24 violated is the reserve equipment rule, which is WAC
25 480-30-216(6). It states, All auto transportation

1 companies must maintain sufficient reserve equipment
2 to ensure the reasonable operation of established
3 routes and fixed time schedules. It doesn't say
4 anything about drivers.

5 JUDGE TOREM: I'm going to overrule the
6 objection and allow the testimony so that I can, based
7 on Mr. Sherrell's earlier opening, understand the
8 context of the business. I am also sensitive that we
9 have scheduled just one day for the hearing. I will
10 allow some use of our time. It looks like we will be
11 able to finish in plenty of time today.

12 I do understand that if it's not relevant to
13 the ultimate items, Mr. Sherrell, then I won't be able
14 to consider it as a direct defense to the complaint.

15 So let's go back. You were saying, Mr. Hagen,
16 about your forecasting, you go back to individual
17 weeks, Monday to Monday. I think that's where we left
18 off.

19 A Jim had asked me if I looked at last year's
20 and years past. Yes, I looked at -- I do look at
21 year's and years past to forecast.

22 MR. SHERRELL: Your Honor, I will cut to
23 the chase on this and we will talk just about
24 equipment.

25 Q Does Shuttle Express have enough equipment to

1 A Yes.

2 Q You have to answer.

3 A Yes. I'm sorry, I need to speak louder.

4 MR. SHERRELL: I'm through. Thank you,
5 John.

6 JUDGE TOREM: Let's take a break here.
7 We will come back at 11:00. I think we will take our
8 15-minute break. Let's be back in the room a little
9 bit before 11:00. If somebody calls in, if you will
10 just speak to them, if we are not on the record, let
11 them know, then I will swear them in.

12 I think you are anticipating on David Gray,
13 and so if you want to be in touch with him between now
14 and 11:00, great. The number to call in you have,
15 correct?

16 MR. SHERRELL: Yes, I do, Your Honor.

17 JUDGE TOREM: Anything else procedurally
18 before we take 10 or 12 minutes?

19 MR. SHERRELL: Just off the record.

20 JUDGE TOREM: We will go off the record
21 and we will come back a little bit before 11:00.

22 (A brief recess.)

23 JUDGE TOREM: We are going to go back on
24 the record. We now have the next witness for Shuttle
25 Express, Mr. David Ray is on the line.

1 handle the peaks at all times?

2 A Yes.

3 Q Is there a difference in the equipment
4 required for a scheduled service and door-to-door, in
5 other words, in numbers?

6 A Yes.

7 Q Is it easier to forecast scheduled service?

8 A Absolutely.

9 Q And door-to-door, you have to have a lot of
10 equipment? Do you have to have a lot of equipment for
11 door-to-door to cover the service?

12 A You have to have a lot of equipment for
13 door-to-door to cover the service. Scheduled service
14 is exactly what it is. There's a big difference
15 between the two. Scheduled service runs on a
16 schedule. It's going to do this all the time, the
17 same place. It's pretty easy to determine that I
18 can -- I can put a bus on that if I have the people,
19 or I can put a van on it. That can't be done with
20 share ride, door-to-door. You can't -- even if I
21 wanted to, that would be way too many stops and you
22 can't negotiate buses into people's homes very easily.

23 Q So your statement is that Shuttle Express does
24 have enough equipment to cover both its scheduled
25 service and its door-to-door service?

1 Mr. Ray, if you will raise your right hand,
2 wherever you are calling in from.

3 THE WITNESS: Okay.

4 JUDGE TOREM: I will give you the oath
5 of witness.

6
7 DAVID RAY, witness herein, having been
8 first duly sworn on oath,
9 was examined and testified
10 as follows:

11
12 JUDGE TOREM: Thank you.

13 In the room here are representatives from
14 Shuttle Express, including Mr. Jimmy Sherrell, who is
15 going to ask you some questions. Also is an attorney
16 general here, Ms. Jennifer Cameron-Rulkowski. She
17 will be entitled to ask you questions as needed in
18 cross-examination. My name is Adam Torem, I am the
19 administrative law judge representing and presiding
20 over this case on the behalf of the Utilities and
21 Transportation Commission.

22 Do you have any procedural questions before we
23 get started, sir?

24 THE WITNESS: No.

25 JUDGE TOREM: Let me know if you can't

1 hear any of the questions. There is a court reporter
2 taking things down, so if you will wait for
3 Mr. Sherrell to finish his question and then give your
4 answer.

5 THE WITNESS: Okay.

6 JUDGE TOREM: Go ahead, Mr. Sherrell.

7
8 DIRECT EXAMINATION

9 BY MR. SHERRELL:

10 Q Hi, Mr. Ray. This is Jim Sherrell with
11 Shuttle Express. Thank you for testifying today.

12 Have you used Shuttle Express in the past?

13 A Yes, fairly often.

14 Q And have you ever been served with anything
15 other than a van?

16 A Yes, we've -- we were provided with a town car
17 one time when the van was unavailable.

18 Q Did we notify you prior to picking you up that
19 it would be a town car?

20 A Yes, you did.

21 Q And did you pay the same fare for the town car
22 that you would have paid for a share ride van?

23 A Yes, we did.

24 Q Did you feel your ride was safe?

25 A Oh, yes.

1 that. You know, so that taxis from Seattle can't go
2 onto the airport, so I was aware of that.

3 Does that make sense?

4 Q About when was that, that you became aware of
5 Commission regulation?

6 A It's been quite a while. A long, long time
7 ago, when I was much younger, any taxi from Seattle
8 could go onto the SeaTac airport. It became a problem
9 because a lot of times you couldn't get a taxi in
10 town. They changed the way taxis are handled at the
11 airport, and that was all handled through the process
12 you just mentioned.

13 Q And when Shuttle Express informed you about
14 the town car or sent the town car, did they at any
15 time receive written permission from you concerning
16 the change in transportation?

17 A It was verbal permission over the phone.

18 Q I understand.

19 And are you aware that if you have any issues
20 with Shuttle Express, that you can file an informal or
21 formal complaint with the Washington Utilities and
22 Transportation Commission?

23 A Yes, I was. I was aware of that.

24 MS. CAMERON-RULKOWSKI: Thank you. I
25 have no further questions for Mr. Ray.

1 MR. SHERRELL: I really don't have any
2 other questions, Your Honor, other than that.

3 JUDGE TOREM: Ms. Cameron, do you have
4 any cross-examination for this witness?

5 MS. CAMERON-RULKOWSKI: Yes, Your Honor,
6 I do.

7 JUDGE TOREM: If you can speak up to
8 make sure he can hear you.

9 MS. CAMERON-RULKOWSKI: Certainly.

10
11 CROSS-EXAMINATION

12 BY MS. CAMERON-RULKOWSKI:

13 Q Good morning, Mr. Ray. This is Jennifer
14 Cameron-Rulkowski, I am an assistant attorney general
15 and I am representing Staff in this proceeding. I
16 have a couple of questions for you.

17 When you did ride in the town car on that one
18 occasion that you just spoke about, were there other
19 passengers in the car with you?

20 A Yes, they did another pickup before they took
21 us to the airport.

22 Q And at that time, were you aware that Shuttle
23 Express is regulated by the Washington Utilities and
24 Transportation Commission?

25 A Yeah, because of the problem that led to see

1 JUDGE TOREM: Mr. Ray, this is Judge
2 Torem.

3
4 EXAMINATION

5 BY JUDGE TOREM:

6 Q Is it just one time that you have been picked
7 up not in a Shuttle Express van but in a town car?

8 A Only one time that I can remember, but, you
9 know, I'm -- you know, my memory is imperfect.

10 Q All right.

11 So tell me what happened that day, what your
12 general plans were, and how you made your reservation,
13 and how you ultimately got to the airport.

14 A When we go fly out of town, we try to make our
15 reservations up to a week in advance. We generally --
16 we generally make them over the phone, but sometimes
17 we use the website.

18 Q Okay.

19 A So I can't remember how we did it in this
20 particular case. But I think a full day before -- as
21 I remember, a full day before we were actually able to
22 leave they told us that -- I can't remember whether it
23 was a day before or earlier that same day, but you
24 know, within the 24-hour period before we left, they
25 called and said there was a problem with the van and

1 they would be sending a town car instead, if that was
2 okay with us. We said that it was and they sent a
3 town car out.

4 Q So it was just that simple, you got a call in
5 advance and they changed the --

6 A Yeah, yeah, it was not a surprise to us. You
7 know, we knew what was happening.

8 Q Okay.

9 JUDGE TOREM: That's the only --

10 MS. CAMERON-RULKOWSKI: Your Honor.

11 JUDGE TOREM: -- question I have. Let
12 me see if Mr. Sherrell and Ms. Cameron-Rulkowski have
13 additional questions.

14 Mr. Sherrell?

15
16 R E D I R E C T E X A M I N A T I O N
17 BY MR. SHERRELL:

18 Q Mr. Ray, part of the hearing is whether we
19 preplan a pickup days in advance to use a town car or
20 not. My question to you would be if you could think
21 of when we contacted you, that might be very important
22 in this case.

23 A What I remember is it was the day before, you
24 know, but my memory of this is not perfect.

25 Q Okay. All right.

1 MR. SHERRELL: I have no further
2 questions, Your Honor.

3 JUDGE TOREM: Mr. Ray, anything else you
4 want to share with me about your experiences with
5 Shuttle Express?

6 THE WITNESS: No. Other than that we
7 are a regular customer. You know, we've never been
8 disappointed. You know, they always show up on time
9 and we've always made our flight.

10 JUDGE TOREM: All right. Well, a
11 regular customer is a satisfied customer, I imagine.

12 Mr. Sherrell, anything else for this
13 gentleman?

14 MR. SHERRELL: Mr. Ray, thank you very
15 much for your time.

16 THE WITNESS: No problem.

17 JUDGE TOREM: Thank you, sir. You can
18 hang up on your end of the phone. We are expecting
19 another caller to come in on the same line.
20 Thank you, Mr. Ray.

21 THE WITNESS: Okay. I'm hanging up now.
22 Thank you very much.

23 JUDGE TOREM: So our next witness
24 scheduled is going to be Ms. Ester Miller. I have the
25 spelling as you have provided it, as E-S-T-E-R for her

1 MR. SHERRELL: Thank you, Mr. Ray.

2 JUDGE TOREM: Ms. Cameron?

3 MS. CAMERON-RULKOWSKI: Thank you.

4
5 R E C R O S S - E X A M I N A T I O N
6 BY MS. CAMERON-RULKOWSKI:

7 Q Mr. Ray, I did think of one other question.

8 Do you remember approximately when it was that
9 you were transported in the town car?

10 A Yeah, it was very early in the morning. It
11 was still dark, so I would say it was around
12 four o'clock.

13 Q I'm sorry, I meant the approximate date.

14 A Oh, no, I would have to go back through my
15 calendar. It would take a long time to figure that
16 out.

17 Q It wouldn't have to be exact. Was it this
18 past year or was it before then? Do you remember the
19 season, perhaps?

20 A I'm thinking it was a year ago, but it seems
21 to me it was -- yeah, I would say it was about a year
22 ago. Maybe later in the year, maybe in the fall. I
23 think that was the time when we went to Peru.

24 MS. CAMERON-RULKOWSKI: Well, thank you.
25 I have no further questions.

1 first name.

2 MS. CAMERON-RULKOWSKI: Didn't you say
3 that you were going to provide a different witness?

4 MR. DEVIN SHERRELL: Ester Miller will
5 not be testifying, actually.

6 JUDGE TOREM: I did not get that
7 information.

8 MR. DEVIN SHERRELL: Sorry, Your Honor.
9 Cheryl Hendrickson, S-H-E-R-Y-L [sic], Hendrickson,
10 H-E-N-D-R-I-E-K-S-O-N.

11 MR. SHERRELL: C-K.

12 MR. DEVIN SHERRELL: C-K-S-O-N.

13 JUDGE TOREM: All right. So Cheryl
14 Hendrickson is who we expect here for the 11:15 slot?

15 MR. DEVIN SHERRELL: Yes.

16 MR. SHERRELL: Yes.

17 (Pause in the proceedings.)

18 JUDGE TOREM: We have a couple minutes,
19 so we will just stay on the record, sit at recess I
20 guess until she calls in, and then we will be ready to
21 get her sworn in and introduced.

22 (Pause in the proceedings.)

23 JUDGE TOREM: Good morning. Is that
24 Ms. Hendrickson calling in?

25 THE WITNESS: Yes, it is.

1 JUDGE TOREM: Hi, this is Judge Torem.
2 We are in a hearing room in Olympia. We are on our
3 record here, about ready to take your testimony.

4 Let me explain who is in the room and then I
5 will give you an oath of witness and we will get
6 started.

7 THE WITNESS: Okay.

8 JUDGE TOREM: Ms. Hendrickson, I am Adam
9 Torem, I'm the administrative law judge for the
10 Washington Utilities and Transportation Commission.
11 My job really is to listen and see if I have any
12 questions. Mr. Jimmy Sherrell is here representing
13 Shuttle Express. After I give you the oath of
14 witness, he will ask you the first bunch of questions.
15 And an assistant attorney general, Jennifer
16 Cameron-Rulkowski, will then have the right to ask you
17 questions in cross-examination. That's our procedure
18 here this morning.

19 Do you have any questions?

20 THE WITNESS: No.

21 JUDGE TOREM: All right.

22 Well, thank you very much for calling in.
23 Wherever you are, if you will raise your right hand,
24 I'm doing so here in Olympia.

25 THE WITNESS: Okay.

1 A Well, basically, yeah, I was watching for him
2 and I guess a town car, I'm not that familiar with
3 cars, came into the driveway. I kind of figured it
4 was somebody from Shuttle, and I think he had a little
5 sign in the window. Then I went out. He explained
6 that I guess there was heavy use and that he would be
7 driving me directly to the airport in a town car. It
8 was very luxurious and a very nice trip. I got to the
9 airport just on time.

10 Q Did the town car make any other stops en route
11 to the airport?

12 A It did not.

13 Q It went directly?

14 A Yes.

15 MR. SHERRELL: I have no further
16 questions.

17 JUDGE TOREM: Ms. Cameron-Rulkowski, any
18 follow-up questions?

19

20 C R O S S - E X A M I N A T I O N

21 BY MS. CAMERON-RULKOWSKI:

22 Q Good morning, Ms. Hendrickson.

23 A Good morning.

24 Q This is Jennifer Cameron-Rulkowski, I am an
25 assistant attorney general representing Staff in this

1
2 CHERYL HENDRICKSON, witness herein, having been
3 first duly sworn on oath,
4 was examined and testified
5 as follows:
6

7 JUDGE TOREM: Can you spell and state
8 your first and last name for the court reporter?

9 THE WITNESS: Yes, it is C-H-E-R-Y-L,
10 last name Hendrickson, H-E-N-D-R-I-C-K-S-O-N.

11 JUDGE TOREM: Thank you.

12 Mr. Sherrell, go ahead.

13

14 D I R E C T E X A M I N A T I O N

15 BY MR. SHERRELL:

16 Q Hi, Ms. Hendrickson. This is Jim Sherrell
17 with Shuttle Express. Thank you for calling in today
18 on this.

19 We are talking about using Shuttle Express.

20 Have you used Shuttle Express in the past?

21 A Yes.

22 Q And have you been served with other than a van
23 during that time?

24 A Once, yes.

25 Q And can you describe how that happened or...

1 proceeding. I just have a couple questions for you.

2 Do you remember approximately when it was that
3 you traveled by town car?

4 A Fall of 1911 -- my goodness. Yeah, it was in
5 the fall, I think it was September 2011.

6 Q Thank you.

7 And did Shuttle Express ever obtain your
8 written permission to travel in the town car, as
9 opposed to the regular vehicle?

10 A Well, except that I had a -- you know, I got
11 an online voucher and I signed that. I guess that's
12 sort of written permission, but not ahead of time or
13 specifically for the town car.

14 Q And the online voucher that you signed, did
15 that have any indication of vehicle?

16 A I believe it says, you know, that it may be
17 one of the above kind of things. I guess a multiuse
18 form or something.

19 Q I see.

20 And are you aware that Shuttle Express is
21 regulated by the Washington Utilities and
22 Transportation Commission?

23 A Yes.

24 Q And at the -- at the time of your travel with
25 the town car, were you aware of that?

1 A Yes.

2 Q Do you know that you can file an informal or a
3 formal complaint with the Washington Utilities and
4 Transportation Commission if you have any questions
5 with Shuttle Express?

6 A Yes.

7 MS. CAMERON-RULKOWSKI: Thank you,
8 Ms. Hendrickson. I have no further questions.

9 THE WITNESS: Okay.

10 JUDGE TOREM: Ms. Hendrickson, this is
11 Judge Torem. I just want to delve into one of your
12 answers to Mr. Sherrell.

13
14 EXAMINATION

15 BY JUDGE TOREM:

16 Q You said on this particular day you were
17 expecting a van. Was the first notice you got that it
18 would be a town car when that town car pulled up in
19 your driveway?

20 A You know, I think so, but it's possible that
21 he called. They sometimes call. I've ridden in
22 Shuttle many times. It's possible that he called
23 saying that -- the shuttle driver himself, saying that
24 it was going to be a town car instead of a van or
25 something.

1 Q Okay.

2 A That may have happened. I can't really
3 remember. They have often called if there is any
4 delay or trouble finding the house or, you know, any
5 kind of thing like that. I have often received a
6 phone call, as well as the van just showing up.

7 Q How often do you use Shuttle Express?

8 A Probably twice a year.

9 Q Okay.

10 JUDGE TOREM: Let me see if Mr. Sherrell
11 has any follow-up questions and if not we will be
12 done.

13 Mr. Sherrell?

14 MR. SHERRELL: I do not, Your Honor.

15 JUDGE TOREM: Ms. Cameron-Rulkowski, any
16 follow-up?

17 MS. CAMERON-RULKOWSKI: None, Your
18 Honor.

19 JUDGE TOREM: Well, Ms. Hendrickson,
20 thanks very much for making time to call in and
21 provide testimony. I do appreciate it.

22 Anything else you want to tell me about your
23 experience with Shuttle Express?

24 THE WITNESS: No. I've used them, like
25 I said, probably over the -- you know, I've probably

1 used them 30 times and I appreciate the service.

2 JUDGE TOREM: Okay. Well, thanks,
3 Ms. Hendrickson.

4 THE WITNESS: Okay.

5 JUDGE TOREM: You can hang up on your
6 end. We are going to get our next witness as soon as
7 we can.

8 THE WITNESS: Okay. Thank you.

9 JUDGE TOREM: Thanks, ma'am.

10 THE WITNESS: Bye-bye.

11 MR. DEVIN SHERRELL: Your Honor, I was
12 unable to contact Ms. Diane Coons [phonetic]. I can
13 try one more time.

14 JUDGE TOREM: She is scheduled at 11:30.

15 Let's go ahead, we will just be at recess until either
16 you reach her or she calls in.

17 MS. CAMERON-RULKOWSKI: Are we off the
18 record?

19 JUDGE TOREM: We will be off the record.

20 (A brief recess.)

21 JUDGE TOREM: Let's break for lunch.

22 (Lunch recess.)

23 JUDGE TOREM: Let's go back on the
24 record. It's about 3 minutes after 1:00. Over the
25 break there were no phone calls, at least that I heard

1 come in on the bridge line that were Ms. Coombs. And
2 also -- unless Ms. Coombs is calling in right now,
3 that's not -- we haven't heard from her; is that
4 right, Mr. Sherrell?

5 MR. SHERRELL: That's correct.

6 JUDGE TOREM: So I think what we are
7 proposing to do is go ahead and resume Mr. Hagen's
8 testimony at this time.

9 The only other note to put on the record, as
10 we had a quick discussion about the Staff Exhibit
11 BY-1, Appendix D. We have confirmed that is the same
12 as Shuttle Express's Exhibit 6. We will just go ahead
13 and accept that there's some duplication and overlap
14 in the record. That's not the first case that's
15 happened, where both parties bring the same exhibit.
16 We will just leave it alone and know if we refer to
17 one, it's the same as the other.

18 Mr. Hagen, welcome back. Your oath from this
19 morning still carries, so I won't readminister that.

20 THE WITNESS: I understand.

21 JUDGE TOREM: Mr. Sherrell, if you want
22 to pick up. My notes say you left off with Mr. Hagen
23 at about 10:45, dealing with the question of
24 sufficient reserve equipment. That was the last set
25 of questions we had covered.

1 MR. SHERRELL: I think I passed. I
2 think I was done, wasn't I? I wasn't done?

3 JUDGE TOREM: I think we got through
4 sufficient reserve equipment. According to your
5 witness list, he was going to handle not only the
6 first and the second cause of action, but also the
7 customer information piece on the third cause of
8 action. I'm not sure how else you were structuring
9 your questions.

10 Go ahead and take a look at your notes. If
11 there are additional questions for Mr. Hagen, you can
12 ask them now. If not, we will defer to
13 cross-examination for Staff, and see if there's
14 further redirect when you come back.

15 Go ahead and take a moment.

16 MR. SHERRELL: Just for clarification, I
17 kind of separated this into the different alleged
18 violations, so should I just go ahead and do John
19 Hagen all the way through and then --

20 JUDGE TOREM: Yes, please.

21 MR. SHERRELL: Okay, all right.

22
23 DIRECT EXAMINATION (Cont'd)

24 BY MR. SHERRELL:

25 Q Mr. Hagen, do you have information of when

1 A We've tried that before and it doesn't help us
2 out.

3 Q In your routing, is multiple stops important?

4 A Yes, it is. We -- we try to -- with our
5 routing we build up, try to build our load factors.
6 We want to have more than -- one stop nobody is making
7 money doing that. Two, probably not. Three is where
8 we start to get profitable.

9 Q So is this how you set our prices?

10 A Yeah, pricing is absolutely set on multiple
11 stops.

12 Q Do you put routes together for a day's
13 operation? Just a second. We already talked about
14 that.

15 How do you plan for how many vans or drivers
16 you will need in a day, specifically by time and day?

17 A Okay. So we -- we -- people will make
18 reservations in advance. We will let them make them
19 as long as -- you know, whatever. They can make a
20 reservation a year in advance. I monitor all of
21 those. I also -- I do -- I forecast. You know,
22 people will make reservations up to the last minute,
23 pretty much, of their flight.

24 So I do -- I still need to forecast. That's
25 based off of last year's numbers, it can be based off

1 Mr. Ray booked his trip and used -- and was rescued by
2 Shuttle Express for that September 2011...

3 A I'm sorry, ask that again, I didn't hear you.

4 Q Do you know when Mr. Ray used -- used our
5 rescue system for Mr. Ray?

6 A Do I know when he did?

7 Q The date?

8 A No, I don't.

9 Q Okay.

10 I would like to talk about Shuttle Express to
11 the airport, and we're talking about door-to-door vans
12 only. We are going to talk about from the airport
13 separately.

14 Do you route for -- to the airport only?

15 A Do we route to the airport only?

16 Q Yes.

17 A I'm sorry, Jim, I don't understand that.

18 Q When you route for the day, do you route just
19 to the airport or do you route to the airport and from
20 the airport?

21 A Oh, I see, what your question is. Okay.

22 So our routing consists of routing to the
23 airport only. From the airport is not -- it's not
24 combined at the same time.

25 Q Okay.

1 what the current trend is right now, how we're doing
2 for the year, those things. I do it by per hour and I
3 monitor the number of drivers that I already have
4 scheduled. I subtract based on what we have. Every
5 hour is different.

6 Q Do you plan for company vans only when you do
7 this?

8 A Share -- we're talking about door-to-door
9 reservations?

10 Q Share ride, yes.

11 A Share ride goes to vans, to our employee vans.
12 It's planned that way, period.

13 Q Do you ever grant -- route or plan to use ICs
14 doing that work?

15 A No.

16 Q What can cause a van not to be able to make a
17 route as planned?

18 A Okay. The big one around here it's traffic,
19 there's weather, there are guests not being ready to
20 go, there's mechanical issues.

21 (Pause in the proceedings.)

22 A I'm sorry, I'm drawing a blank. There's a
23 myriad of things that get -- that can -- that's a
24 little bit out of our control.

25 Q If we get 300 walk-ups, unexpected walk-ups in

1 an hour, can that affect how we serve the inbound to
2 the airport?

3 A It can. And it's actually happened before,
4 where we had very much -- very -- a lot more than
5 expected number of people, a lot more. It will impact
6 the inbound. The routes become -- we need to get
7 people out of the airport, so the routes become fuller
8 out of the airport. It takes longer to drop people
9 off than anticipated and it starts to put pressure on
10 the inbound routes coming back in.

11 That whole roundtrip of picking people up,
12 dropping them off, then picking up that group, going
13 back to the airport, the airport will also affect
14 that.

15 Q That affects the door-to-door service. Does
16 that affect our scheduled service in the same way that
17 it affects door-to-door?

18 A Not really, because scheduled service is just
19 what it is, it's -- it's routes on a schedule. People
20 can get on the next schedule, where on door-to-door,
21 there's no guarantee that there's another vehicle out
22 there to come back. So if you are coming out of
23 whatever area, there's no guarantee that there is
24 another vehicle, another route right behind it to pick
25 up if something goes wrong. Scheduled service there

1 is.

2 Q So when we experience this problem of
3 coverage, what's your first procedure for rescuing?
4 Who do you go to first?

5 A We always look for a van.

6 Q One of our --

7 A One of our vans, typically. We always do.
8 Who is in the area?

9 Q And what is your second procedure?

10 A Second is to use an independent contractor.

11 Q And what would be our third procedure?

12 A Ask the guest to drive themselves and we pay
13 for their parking.

14 Q You pay for their parking. And what can
15 that --

16 A We pay for their parking.

17 Q And what can that run if we --

18 A Oh, gosh, it depends on how long they are
19 gone. It can be quite expensive. I don't know, 500
20 bucks, 600 bucks. I can't remember how much per day
21 it is right off the top, but it's a lot per day.

22 Q You heard testimony by Mr. Ray and he said he
23 wasn't quite sure whether we called him. Is it
24 standard procedure to always call every guest before
25 we pick them up with an alternate rescue service?

1 A Yes.

2 Q Does Shuttle Express ever upcharge for using
3 rescue service?

4 A No.

5 Q Has Shuttle Express ever been turned down by a
6 passenger for a rescue service?

7 A No.

8 Q You are aware of Shuttle Express financials
9 and cost per trip?

10 A Uh-huh, yes. Yes. I'm sorry.

11 Q What is the most efficient rescue?

12 A What is the most efficient?

13 Q Financial rescue for Shuttle Express?

14 A Well, it's -- I think what you are asking is
15 what's the best cost for us. Of course, it's in a
16 van. It's going to cost more to send an independent
17 contractor.

18 JUDGE TOREM: You have to keep your
19 voice up so she can take it down.

20 THE WITNESS: I'm sorry.

21 A So it's more cost effective to send a van for
22 a rescue than an independent contractor.

23 Q Looking at the financials, when Shuttle
24 Express uses a rescue service, does Shuttle Express
25 make money on that?

1 A On the particular trip?

2 Q By using a rescue service over a van?

3 A Does Shuttle Express make money on -- no, I
4 wouldn't believe so.

5 Q So there's no financial advantage for Shuttle
6 Express to use an independent contractor over a van?

7 A No, there's none. There isn't an advantage.
8 Using an independent contractor for rescue service
9 does not help Shuttle Express's financials.

10 Q Do you feel it might be a cost to Shuttle
11 Express because they are losing a rider off of an
12 existing van that would be moving?

13 A There's no -- yeah, there's -- we have to pay
14 for the driver that's already in the field. We don't
15 want to take the -- we don't want that to happen.

16 Q In your experience, has Shuttle Express ever
17 used taxis for rescue service?

18 A Yes, we have.

19 Q And what time period would that be?

20 A It was a while back. It was before I left in
21 2007. You know, I can't tell you what year it was,
22 but it was -- it was a while back. We used Far West
23 Taxi.

24 Q Did we use taxis when we first had Shuttle
25 Express, in its inception?

1 A At the very beginning?
 2 Q Yes.
 3 A I'm sorry, Jim, I don't remember.
 4 Q That's okay.
 5 A I don't.
 6 Q Do we use taxis today?
 7 A No, we do not.
 8 Q Why?
 9 A Because we don't know what we are going to
 10 get. Taxi drivers are not drug tested. And with our
 11 experience, too, they are not reliable.
 12 Q Do we have a flight guarantee for people?
 13 A Yes, we do.
 14 Q And how does that work?
 15 A If someone traveling on our service, share
 16 ride service to the airport, when they go at our
 17 requested time or earlier. If they chose to go later,
 18 that's not a guarantee. If we make a mistake and they
 19 miss their flight, we get them on a flight. We get
 20 them on the next flight. We pay all the expenses it
 21 takes to do that.
 22 Q That's expensive to the company. Why would
 23 the company do that?
 24 A Well, we do it because we are going to take
 25 care of the people. It is expensive, but...

1 A We stage because we can't -- we can't
 2 necessarily afford to just go to an area with one
 3 person. It's share ride, it's share the ride, and we
 4 need to build up the trips.
 5 Q On occasion, do we experience long waits at
 6 the airport for people to get on our vans?
 7 A Yes.
 8 Q And what causes that?
 9 A There's a number -- I mean the things that I
 10 just talked about with traffic and those things are a
 11 definite cause of that. Airlines are also a cause of
 12 that, flight delays. You know, we try to plan out the
 13 best that we can with the flights coming in. You
 14 start getting flight delays on top of the regular
 15 arrivals, then that can be double the amount of people
 16 that you are expecting in that hour, or half an hour,
 17 or pick a time period.
 18 Q You stated earlier that we've experienced
 19 unexpected walk-ups in large numbers. When you
 20 experience that and route out of the airport, does
 21 that also have an effect on the inbound pickup times?
 22 A We can end up -- yes. We can end up pushing
 23 that, the inbound pickup times because we are so full
 24 with dropping people off.
 25 Q Do you experience any problems with mass

1 Q Do you feel rescue service is an important
 2 service in the interest of the public?
 3 A I think a rescue service is absolutely needed
 4 in our business.
 5 Q Could you just add more vans and drivers to
 6 the current day, add more equipment and solve this
 7 problem so you wouldn't have to use rescue service?
 8 A No, and this is why. Adding -- it kind of
 9 goes back to the original thing about having enough
 10 equipment, the reason why we have enough equipment.
 11 Adding -- just adding drivers to the fleet does not
 12 solve this problem. The problem that exists is we
 13 don't know where the rescue is going to happen. So
 14 with the service area that we cover, in order for me
 15 to guarantee -- to have a van in the area would be to
 16 have a backup van in every area that we serve all the
 17 time. A mechanical can happen at any given time,
 18 traffic can happen at any given time, so a rescue
 19 service is needed.
 20 Q I would like to talk next about out of the
 21 airport. What is an acceptable time for getting
 22 people out of the airport?
 23 A Well, we will -- we will stage our routes or
 24 people going to areas up to 45 minutes.
 25 Q And why do you stage?

1 walk-ups on scheduled service out of the airport?
 2 A It's not such a problem because scheduled
 3 service you can have a bigger vehicle. Scheduled
 4 service we can provide a bus. I mean it can happen,
 5 but for the most part, we can run buses versus the
 6 ten-passenger van, share ride.
 7 Q Do you ever use independent contractors to
 8 support your scheduled service?
 9 A It can happen. The same thing can happen with
 10 a vehicle breaking down on a scheduled service. But
 11 for the most part, we have another vehicle behind it
 12 to help out with scheduling. It's not nearly as
 13 critical but it can happen.
 14 Q Do you build in extra drivers for extra
 15 passengers on a day you expect large walk-ups?
 16 A I forecast and I always staff to the forecast.
 17 If we are expecting extra walk-ups, I am going to add
 18 drivers to that.
 19 Q And if we have excessive wait times, do people
 20 then sometimes migrate to a taxi or limo rather than
 21 using us?
 22 A Yeah, we will lose guests to the taxis and the
 23 limousines at the airport if our wait times get too
 24 high.
 25 Q Are you aware of the taxi and limo rates at

1 the airport? Are they higher than us?

2 A Yeah, they are. They are higher than -- they
3 are higher than us.

4 Q In your experience, is price a major reason
5 people use us?

6 A Yes, price is a big reason why they share the
7 ride.

8 Q So if people are planning to use our service
9 and they move to a taxi or a limo, then they end up
10 paying more money than what they expected?

11 A Yes.

12 Q Do you use rescue service out of the airport?

13 A If their wait times exceed the 45 minutes,
14 then we have to start looking at getting -- how are we
15 going to get people out of the airport.

16 Q Do you have a charge to people for using
17 rescue service out of the airport?

18 A No, we never charge -- we never charge people
19 more than -- than their share ride fare.

20 Q So would it be safe to say that by using
21 rescue service, we save people money out of their
22 fares?

23 A Yes.

24 Q Do we ask people when they leave the airport
25 if they want to use our service or upgrade?

1 A Yeah, I mean you have two people going in the
2 same direction and they both need to be rescued, it
3 makes more sense to put them in the same vehicle, yes.

4 Q Have you -- has Shuttle Express operated not
5 using multistops in the last 60 days?

6 A Shuttle Express -- for the ICs?

7 Q For the ICs, I'm sorry.

8 A Has Shuttle Express in the last 60 days -- I'm
9 sorry, used or not used?

10 Q Not used multistops for rescue service?

11 A In the last 60 days, we have used an IC for a
12 multistop.

13 Q I don't know if you understand my question.

14 A Have I -- I didn't.

15 Q Okay.

16 For the last 60 days, was there a company memo
17 that said do not use multistops for rescue service?

18 A I don't know, I'm sorry.

19 Q Okay.

20 A I -- I don't know.

21 Q Do taxis at the airport ever use multistops
22 out of the airport?

23 JUDGE TOREM: Mr. Sherrell, I'm not sure
24 that taxis are at all relevant.

25 MR. SHERRELL: Okay.

1 A Do we -- do we upgrade our -- I'm sorry, Jim.

2 Q Are people asked if they want to use our
3 upgraded service out of the airport if we offer rescue
4 service?

5 A We do -- do we upsell our -- I'm sorry, I
6 don't understand.

7 Q Do we ask people if they want to use our
8 upgraded service for the same price out of the airport
9 when we want to use a rescue?

10 A Oh, yes. I'm sorry. No different than
11 calling them prior to using it. If we are going to
12 use an IC out of the airport to help with the share
13 ride, we are going to talk to them first.

14 Q So is using multiple stops on occasion out of
15 the airport a necessity?

16 A Yes, it is.

17 Q Why?

18 A It's the same thing. I think I already said
19 that.

20 Q Let me ask you a question. If we have two
21 people that are going in a similar direction and a
22 similar location and they are both standing at the
23 airport, would it make sense to use one vehicle for
24 using a rescue for two stops or should you use two
25 rescue vehicles?

1 JUDGE TOREM: I really want to focus on
2 your operations and how you use independent
3 contractors.

4 MR. SHERRELL: Okay.

5 JUDGE TOREM: So just skip over anything
6 that has to do with taxis and what they offer.

7 Q Do you know how long Shuttle Express has used
8 a rescue service, including current town cars or taxis
9 or whoever?

10 A I couldn't remember when we first started, way
11 back when, if we used them or not. We've used them
12 for a long time.

13 Q Twenty years?

14 A Let's see, we've been in business for 25. I
15 would -- I would say that's a safe year. I mean it's
16 been 15 to 20 years.

17 Q Does Shuttle Express ever give credits or free
18 travel to its passengers when there is a problem?

19 A Yes. At times we will discount their fare if
20 we've had a service issue.

21 Q Are you aware of the ICCU regulations -- UTC
22 regulations?

23 A Yeah. Our -- yes, our -- our -- in -- I can't
24 recite the number, I'm sorry, but in there it does say
25 that we are allowed to reduce the fare if there are

1 service issues.

2 Q Have you read WAC 480-30-466, which allows
3 credits and refunds as compensations to its customers?

4 A That's what I'm talking about.

5 Q That's what you're talking about, okay.

6 MR. SHERRELL: Your Honor, I think I'm
7 finished.

8 JUDGE TOREM: Are you prepared for
9 cross-examination?

10 MS. CAMERON-RULKOWSKI: Thank you, Your
11 Honor. Actually, give me just a moment.

12 (Pause in the proceedings.)
13

14 C R O S S - E X A M I N A T I O N

15 BY MS. CAMERON-RULKOWSKI:

16 Q Good afternoon, Mr. Hagen.

17 A Good afternoon.

18 Q You had just testified about the need for
19 rescue service and also you testified that multistop
20 rescues had occurred this summer, if I understood your
21 testimony correctly. I have a couple of questions
22 about that.

23 Do you know how many multistop rescues have
24 occurred during the summer season so far?

25 A This particular summer?

1 Q Sure.

2 A -- would be an easy way to explain it.

3 So I have so many reservations. I have a
4 ratio to match up the number of people that -- we have
5 an average number of people that we take. I have a
6 ratio which tells me how many drivers I need. Then I
7 have to figure in, okay, we are going to have some
8 sickness, some drivers are going to be sick, so I
9 figure that in. And then in my calculations, I add a
10 couple more.

11 So that -- that's how I would -- how I would
12 figure in extra drivers for problems that are going to
13 occur. The problem I have is I don't know where the
14 problem is going to occur, so with that extra driver
15 that I have out there, where do I put him to help
16 solve that. That's the dilemma.

17 Q So -- so let's talk about tomorrow. You have
18 reservations presumably already for tomorrow. So what
19 would your forecasted need for rescues be for
20 tomorrow?

21 A Well, tomorrow -- you know, just so everybody
22 knows, we look at it by hour, all the way through, and
23 every hour is going to be different, different type of
24 kind of the share ride service, so to speak. I
25 would -- tomorrow morning we are running about 37

1 Q Yes.

2 A I would say the very first multistop rescue
3 this summer was last week. So to give you a real
4 number after that -- it's very few, but the very first
5 multistop was last week.

6 Q So it has decreased markedly since the review
7 period of Staff's investigation?

8 A Yeah, I don't know what period that is. I
9 know when I came back to Shuttle in May of last year.

10 Q And the review period that I was referring to
11 is from October 2010 to September 2011.

12 A Okay. In that period I was not there, at
13 Shuttle.

14 Q So help me understand this. You testified
15 that there was an ever-present risk of rescue being
16 needed; is that right?

17 A Yeah, that's I think okay to say.

18 Q And you also testified that you forecast the
19 driver and equipment needs on a regular basis; is that
20 right?

21 A Yes.

22 Q So what would your forecast for rescues be for
23 this week, say, if you do it on a weekly basis or a
24 daily basis?

25 A A daily basis --

1 drivers on the road in the bulk period in the morning,
2 and the forecasted need shows for 34. I'm adding two
3 for sickness and an extra driver, too, for whatever,
4 is what I'm doing.

5 Q And so your forecasted driver need is the
6 amount of drivers you need, plus three extra?

7 A Yeah, that -- sure. I mean, you know, if --
8 if I drop down lower in the winter, maybe it's not so
9 much, but the thing is, I can't -- if I put more on,
10 they are just going to sit around. We've tried doing
11 that.

12 Q So where do the independent contractors fit
13 into your forecast for -- for extra drivers?

14 A I don't forecast them at all.

15 Q So do I understand, then, that you have the
16 number of drivers you need, plus three extra, working
17 that day; is that correct?

18 A Yes.

19 Q So what you are telling me is that there is a
20 constant ever-present risk that your forecast is wrong
21 and that you are going to need additional drivers and
22 vehicles; is that right?

23 A I question the word "constant." You know, I
24 can't answer that question by saying -- I mean you
25 have -- I have to answer that question yes. The

1 reason I have to answer the question yes is because I
2 can't predict where the vehicle is going to have a
3 flat tire or a vehicle is going to break down. So
4 is -- am I -- I cannot accurately forecast 100 percent
5 because of that reason. I can get close.

6 Q So given the few rescues that have occurred
7 this summer, and given that that appears to be a
8 pattern based on what the Company has told Staff about
9 the reduced number of rescues, is there really a need
10 for this independent contractor program?

11 A Yes, because what's happening right now is our
12 service isn't as good.

13 Q I'm sorry, can you repeat that?

14 A Our service is not as good right now because
15 we don't have the multi -- I mean up until last week,
16 when we did some more, the service isn't as good. I
17 mean we are -- we don't have the ability to send out
18 an independent contractor to go pick up two stops, so
19 that person, we are either scrambling too much, or we
20 are pushing their flight time to get them to the
21 airport, or they are paying for parking.

22 So the balance is, we still need -- we need
23 some sort of rescue service. The balance is we are
24 pushing service. It's not -- it's not that the
25 problem has went away at all, it has existed the whole

1 THE WITNESS: Okay.

2 JUDGE TOREM: Given your confusion, I
3 want Ms. Cameron-Rulkowski to define what she means by
4 a multistop rescue.

5 MS. CAMERON-RULKOWSKI: Certainly, Your
6 Honor.

7 Q That's a pickup or a drop-off that involves
8 more than one stop.

9 A So the trip itself is -- so a trip is a
10 culmination of reservations, so it has more than
11 one reservation in it.

12 JUDGE TOREM: A rescue, though, would
13 involve more than one drop-off at a household, it
14 would be --

15 Q A rescue would be a pickup at two or more
16 addresses or a drop-off at two or more addresses.

17 A With using an independent contractor?

18 Q From the questions that I've asked, I've been
19 talking about independent contractors. Has that been
20 your understanding?

21 A Yes.

22 Q Okay.

23 MS. CAMERON-RULKOWSKI: I don't have any
24 further questions at this time. Thank you.
25

1 time. We have just said, Okay, well, we are going
2 to -- we are not going to do multistop rescue service,
3 but our service is going to suffer because of it.
4 That's what's happening right now.

5 Q Except that you still are doing multistop
6 rescue service?

7 A Very little, though, yeah. I personally do
8 not think we did any rescue, multistop rescue service,
9 I don't have the 100 percent numbers to back me up,
10 but since I've been back here, in May of 2001.

11 Q Except for the one --

12 A Except for this --

13 Q -- instance of --

14 A -- this last week.

15 JUDGE TOREM: Let me interrupt and make
16 sure we are talking about the same thing.

17 THE WITNESS: Okay.

18 JUDGE TOREM: The question is posed as
19 to multistop rescue service. Are you thinking of an
20 independent contractor picking up more than two stops
21 to or from the airport, or just rescuing somebody from
22 a multistop route?

23 THE WITNESS: Oh, I'm --

24 JUDGE TOREM: I'm not sure that we are
25 asking the same question here.

1 EXAMINATION

2 BY JUDGE TOREM:

3 Q Mr. Hagen, you were here earlier for
4 Ms. Young's testimony.

5 A Yes.

6 Q And I asked her about her interpretation of
7 this WAC rule 480-30-213(2).

8 A Okay.

9 Q I will hand this across to you. This is the
10 one that says that the driver of a vehicle operated by
11 a passenger transportation company such as Shuttle
12 Express has to be the certificate holder or an
13 employee of the certificate holder.

14 It's the top part of the page there.

15 A Okay.

16 Q And I think you heard me ask Ms. Young about
17 how she distinguishes between an employee and an
18 independent contractor. If I understood her
19 testimony, any use of an independent contractor would
20 violate this rule. Did you hear that testimony
21 earlier today?

22 A Yes, I did.

23 Q So from your testimony, are you telling me
24 that the only way for Shuttle Express to comply with
25 this rule strictly would be to have service quality

1 suffer?

2 A Yeah, or change the rule.

3 Q I understand. We are here not to change the
4 rules in this proceeding. I have to go with the rules
5 as they are written.

6 A I understand.

7 Q When you read this rule, do you interpret it
8 any differently than Ms. Young just said? Do you see
9 any allowance within the rule, in your interpretation,
10 for use of an independent contractor?

11 A Can I read it one more time?

12 (Pause in the proceedings.)

13 A I can't remember exactly what Ms. Young said,
14 as far as it, but I -- it's pretty straightforward.
15 The employee or certificate holder must...

16 Q So my understanding from your description of
17 all of the operational management of scheduling and
18 forecasting, is you do your best to avoid any reliance
19 for rescues on an independent contractor; is that
20 correct?

21 A That is correct.

22 Q But on occasion, in order to either uphold
23 your customer's flight guarantee or for service
24 quality, you have to turn to them to keep things
25 rolling?

1 A I don't have the experience.

2 JUDGE TOREM: Okay. Those are the
3 questions I had.

4 Mr. Sherrell, do you have any follow-up for
5 Mr. Hagen?

6 MR. SHERRELL: Yes, I do.

7
8 R E D I R E C T E X A M I N A T I O N
9 BY MR. SHERRELL:

10 Q If it states in the rule that we can use
11 another auto transportation company to provide service
12 that we cannot provide, is there any operator that you
13 know out there that could provide that service for us,
14 licensed operator?

15 A A WUTC license?

16 Q Correct.

17 A No.

18 Q When we have a huge demand at the airport, do
19 you use overtime to help staff that, to take care of
20 the rush, the demand?

21 A I'll use employee overtime before I use
22 independent contractors, yes. So the answer is yes.

23 Q Did you state that when multistops were
24 discontinued using ICs that our service deteriorated?

25 A Yes. When we stopped using independent

1 A That is correct.

2 Q And so what would happen if you just didn't
3 use independent contractors at all?

4 A Our service quality would drop.

5 Q And is there any way for you to build the
6 independent contractors you have described in your
7 current operations out of the program? Could you
8 change price? You said you couldn't have drivers
9 sitting around, that's undesirable. Is there any
10 other options you could think about for how to
11 eliminate independent contractors if the rule were to
12 stay the same?

13 A To be honest, no. I think we would have
14 already did it.

15 Q Now, it's my understanding there's another
16 rule that's not cited in the complaint or otherwise,
17 but it's within the same chapter, it's 480-31-66, that
18 allows for subcontracting to other certificate
19 holders. Have you ever explored essentially leasing
20 parts of our Shuttle Express certificate while you
21 were at the company?

22 A You know, I -- I -- I don't think I'm in the
23 position to answer that question.

24 Q That's okay. I just wondered if you had any
25 experience.

1 contractors to help with rescues, yes.

2 Q So our service is worse?

3 A Our service is worse.

4 Q In an unrealistic world -- I better rephrase
5 that. In a perfect world, if you were to add just all
6 the advantage you could, how many would it take to put
7 out there so you wouldn't have to use rescue service?

8 A You know, that's a difficult question to
9 answer. You know, in order to truly eliminate rescue
10 service altogether, you have to have an extra van
11 positioned to be out in every area, so 20. I mean
12 it's unrealistic.

13 Q Are we currently doing multistops with rescue
14 service?

15 A We had done a couple last week.

16 Q Did I mandate that we start using it again?

17 A Yes.

18 MR. SHERRELL: I don't have anything
19 else, Your Honor.

20
21 F U R T H E R E X A M I N A T I O N
22 BY JUDGE TOREM:

23 Q Just before lunch, we were talking about
24 having sufficient equipment. Under the rules it says
25 you are supposed to have sufficient reserve equipment

1 to ensure the reasonable operation of your established
2 routes and fixed time schedules.

3 You may need to refer to one of the exhibits,
4 I think it was Exhibit 2 or 3, and I'll let
5 Mr. Sherrell find that for you.

6 A The number of vehicles?

7 Q The number of vehicles.

8 A I know that.

9 Q Can you give me an idea as to how many vans
10 Shuttle Express has and what percentage of them are in
11 use on any given day, and also account in your answer
12 for the seasonability you described before lunch?

13 A So I know we have 80 vans, 80 share ride vans,
14 and we have 15 buses, so buses will sometimes be used.
15 A lot of times busses are used on scheduled service.
16 We can have -- I think our -- I think we talked about
17 it yesterday. Our down ratio for vehicles should be
18 between 10 to 15 percent. So let's say that's 12, so
19 we are down to 68 operating vehicles.

20 As I said earlier, for tomorrow morning -- and
21 this is August, which is prime time. Tomorrow morning
22 we are going to run 37 vans on the early morning, and
23 I will schedule up to 50 drivers -- not tomorrow, but
24 Friday will be up to 50 drivers. I am not scheduling
25 over 50 drivers on the road at one time right now. We

1 shift change. That's kind of our crunch time, if we
2 ever have one, with vehicles. So during that time I
3 still preschedule. I'm not going over 40 drivers for
4 68 vehicles, but I at least only end up using 50 of
5 them.

6 Q So do the vans come back to a Shuttle
7 Express-owned parking lot or do they go home with the
8 drivers?

9 A They -- all but three come back to Shuttle
10 Express in Renton.

11 Q So at shift change there's some vans going
12 into the lot and some coming out of the lot. Is that
13 how it works?

14 A Yes.

15 Q What's the most number of vans you've ever had
16 out on the road, including a shift change one time?

17 A Well, we used to have more vans than we do
18 now. I remember scheduling up to 70-some vehicles at
19 one time.

20 Q Rough percentage of your fleet on the road at
21 one time?

22 A I guess are you asking me what was now
23 and then what -- I mean we had them all on the road at
24 one time, with the exception of some being down. I
25 can't tell you an exact number at this point. We did

1 have plenty equipment.

2 Q How many drivers do you have on your schedule?
3 It's another one of the exhibits.

4 A Yeah, I might need to see that. I don't know
5 if it's listed by drivers. I need to look.

6 MR. SHERRELL: That's one of yours?

7 MS. CAMERON-RULKOWSKI: It's yours.

8 MR. SHERRELL: Okay.

9 A While he's looking at that, it's a little over
10 140.

11 (Pause in the proceedings.)

12 A 184 total drivers.

13 Q That's full and part time?

14 A Yeah, that would be full. So 140 full time.

15 Q And so when you say that tomorrow you are
16 going to have 68 vehicles available and you will have
17 about 35 of the vans scheduled with a driver, what are
18 the other vans doing?

19 A What will also happen is, as the day goes on,
20 we have a shift exchange. We do require a few more
21 vehicles to help because we will have some people
22 coming on and some people coming off. With the way
23 that the business works, flight delays and things, I
24 may hold drivers over to do an extra run to help out.
25 I have to have a few more vehicles available during

1 have -- you know, four or five years ago we were
2 busier than we are now.

3 Q To look at the second cause of action, this
4 question of sufficient reserve of equipment, is the
5 independent contractor issue that we have described in
6 maintaining level of service Shuttle Express wants,
7 that deals with that first cause of action, is hiring
8 the independent contractor a substitute for having
9 more vans or are they related?

10 A Well, it's not a substitute for having more
11 drivers or vans. Sometimes we get confused on what we
12 are talking about here. The driver has to go with a
13 van or it can't run.

14 Q You'd have to be an awfully strong driver to
15 take those passengers.

16 A It's not a substitute, it's a requirement. We
17 have to have a -- and whether it's an IC or a backup
18 service, whatever we want to call it, we have to have
19 a backup service. In this case we are using our ICs
20 because we know them well, because we just don't know
21 where things are going to happen.

22 I stress that a lot, but I've been doing this
23 a long time. You don't know where things are going to
24 happen. I can add five, ten more drivers on the road.
25 Sure, I can do that, we have the equipment for it, but

1 it still does not fix the problem of having the driver
2 in the right place to help with the rescue. And even
3 at -- even using the independent contractors, they are
4 not always in the right place to help out. They
5 are -- they are busy with their own set of work or
6 they are across town and we need help in Issaquah or
7 something. It's a complicated deal.

8 JUDGE TOREM: Okay. I think that
9 answers the questions I had.

10 Mr. Sherrell, did that raise any additional
11 questions for you?

12 MR. SHERRELL: Yes, it did. Just a
13 couple.

14
15 FURTHER REDIRECT EXAMINATION
16 BY MR. SHERRELL:

17 Q Do you take part in deciding how much
18 equipment we need?

19 A Yes.

20 Q Has management ever said they would not buy
21 the equipment you want?

22 A No.

23 MR. SHERRELL: That's it.

24 JUDGE TOREM: Recross?

25 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

1 the Commission?

2 A Not to my knowledge, I'm sorry.

3 Q And to your knowledge, has Shuttle Express
4 ever asked the Commission for a declaratory ruling on
5 the legality of their independent contractor
6 operation?

7 A I don't know what that is, so no.

8 Q I will rephrase the question.

9 A Okay.

10 Q Has Shuttle Express ever formally asked the
11 Commission to rule, to issue a decision on whether the
12 independent contractor operation was compliant with
13 the statutes and rules that the Commission regulates?

14 A Okay. Well, you -- the Commission does not
15 regulate independent contractors, so --

16 Q Let me back up.

17 A Okay.

18 Q I'm simply asking, has Shuttle Express ever
19 come to the Commission and asked for a decision about
20 whether it can legally do what it is doing under its
21 independent contractor program?

22 A You know, I don't know. I would -- that's the
23 time period I was gone.

24 Q Understood.

25 MS. CAMERON-RULKOWSKI: That's the only

1 RE CROSS - EXAMINATION

2 BY MS. CAMERON-RULKOWSKI:

3 Q Have you ever asked to purchase additional
4 equipment? Have you ever asked management to purchase
5 additional equipment?

6 A Absolutely. I have, yeah. Oh, let me
7 clarify, too, because I don't want to get -- that's a
8 pretty open-ended question. Have I asked? Yes.
9 There's reasons for replacement, that I know vehicles
10 are breaking down more. You know, I go to Jim and
11 say, I need new equipment, or Devin, I need new
12 equipment. Have I asked because I do not have enough
13 vans, if that's what your question is? No.

14 Q So --

15 A I've been asking for more buses. That helps
16 with our scheduled service. That's -- that's been
17 asked for. He knows that. Am I asking for more vans
18 because we don't have enough to service the public?
19 The answer is no.

20 Q Thank you.

21 I have a question for you that you may or may
22 not know the answer to, and perhaps Mr. Sherrell might
23 be able to help.

24 To your knowledge, has Shuttle Express ever
25 sought a waiver of the vehicle and driver rule from

1 other question that I had. Thank you.

2 JUDGE TOREM: Any other questions that
3 you have for Mr. Hagen?

4 MR. SHERRELL: No, Your Honor, I'm
5 finished.

6 JUDGE TOREM: I apparently need to
7 address something with staff for my division. Let's
8 go ahead, it's almost two o'clock, and take a
9 ten-minute break. When we come back we will --
10 Mr. Sherrell, I think you will be the last witness.
11 We will get you sworn in, have you give your testimony
12 in a form that -- you don't have to ask yourself
13 questions, but narrate whatever subjects you think we
14 need to go into, and then we will get the
15 cross-examination.

16 We will come back at 10 after.

17 (A brief recess.)

18 JUDGE TOREM: Let's go back on the
19 record. It's now 2:15. I think we are ready to
20 return to Shuttle Express's presentation.

21 Do you have any other witnesses, Mr. Sherrell,
22 aside from yourself?

23 MR. SHERRELL: I do not.

24 JUDGE TOREM: Do you want me to swear
25 you in to give testimony at this time?

1 MR. SHERRELL: Yes, please.
 2 JUDGE TOREM: All right.
 3
 4 JIMY SHERRELL, witness herein, having been
 5 first duly sworn on oath,
 6 was examined and testified
 7 as follows:
 8

9 JUDGE TOREM: Thank you.

10 The court reporter already has the spelling of
 11 your names, so let's press on with --

12 THE WITNESS: Do you want me to move?

13 JUDGE TOREM: Right here is fine, I
 14 think, so the court reporter can see you. We can keep
 15 this more informal, that's fine.

16 MR. SHERRELL: Perfect. Then my hands
 17 don't shake as bad.

18 JUDGE TOREM: That's right.

19 Go ahead, sir.
 20

21 T E S T I M O N Y

22
 23 MR. SHERRELL: I would like to make it
 24 very clear that in 2008, when we were issued a
 25 citation and paid a fine, that we discontinued that

1 they could ignore the fact; or two, they could cause
 2 it to cease and desist. I chose to put it in place,
 3 hoping that it would be ignored and it wasn't, so I
 4 paid a fine and I discontinued the service.

5 Operating independent contractors in cars, I
 6 looked at the independent contractor programs and what
 7 you need to do to set that up, and I understand the
 8 independent contractors I think pretty fully, and I
 9 understand the regulations within the UTC.

10 I will save some of my other comments for the
 11 closing statements.

12 JUDGE TOREM: Okay.

13 MR. SHERRELL: I would like to say that
 14 we do have enough equipment and that I am committed to
 15 purchase equipment needed. In fact, there's ten new
 16 vans on the way right now. It's just standard, except
 17 this year we bought 20 rather than ten.

18 I think my closing statement will cover the
 19 rest of what I want to say.

20 JUDGE TOREM: Okay

21 Ms. Cameron-Rulkowski, cross-exam?

22 MS. CAMERON-RULKOWSKI: Thank you, Your
 23 Honor.
 24
 25

1 service 100 percent. The difference between our
 2 rescue service and that service is that the service we
 3 were fined for with the independent contractors, the
 4 independent contractors were using Shuttle Express
 5 vans and they -- that they leased and they themselves
 6 were independent contractors. The independent
 7 contractors that we use for rescue service own their
 8 own vehicle and they are independent contractors. The
 9 two are not related in any way, shape or form, as far
 10 as operations.

11 The second part is that rescue service is a
 12 reaction of immediacy. In our business, people are
 13 flying to destinations and that imposes financial
 14 commitment on their part and also making an
 15 appointment that could be all the way up to life and
 16 death and everything in between. We see an immediate
 17 urgency, and the immediacy is something that we have
 18 to react to with whatever resources we can react to.

19 When I chose to put independent contractors in
 20 vans and provide door-to-door service, of the service
 21 that we were fined for, I had asked for all Staff
 22 communications involving the use of independent
 23 contractors. In that communication, I found that a
 24 top UTC official had recommended to the commissioners
 25 that they could react in two different ways: One,

1 C R O S S - E X A M I N A T I O N
 2 BY MS. CAMERON-RULKOWSKI:

3 Q Mr. Sherrell, I had asked Mr. Hagen a couple
 4 of questions that he didn't have full knowledge about,
 5 so I would like to ask them of you.

6 One is, has Shuttle Express ever sought a
 7 waiver of any rule of the Commission?

8 A No, we have not.

9 Q And has Shuttle Express ever sought a
 10 declaratory ruling on the legality of any of its
 11 independent contractor operations?

12 A I don't believe so.

13 Q And to perhaps help you on that question, a
 14 declaratory ruling would mean that a proceeding would
 15 be docketed and parties would present evidence and the
 16 Commission would issue a formal decision. Has
 17 anything like that ever occurred on the issue of the
 18 independent contractor operations?

19 A Are you asking me the ruling that was passed
 20 down that we got the fine on? Is that what you are
 21 asking me?

22 Q Oh, no, I'm not.

23 A Okay.

24 Q I'm asking you if the Company has ever come to
 25 the Commission to get an answer about whether its

1 independent contractor operation complied with the
2 laws and the rules that the Commission enforces?

3 A No, we have not.

4 Q And I'm going to refer you to Exhibit BY-2,
5 and to Exhibit D, which is on Page 55. I will just
6 give you a moment there to look that over. What I --
7 what I would like to know is, if you turn to -- I'm
8 interested in the second page.

9 So first of all, do you recall this letter?

10 JUDGE TOREM: Just to make sure that we
11 are looking at the same thing, we are in Exhibit BY-2,
12 attachment D, as in Delta. This is a letter regarding
13 proposed driver contract for November 4th, 2005,
14 signed by Carol Washburn, who was then the executive
15 secretary of the Commission.

16 MS. CAMERON-RULKOWSKI: That's my
17 intent, Your Honor.

18 JUDGE TOREM: I just want to make sure
19 we are all on the same pages.

20 MS. CAMERON-RULKOWSKI: Yes.

21 A Do I remember reading it, no, but I know I
22 did. I know I read it. Anything legal that comes to
23 the office I read.

24 Q Understood.

25 And so if you turn to Page 2 of that letter,

1 offer anything else that might come to mind, so
2 anything else testimony-wise?

3
4 FURTHER TESTIMONY

5
6 MR. SHERRELL: Yeah. When I read this,
7 that was back in '05, so my questions then would have
8 been to operate Shuttle Express with independent
9 contractors only. It had nothing to do with any
10 rescue service in my mind whatsoever. So from that
11 letter, I made a decision to put vans -- independent
12 contractors in vans and run door-to-door service. I
13 paid for a utility commission's car, \$9500, a down
14 payment anyway, for trying that, to see if it would
15 work. This, in my mind, had nothing to do with using
16 independent contractors for rescue service.

17 At that time I believe that our town cars were
18 operated by employees, so our rescue service would
19 have been provided by employees, which is absolutely
20 totally legal, it's just a difference in vehicles. So
21 I separate the two in my thoughts of what I would
22 seek. And there is a WAC that states you can use
23 alternate service. The only license service I know
24 that can provide it is taxicabs or limos, and so I've
25 chosen to use an operation that I know is safe.

1 on Page 56, would you mind reading that paragraph at
2 the top?

3 A As Staff has advised you previously, you have
4 the option of requesting a declaratory ruling by the
5 Commission about the legality of the proposed
6 arrangement. Shuttle Express and Staff would present
7 their respective views to the commissioners who would
8 issue a written decision. In addition, you may wish
9 to consider the option of filing an application to
10 lease your certificate of authority and a petition to
11 lease other properties on the terms of your proposed
12 agreement. And, of course, any option for you to
13 consider is seeking a change in the statutes.

14 Q Thank you.

15 I believe it read "another option" there.

16 A Oh, I'm sorry.

17 Q That's all right. And that actually is my
18 question. Have you ever sought a change in the
19 statutes through the legislature?

20 A No, I wouldn't do that.

21 MS. CAMERON-RULKOWSKI: Thank you.
22 Those are all the questions that I have for you.
23 Thank you.

24 JUDGE TOREM: So after
25 cross-examination, usually I give you a chance to

1 I hope I answered...

2 JUDGE TOREM: Any other cross?

3 MS. CAMERON-RULKOWSKI: No, Your Honor.

4
5 EXAMINATION
6 BY JUDGE TOREM:

7 Q Mr. Sherrell, let me just ask if your
8 interpretation of WAC 480-213(2) [sic] -- this is the
9 one that says any cars have to be driven by an
10 employee -- the same question I asked Mr. Hagen. Do
11 you see any way to comply with that and still make use
12 of independent contractors?

13 A No, I do not. They are not employees.

14 Q And I think I understood you have already
15 addressed the issue with sufficiency of equipment to
16 your satisfaction?

17 A Yes.

18 Q Did you want to address anything about the
19 third cause of action, about the customer information
20 being given outside the company, WAC 480-30-456?

21 A We have a policy at Shuttle Express that we do
22 not give any passenger information out to any
23 institute, business or other companies. We make that
24 strictly adhered to by Shuttle Express and any
25 contract we have with another operator, IC. We have

1 dismissed contracts because we found ICs were -- had
2 called upon one of Shuttle Express's previous
3 customers. We enforce that and adhere to it.

4 Q And do you understand the Commission's adding
5 that third cause of action appears to be because the
6 information is given to the independent contractor to
7 provide the rescue?

8 A Yes, I do. We can't pick somebody up if the
9 driver doesn't know a name and address and where to
10 pick them up. If we are going to rescue somebody, we
11 need to give the information out to a contract carrier
12 that we have.

13 JUDGE TOREM: Is there any other
14 cross-exam at this time from the Commission?

15 MS. CAMERON-RULKOWSKI: No, Your Honor.
16 I would be ready to recall Ms. Young at the time, if
17 you are ready.

18 JUDGE TOREM: I think so.

19 Mr. Sherrell, anything else that you want to
20 provide me from Shuttle Express's point of view?

21 MR. SHERRELL: No.

22 JUDGE TOREM: I think what we are going
23 to do is we are going to stay on the record, we are
24 going to get Ms. Young back to testify. She is still
25 under oath.

1 should be, then we can have you -- you will still be
2 under oath as well, and we can get all of the
3 information out there.

4 MR. SHERRELL: I understand.

5 JUDGE TOREM: Thank you. I'm sorry for
6 the confusion in the procedure. I want to hear
7 everything you want to tell me. We will just get it
8 in the right order today.

9 MR. SHERRELL: Okay.

10 JUDGE TOREM: Ms. Cameron-Rulkowski,
11 Ms. Young is still recalled.

12 MS. CAMERON-RULKOWSKI: Thank you, Your
13 Honor.

14 JUDGE TOREM: You are still under oath.

15
16 R E D I R E C T E X A M I N A T I O N
17 BY MS. CAMERON-RULKOWSKI:

18 Q From what you have heard today, Ms. Young,
19 would you add anything to the discussion of penalties
20 in your report?

21 A I think from Staff's perspective, I think
22 it's -- it's important to note that whether in
23 the pre -- as in the previous investigation in Docket
24 TC-072228, or the type of service that was being
25 provided in the current investigation, the key for

1 This is the opportunity for Staff to make a
2 recommendation based on all of the evidence that they
3 have heard, including the written documents, but also
4 the testimony provided by Shuttle Express's witnesses.
5 And then see -- I know there's a recommendation that
6 was contained in the investigation itself. I
7 anticipate we will talk about that and whether it has
8 changed based on today's information, and you will
9 have the opportunity to cross-exam.

10 MR. SHERRELL: Can I make one last
11 statement because I didn't know we were going to do
12 that?

13 When I look at the fine, the \$250,000, and
14 they get that from Shuttle Express receiving \$250,000
15 from its passengers, Shuttle Express has experienced
16 losses in providing --

17 JUDGE TOREM: Let me have you hold that
18 because let's see what the recommendation is.

19 MR. SHERRELL: Okay.

20 JUDGE TOREM: I think you will have an
21 opportunity to ask that in the form of a question.

22 MR. SHERRELL: Okay.

23 JUDGE TOREM: And if you want to then
24 come back and give further testimony on what you
25 think, if there should be any penalty at all, what it

1 Staff is that it is the type of service being
2 provided. It's not the distinction that it's a
3 rescue, it's the fact that another company, or someone
4 that wasn't an employee of Shuttle Express was
5 providing regulated services under Shuttle Express's
6 certificated authority.

7 If -- I think it's also important to note that
8 if another company that didn't have an independent
9 contractor agreement with Shuttle Express was
10 providing this same service within Shuttle Express's
11 territory, Shuttle Express would complain about that
12 to me, and have in the past, I'm actually working on a
13 complaint right now. There's a company that Shuttle
14 Express believes is providing share ride services
15 within its territory. So it's the type of service
16 being provided, it's not the fact that it's -- the
17 Company deems it as a rescue. It's the fact that
18 Shuttle Express can't use someone that's not an
19 employee to provide services under its certificate
20 authority.

21 And another thing that I think is important to
22 mention in the discussion of what remedies the Company
23 has or what options the Company has to provide this
24 service, we talked about, earlier it was brought up on
25 record about subcontracting and the fact that that's

1 available in the statute. There's also WAC
2 480-30-141, which is -- which allows the Company to
3 lease out portions of its authority. That doesn't
4 have to be with another auto transportation carrier,
5 that can be with anybody. The Commission has to
6 approve that in advance. That's the key. If you
7 want -- if a company wants to provide that type, or
8 lease out a part of its service or subcontract, it has
9 to bring that proposal before the Commission and the
10 Commission has to decide about that.

11 There are -- in Staff's opinion, it seems that
12 getting the business done, in this case the business
13 was more important than following the Commission's
14 rules. I think it's clear that this behavior not only
15 continued, it will continue. Shuttle Express doesn't
16 appear to have any interest in discontinuing the
17 independent contractor rescue service. I think just
18 in that sense that's the only things -- those are the
19 things I would add to the penalty discussion in my
20 investigation.

21 Q Thank you.

22 A Uh-huh.

23 Q Following that, what relief do you recommend
24 that the Commission order in this proceeding?

25 A I recommend that the Commission issue an order

1 JUDGE TOREM: Ten minutes. Come back at
2 a quarter till.

3 (A brief recess.)

4 JUDGE TOREM: Back on the record.
5 Mr. Sherrell, are you ready to tell me
6 your perspective on potential Commission action on the
7 evidence we have heard today?

8 MR. SHERRELL: I think I get to cross
9 first, don't I?

10 JUDGE TOREM: Do you have questions?
11 Yes, please, let's go ahead and ask those questions
12 first.

13 MR. SHERRELL: Okay.

14
15 R E C R O S S - E X A M I N A T I O N
16 BY MR. SHERRELL:

17 Q In looking at the fine, are you taking into
18 account that Shuttle Express discounted its fares?

19 A Discounted its fares?

20 Q Yes, in your report.

21 A Discounted its fares for what?

22 Q For rescue service people or people that we
23 weren't able to provide good transportation to or
24 service?

25 A It was my understanding that people that took

1 requiring Shuttle Express to cease utilizing its
2 independent contractor program to provide services
3 regulated by the Commission and that the Commission
4 impose \$250,000 in penalties against the Company for
5 its violations of state law and Commission
6 regulations.

7 Q Thank you.

8 MS. CAMERON-RULKOWSKI: I have no
9 further questions for Ms. Young.

10 JUDGE TOREM: Mr. Sherrell, do you want
11 to inquire further of Ms. Young, or do you want to go
12 straight to giving me your ideas on a penalty, if any,
13 of what might be merited and appropriated for the
14 Commission to act based on the evidence that I have in
15 front of me?

16 You can certainly ask Ms. Young about it, this
17 is the time to do it if you want. You can also tell
18 me your thoughts. If you want to cross-examine
19 Ms. Young on anything she just said about adding to
20 what's already in her report and/or the penalty
21 amount, you can do that.

22 If you want a quick break to do that, we do
23 have time to let you gather your thoughts, too.

24 MR. SHERRELL: Okay. Let's take a quick
25 break.

1 the rescue service, the trips that were in question
2 here, that they paid the same amount. No, I would say
3 we did not factor that in.

4 Q Okay, okay.

5 Are you -- in your report you said that the
6 service that we were fined for and the service that we
7 are providing today is just a reappearance of us
8 changing things so we could still do independent
9 contractors. Do you still believe that the two are
10 related?

11 A Could you ask me that question again? I'm not
12 quite sure I understand what you are asking.

13 Q I've got it right here.

14 A Okay.

15 Q You say that Shuttle Express crafted a revised
16 independent contractor program to provide regulated
17 service that was even broader in scale. Is that still
18 your opinion?

19 A Yes.

20 Q So you don't feel that there's a difference
21 between what Shuttle Express was doing in '08 and what
22 they are doing today with the rescue service?

23 A I think the difference is in the manner that
24 it as being provided in 2008. I think in 2008 it was
25 provided by charter drivers using your vans. I think

1 today it's provided by other companies in their own
2 vehicles. It's still the same service provided on
3 your regulated routes.

4 Q And where do you come up with the \$250,000
5 fine? How do you come up with that figure?

6 A Well, I think I laid it out in the report, but
7 I can certainly go back to that and read the steps in
8 my analysis.

9 Q It's on Page 25.

10 A One of the things that we looked at was the
11 amount of revenue Shuttle retained for providing the
12 services. That was recorded in the rate case in
13 Docket TC-112072. That amount was \$241,549.

14 And then the other thing, as an enforcement --
15 in the enforcement work that I do, part of what the
16 Commission asks the enforcement staff to consider are
17 these ten factors in the Commission's enforcement
18 policy. Those are all explained starting on Page 21
19 in my report, through the various different things
20 that the Commission considers when and how to take
21 enforcement action.

22 It was a combination of the information that's
23 included in here. The Commission Staff took into view
24 the totality of the violations, all the separate
25 violations, which were 22,860 violations as we counted

1 them. We also believe that -- Staff -- I,
2 representing Staff, also believe that Shuttle Express
3 never should have had the independent contractors
4 providing this service, never should have committed
5 these violations, never should have retained the
6 \$241,000 plus in revenue. Staff believes that that's
7 a reasonable penalty recommendation based on the size
8 of the violations, the amount of violations, the
9 continued violations, even though Commission had fined
10 Shuttle Express for the practice before. Sort of all
11 of those things that I laid out in the final piece of
12 the report.

13 Q So in testimony today, you heard that Shuttle
14 Express actually loses money by offering the rescue
15 service, and undoubtedly has expenses in generating
16 revenue, and you do not take that into account?

17 A To me that's not relevant because it's a
18 violation of the Commission rule. You know, in the
19 settle -- the previous settlement agreement, Shuttle
20 Express agreed to comply with Commission rules. Based
21 on its own commitment, it had committed not to violate
22 these rules. To me the amount of money the Company
23 lost on it is not part of my consideration.

24 Q In RCW 80.01 it directs the commissioners to
25 act in the interest of the public. Do you feel that

1 Shuttle Express did not act in the interest of the
2 public?

3 A I think any regulated company that violates
4 the rules of the Commission is not acting in the
5 public interest, that's correct.

6 Q So you feel that 5,715 people should have
7 called in a complaint to the Commission?

8 A I can't testify to what 5,715 people should
9 have done. I don't think Commission Staff has any
10 argument to the notion that these customers probably
11 received very comfortable, possibly even better
12 service than sitting on a van. That's not the issue,
13 though. The issue is this practice violates rules,
14 this type of service being provided by independent
15 contractors violates Commission rules, and Shuttle
16 Express was aware of that, so -- because of the
17 previous compliance action the Commission had taken.
18 That's really the heart of Staff's case.

19 JUDGE TOREM: Any other questions?

20 MR. SHERRELL: (Nods head.)

21 JUDGE TOREM: Mr. Sherrell, why don't
22 you tell me your position on what you think the
23 Commission should do, given the evidence. That may
24 involve a penalty, no penalty. What remedy or relief
25 should I grant, if any, to the Commission's

1 complaints?

2 In a way I don't want you to bid against
3 yourself and say, oh, well, this is what I would do,
4 Judge. You have heard all evidence. Ms. Young had an
5 opportunity to comment on what the Commission's
6 position is. You have heard the numbers and the
7 reason. I just want you to have an opportunity to
8 say, no, that's wrong, there's no penalty, there's a
9 penalty but it should only be. Anything in that
10 regard, that's what I want your testimony to tell me
11 now, if you want to.

12 MR. SHERRELL: Thank you.

13 The way I interpret RCW 80.01 is we need to
14 work in the public interest. For 26 years, Shuttle
15 Express has had to use alternate transportation
16 because of the type of operation it is. I feel the
17 Commission and Staff have never totally understood
18 share ride door-to-door. I had to fight my way in
19 through many hearings to get a license to serve. At
20 that time, the Commission didn't know what they wanted
21 to do with us or how to operate -- how we operate. I
22 still feel that that's happening today. Shuttle
23 Express has never ever willingly, knowingly broke any
24 rule or regulation for its own interest and it will
25 always provide service in the public interest.

1 So when Staff says we will continue to do
2 rescue service, that is absolutely what we will do,
3 bar none. If there's an avenue that we can seek a
4 remedy so that that's legal, we will take
5 whatever avenue we can take.

6 There absolutely should be no penalty. We
7 operate on an extremely short budget, and \$250,000 has
8 the effect of basically come get my certificate
9 because it will bankrupt the company. So the
10 questions here for the Commission is do you want to
11 have share ride provided by the best operator in the
12 United States, which you can substantiate by any
13 Shuttle business out there, and the safest in the
14 United States?

15 And there needs to be either a regulation or a
16 relief issued so that the people in Seattle can enjoy
17 share ride door-to-door service. Without that, there
18 will not be any service. And while you may say, Well,
19 just go get a different operator, we are the best in
20 the U.S., and they are going to enter the same
21 position. Other operators that would come in here
22 would want to use independent contractors.

23 Anyway, I don't feel that Staff is looking at
24 what Shuttle Express has already paid to provide this
25 rescue service, and that there is no advantage to

1 to be more of a closing argument.

2 MR. SHERRELL: That would be good.

3 JUDGE TOREM: But I have to give
4 Ms. Cameron-Rulkowski an opportunity to give her
5 closing, as much as Ms. Young gave her opinion
6 strictly on that. That would seem to be much more
7 opinion, unless you had a cross-examination question
8 on any of the particulars that Mr. Sherrell had that
9 were more factual in nature than opinion. I wasn't
10 sure if you had any questions for Mr. Sherrell on the
11 penalty issue.

12 It seemed like a good blend of testimony and
13 argument. I wanted to not foreclose questions on
14 testimony, but see if you understood it in the same
15 way, and if so, then we would transition quickly to
16 your closing.

17 MS. CAMERON-RULKOWSKI: Thank you, Your
18 Honor. I heard it as opinion as well.

19 JUDGE TOREM: Do you need time to
20 prepare your closing or are you prepared to go
21 forward?

22 MS. CAMERON-RULKOWSKI: I'm ready to go.

23 JUDGE TOREM: All right. Let's press
24 on.

25 MS. CAMERON-RULKOWSKI: All right.

1 Shuttle Express to provide rescue service, other than
2 it keeps its customers. If Shuttle Express had any
3 way of not using independent -- any way of not using
4 another carrier to provide service, it would use it.

5 When you really get down to the bottom line,
6 we are talking about one stop. While the Commission
7 has not looked at the rescue service for individual
8 passengers, because the cars are licensed for
9 individual passengers, which is not against the law,
10 it has only chose to look at two stops, so they are
11 really talking about one stop for \$250,000. So any
12 fine of any kind is outrageous.

13 Doing day-to-day work running the Company, did
14 I miss maybe going to the Commission and raising our
15 hand and saying we need relief? Probably. Did I
16 recognize it? No. Would I have done it? Yes.

17 Has Shuttle Express ever violated any other
18 rules and regulations within the UTC after it issued
19 its license? The answer is no. And there's no
20 complaints from the public. So I feel that Shuttle
21 Express is totally within -- providing service in the
22 interest of the public by providing rescue service.
23 That's where I'm at.

24 JUDGE TOREM: Thank you.

25 Ms. Cameron-Rulkowski, I think that turned out

1 I will just begin by saying that, as Ms. Young
2 just testified, the customer experience is not what is
3 at issue in this proceeding. Staff does recognize
4 that there are challenges to operating Shuttle Express
5 sustainably and profitably, which is what much of the
6 testimony from the Company concerned, that we heard
7 today. However, in enforcement proceedings, which is
8 what this proceeding is, is not the forum to address
9 alternative regulation.

10 This proceeding concerns the four causes of
11 action set forth in the complaint and whether the
12 alleged violations occurred during the review period
13 which spans October 2010 to September 2011. Staff has
14 met its burden of showing that the alleged violations
15 occurred. The violations alleged in each of the
16 causes of action in the complaint are documented and
17 explained in Ms. Young's investigation report dated
18 March 2013, which has been marked as Exhibit BY-1.
19 These violations have not been refuted or even really
20 contested by Shuttle Express's evidence today.

21 To summarize, Shuttle Express violated WAC
22 480-30-213(2), WAC 480-30-216(6) and WAC 480-30-456,
23 and also violated the Commission's order in Docket
24 TC-072228 each time the Company provided Commission
25 regulated transportation pursuant to its independent

1 contractor program. As stated by Shuttle Express in
2 response to a data request from Staff, this type of
3 transportation occurred 5,715 times during the
4 investigation period. Today we had some discussion of
5 the reserve equipment rule. Regardless of driver
6 counts or how many vans are on the street and in the
7 lot or in the garage, reserve equipment isn't
8 sufficient if Shuttle Express can't pick up everyone
9 it wants to.

10 And I would like to touch briefly on the
11 violation of the Commission order. The issue there is
12 that both of these enforcement proceedings centrally
13 involve the same rule, which was the -- the driver and
14 vehicle rule which states that a vehicle operated by
15 an auto trans provider must be operated by the
16 employee -- I am paraphrasing here -- or the owner of
17 the certificate, and because both proceedings
18 centrally involve the same rule, that's why we have
19 focused on the order in TC-072228, and Shuttle
20 Express's failure to comply with that order, and with
21 its commitment in the settlement agreement adopted in
22 that order that it would comply forthwith with that
23 rule and others enforced by the Commission.

24 Ms. Young's investigation report contains a
25 thorough discussion of the factors in the Commission's

1 using its independent contractor program to provide
2 services regulated by the Commission and that the
3 Commission impose \$250,000 in penalties against the
4 Company for its violations of state law and Commission
5 regulations.

6 That concludes Staff's closing.

7 JUDGE TOREM: Mr. Sherrell, did you have
8 anything else that you wanted to say as the last word
9 on that?

10 MR. SHERRELL: If --

11 JUDGE TOREM: I know you have covered a
12 lot of it already. Any response?

13 MR. SHERRELL: Well, if the Commission
14 issues us a \$250,000 fine and we no longer can use
15 rescue service, the Company is defunct, so you might
16 as well issue a cease and desist. And that's the way
17 it is.

18 JUDGE TOREM: Well, I asked you earlier
19 about briefing and whether you wanted briefs. Now I
20 have realized that I am going to ask you to do it
21 whether you want to or not. I am seeing a conflict
22 here that means the outcome that Staff is asking for
23 and the business questions that have been raised and
24 sympathized with by Staff mean that we are going to
25 come back for a third proceeding again, on the same

1 enforcement policy that the Commission considers when
2 determining an appropriate penalty. In her testimony
3 today she added to that discussion. RCW 81.04.380
4 authorizes penalties of up to \$1,000 per violation.
5 With the four causes of action, Staff has documented
6 well over 20,000 violations. Staff calculated that
7 Shuttle Express gained close to \$250,000 in revenue
8 from providing regulated transportation services
9 through its independent contractor program during the
10 review period.

11 This calculation which Ms. Young testified
12 about towards the end of our day today is fully
13 explained on Page 16 of her investigation report.
14 Based on Staff's discussion of the enforcement policy
15 and based on what Staff heard here today, Staff
16 recommends that \$250,000, which approximates the
17 amount of the retained revenue from the review period,
18 is an appropriate penalty amount.

19 Shuttle Express has failed to demonstrate a
20 basis to justify any mitigation of Staff's recommended
21 penalties. A business does not get to pick and choose
22 which rules to comply with based on its perception of
23 necessary cost savings.

24 In closing, Staff asks that the Commission
25 issue an order requiring Shuttle Express to cease

1 rule, if we don't get something resolved.

2 This may not be the forum for me to know how
3 to change the rule or do alternative forms
4 of regulation, but the Commission I believe needs to
5 be informed on what the path forward is going to be.
6 And if the path forward leads to the Company being
7 defunct and/or being back in the hearing room with the
8 same questions again, then we are failing as a
9 Commission. No matter what the rules say or what the
10 challenges of day-to-day shuttle operations and
11 scheduling might be, I don't want to see you guys back
12 here again.

13 The Commission issued a complaint in 2007 or
14 '8, and you settled it. I think that both parties
15 wanted to walk away saying, you're \$9500 lighter on
16 the books for Shuttle Express, but there was a lesson
17 learned. We weren't going to be back. I'll make a
18 ruling based on what happened between now and then,
19 this complaint, but I think I have to ask for either
20 independent or a joint product from the parties here.

21 Now, I'll let you decide. If you can work on
22 something together and submit it jointly, that's
23 easier, even if it's a joint letter with, we support A
24 and we support B. So talk to each other after we
25 close the hearing today and come up with something by

1 Friday the 16th of August. And if you need an
2 extension, that's fine, but I would like to have
3 something by noon on Friday the 16th.

4 If you need an extension -- I'm out of town
5 the entire next week on other personal business. I
6 would be glad to give you one if it's going to lead to
7 a better product. But if I get it by noon on the
8 16th, I will take your product with me and consider it
9 while I'm out of town.

10 What I want is some recommendation on how
11 Shuttle Express can meet the needs of its passengers
12 and how Shuttle Express can comply with all applicable
13 Commission rules. There have been some invitations
14 that have been set out in the letter from
15 Ms. Washburn, going back to 2005, and cited in the
16 various exhibits that Ms. Young wrote up as part of
17 BY-1, and maybe even in BY-2, suggesting a need or the
18 option for a declaratory ruling, a workshop, an
19 exception to rule. There's a variety of tools that
20 are not available to me to deal with what's occurred
21 in the past, but I would like to be able to write an
22 order that gives a way forward, so that we don't have
23 to be here having this argument again.

24 So that's the briefing I want. Not on the
25 facts of necessarily this case and how I should act,

1 not on the facts of what the penalty should be, but
2 simply -- either it's a letter, but some way that
3 shows that going forward, if independent contractors
4 are going to be used, it's going to be with a
5 Commission endorsement; if independent contractors
6 aren't going to be used, that there's a way for
7 Shuttle Express to handle that other 5 percent, I
8 think it was, under the evidence, of passengers that
9 would not be satisfied with their shuttle opportunity
10 experience.

11 If you come back to me and it says we couldn't
12 get together, then write independent issues on what
13 Staff would like to see happen to address this from
14 coming back again, and maybe from Shuttle Express. I
15 could predict, you know, Shuttle Express would say
16 change the rule, that's pretty easy to say, but I
17 would like to have some thought put into it. Under
18 the current rules is what I'm talking about. If one
19 part is change the rule, fine, talk about that.

20 There was an invitation earlier about changing
21 a statute. Those are all options to be discussed from
22 Shuttle Express's perspective.

23 But from Staff's perspective, particularly
24 with the closing that concedes that there's not an
25 issue with the customer experience, it's compliance

1 with the rules, this Commission's end goal is always
2 compliance, and so with that in mind, we want to keep
3 companies compliant.

4 We see it in all manner on our utilities and
5 on our transportation side. It's a consistent theme
6 of regulatory practice. If you are an unregulated
7 company, you do other things within the bounds of the
8 law. Here you have got additional regulations piled
9 on and we need to know how we are not going to
10 continue to have a regulated company butting heads
11 with its regulators on something.

12 I don't see any recalcitrance here. I see
13 some resignation, but I think we need to get outside
14 the box, and you guys are in the best position to tell
15 me how the Commission should go forward. How that
16 will get factored into the order, I don't know, but it
17 will come in as part of the record. And that way, if
18 either of you feel that whatever the solution or the
19 order says, you can file an appeal, or the
20 commissioners want to look at this on their own, the
21 record is going to be further developed from the
22 commissioners' perspective as to what's the long-term
23 solution, not only for Shuttle Express but statewide,
24 given that these rules apply statewide.

25 And as much as Shuttle Express might be

1 uniquely positioned to have this challenge, there may
2 be others that we are not thinking of today, that the
3 commissioners, when they write a rule and it is a
4 statewide precedential order, this information is
5 going to help them, I hope tremendously, to see a way
6 ahead, whether that requires a rule change or whether
7 that just simply requires additional incentive to the
8 Company to get the message to comply, I know they like
9 the rules, go forward from there.

10 So it's kind of a freestyle assignment of a
11 brief. I don't care how long it is, but I care how
12 well thought out and effective the presentation is.
13 I'll let you take it together. If you can do it in
14 the next two weeks, great; if you need additional
15 time, that's fine. I will continue to working on
16 crafting the order. As I said, I don't think it can
17 influence the facts of the case, but it will help me
18 to address the disease, not just the symptoms here, if
19 you will.

20 MS. CAMERON-RULKOWSKI: Your Honor, I
21 have a concern about acting as legal counsel for the
22 Company, because what you are asking us to provide is
23 essentially a legal solution. And is there -- could
24 we encourage the Company to retain legal counsel to --
25 for this situation?

1 MR. SHERRELL: Yes.

2 JUDGE TOREM: I think that would be at

3 the Company's option, but I understand your

4 reluctance. You have a role to provide to your

5 client, but I think it may also be that Staff can work

6 without legal counsel and correspond with the Company,

7 as almost the way we do technical assistance, to

8 provide it. I think the legal solution, as you call

9 it, because this is so rule centric, is going to be

10 necessary. For this limited purpose, if the Company

11 thinks it's a good investment, I would recommend it,

12 but again, I can't give legal advice to the Commission

13 Staff or to counsel for the Company, but it's

14 definitely a meritorious suggestion and should be

15 considered.

16 MS. CAMERON-RULKOWSKI: And, Your Honor,

17 I have one other request, and that is that you issue

18 an order that explains what it is you want from us.

19 We will now need to --

20 JUDGE TOREM: You actually want me to

21 put that in writing?

22 MS. CAMERON-RULKOWSKI: I know, Your

23 Honor.

24 JUDGE TOREM: I will do something

25 tomorrow to specify the elements at the very least. I

1 at this point a mediated resolution. Do you think

2 that that is a fair --

3 JUDGE TOREM: Oh, not to this complaint.

4 I'm looking at --

5 MS. CAMERON-RULKOWSKI: Essentially a

6 mediated -- a mediated solution to going forward, to

7 compliance going forward?

8 JUDGE TOREM: Yeah, I'm not even sure I

9 would call it mediated. It can be a joint

10 recommendation, it can be individual recommendations.

11 I'm simply looking for input for the Commission to

12 prevent this from recurring again.

13 I will give this some more thought and put it

14 down into a letter directive format. Again, it will

15 be kind of a suggestion on what you should do, but it

16 won't be limited to -- if you think of something when

17 you are driving home today, or otherwise, Well, here's

18 the solution and the judge didn't contemplate it,

19 please include it. Take it as the broadest stroke of,

20 how do you keep the Commission and Shuttle Express, or

21 any other auto transportation company, from having

22 these set of rules again litigated because of the

23 perceived need to meet passenger satisfaction demands,

24 or as Mr. Sherrell put it, to do RCW 80.01. We want

25 to serve the public interest.

1 don't want anything that I craft as an order requiring

2 a posthearing brief, but I think that's fair, to

3 actually take that rambling discourse and put it into

4 some bullet points that should be addressed.

5 MS. CAMERON-RULKOWSKI: I would

6 appreciate it. We will need to be explaining that to

7 multiple staff members and it would certainly be

8 easier if we had one document to work from.

9 JUDGE TOREM: And we don't even have

10 anyone on the bridge line inhale deeply and wonder

11 what I'm saying.

12 So I can do that. I will try to issue

13 something, if not tomorrow, then by early next week.

14 I will get a letter out to you, or as it is an order,

15 explaining the deadline of the 16th and the bulleted

16 points.

17 I think you have the general idea. I think

18 you're right, trying to communicate this without the

19 transcript might be difficult to others that might

20 have an interest, particularly if you hire legal

21 counsel. This will give us all a place to have a

22 starting point.

23 MS. CAMERON-RULKOWSKI: Essentially

24 what -- just to make sure that I understand what it is

25 you are seeking, it looks to me that you are seeking

1 I understand that there's a variety of

2 interests being served when you charge money for a

3 service. However, taking that in the manner it was

4 intended, I think to have the customer experience not

5 ever be an issue in front of the Commission, how do we

6 keep the ability to meet the customers' needs and

7 satisfaction, and yet also have compliance with the

8 rules? If the rule is wrong under door-to-door

9 service, as has been suggested, and it only works for

10 scheduled service, there's ways to deal with that. If

11 there are ways to get exceptions to rules, if there

12 are ways to have an independent contractor provision,

13 or some other way, I just want a preventive tool going

14 forward. I'll try to come up with some more discrete

15 bullets and discrete direction.

16 MS. CAMERON-RULKOWSKI: Thank you, Your

17 Honor.

18 JUDGE TOREM: All right. So I will

19 issue that hopefully no later than Monday. I will

20 send it out to you electronically, as soon as it's

21 cut, and you will get one in the mail. It will also

22 set the deadline of Friday, August 16th at noon.

23 Again, if you need a -- hopefully, by at least

24 24 hours in advance, if you need an extension, let me

25 know. That way we can easily turn out the new date.

1 Any other questions besides what in the heck
2 did he just say?

3 Okay. Then it's now about 3:25. It looks
4 like we are ready to adjourn for the day.

5 Does anybody want to order a copy of the
6 transcript, besides what the Commission is already
7 going to order?

8 MR. SHERRELL: Yes, please.

9 JUDGE TOREM: Let me have you get with
10 the court reporter after, so you understand when you
11 say, Yes, I want to order the transcript, what the
12 approximate cost might be as well.

13 MR. SHERRELL: Yes, I want to order a
14 transcript.

15 JUDGE TOREM: Fair enough.

16 And the transcripts are usually available -- I
17 think we are running two weeks or ten days. Ten
18 business days probably. So it may not -- if you need
19 the transcript to respond to the briefs, then we will
20 definitely need an extension, so let me know on that
21 as soon as you sort that out with the Company as well.
22 I don't want you to have to incur rushed service just
23 to respond to that.

24 MS. CAMERON-RULKOWSKI: So just in terms
25 of, if we are talking about extensions, I'm going to

1 JUDGE TOREM: So for now we will set it
2 for the 16th of August at noon. I will anticipate and
3 liberally grant an extension to mid-September, if
4 that's justified in what you need to do.

5 Thank you. It's 3:25. We are adjourned.

6 (Discussion off the record.)

7 JUDGE TOREM: We are back on the record
8 at the request of the parties. I will note it's a
9 very reasonable request, as we just discussed, the
10 August 16th date and the likelihood of it being
11 extended is pretty much 100 percent, maybe
12 105 percent. We have picked a new date that still
13 complies with the Commission trying to get an order
14 out within 60 days of today. Friday, September 20th
15 will be the date. We won't really entertain any
16 further extensions, unless there's very good cause,
17 because we don't want to delay the product coming out.

18 I will do my best to write the order. As I
19 say, this won't necessarily influence the outcome of
20 the order, but will be discussed in a latter section
21 of the order, and I will work hard to incorporate it
22 shortly after I receive it.

23 Friday, September 20th, at close of business
24 is when a joint brief or individual explanations will
25 come out. I will still send you by early next week,

1 be out for vacation and minor surgery starting
2 August 26th, and through the following week,
3 September 6th. I will need to either get this done
4 before then or after then.

5 JUDGE TOREM: Okay. So I realize an
6 extension request could be 30 days.

7 MS. CAMERON-RULKOWSKI: Okay.

8 JUDGE TOREM: I'm either going to expect
9 this product from you mid-August, or if it can't be
10 done, we're waiting on transcripts or something else,
11 then mid-September.

12 For the Commission, my target to enter an
13 order typically is 60 days after the date of the
14 hearing, after the record closes, and I'm hoping that
15 I can get you an order before September. If I have to
16 wait on the inputs, then we will probably just wait
17 until toward the end of September to get the order
18 out. If that's fine with everybody, it's not a more
19 urgent matter for either side to get the order, then
20 we can do it all together. I can have most of the
21 order written, and then work in whatever discussion I
22 have about materials I'll get from you, so that's not
23 critical.

24 MS. CAMERON-RULKOWSKI: That sounds
25 reasonable, Your Honor.

1 Monday, I hope, the bulleted, more directed point of
2 this.

3 MS. CAMERON-RULKOWSKI: Thank you, Your
4 Honor.

5 MR. SHERRELL: Thank you.

6 (Hearing adjourned 3:28 p.m.)

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CERTIFICATE

STATE OF WASHINGTON
COUNTY OF KING

I, Sherrilyn Smith, 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.

 

SHERRILYN SMITH