

0195

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

1  
2

3 In re Application TC-111446 of ) DOCKET TC-111446  
4 SHUTTLE EXPRESS, INC. ) (consolidated)  
5 ) Pages 195-235

6 For Extension of Authority under )  
7 Certificate No. C-975, For a Certificate of )  
8 Public Convenience and Necessity to Operate )  
9 Motor Vehicles in Furnishing Passenger and )  
10 Express Service as an Auto Transportation )  
11 Company )

12 ..... )  
13 In re Application TC-111643 of ) DOCKET TC-111643  
14 EXCALIBUR LIMOUSINE LLC ) (consolidated)  
15 d/b/a SEATTLE GREEN LIMO ) Pages 195-235

16 For a Certificate of Public Convenience and )  
17 Necessity to Operate Motor Vehicles in )  
18 Furnishing Passenger and Express Service as )  
19 an Auto Transportation Company )

20 ..... )  
21 In re Application TC-111619 of ) Docket TC-111619  
22 PACIFIC NORTHWEST TRANSPORTATION SERVICES, ) (consolidated)  
23 INC. d/b/a CAPITAL AEROPORTER; ) Pages 195-235  
24 AIRPORT SHUTTLE, )

25 For Extension of Authority under )  
Certificate No. C-862, For a Certificate of )  
Public Convenience and Necessity to Operate )  
Motor Vehicles in Furnishing Passenger and )  
Express Service as an Auto Transportation )  
Company )

---

EVIDENTIARY HEARING, VOLUME III  
Pages 195-235  
ADMINISTRATIVE LAW JUDGE MARTIN LOVINGER

---

10:01 A.M.  
JANUARY 31, 2012

Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive Southwest

20  
21  
22  
23  
24  
25

0196

1

A P P E A R A N C E S

2

ADMINISTRATIVE LAW JUDGE:

3

MARTIN LOVINGER  
Washington Utilities and  
Transportation Commission  
1300 South Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, Washington 98504  
360.664.1163

6

FOR WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION:

8

JENNIFER CAMERON-RULKOWSKI  
Assistant Attorney General  
1400 South Evergreen Park Drive  
Southwest  
P.O. Box 40128  
Olympia, Washington 98504  
360.664.1186  
jcameron@utc.wa.gov

10

11

12

FOR SHUTTLE EXPRESS, INC.:

13

BROOKS E. HARLOW  
Lukas, Nace, Gutierrez & Sachs  
8300 Greensboro Drive  
Suite 1200  
McLean, Virginia 22102  
206.650.8206  
bharlow@fcclaw.com

14

15

16

FOR CAPITAL AEROPORTER; AIRPORT SHUTTLE:

17

JAMES N. FRICKE  
President/CEO  
P.O. Box 2163  
Olympia, Washington 98507  
360.292.7686  
jimf@capair.com

18

19

20

21

REPORTED BY: SHELBY KAY K. FUKUSHIMA, CCR #2028

22

Buell Realtime Reporting, LLC

23

1411 Fourth Avenue, Suite 820

24

Seattle, Washington 98101

25

206.287.9066 | Seattle

360.534.9066 | Olympia

26

800.846.6989 | National

27

www.buellrealtime.com

0197

1

INDEX OF WITNESSES

2

WITNESS:

PAGE

3

PENNY INGRAM

4

Direct Examination by Mr. Fricke

206

Examination by Judge Lovinger

207

5

Cross-Examination by Ms. Cameron-Rulkowski

207

6

7

DAVID GOMEZ

8

Direct Examination by Ms. Cameron-Rulkowski (Resumed)

209

Cross-Examination by Mr. Harlow

210

9

10

Oral Argument by Ms. Cameron-Rulkowski

213

11

Oral Argument by Mr. Harlow

215

Oral Argument by Mr. Fricke

220

12

Rebuttal by Mr. Harlow

224

13

14

15

16

17

18

19

20

21

22

23

24

25

0198

1

OLYMPIA, WASHINGTON, JANUARY 31, 2012

2

10:01 A.M.

3

P R O C E E D I N G S

4

5

JUDGE LOVINGER: Good morning. It is about 10:01,

6

and this is the time set for the resumption of the hearing in

7

Dockets TC-111446, Docket TC-111643, and Docket TC-111619.

8

Are the parties -- is everyone here ready to resume?

9

MR. HARLOW: Yes. Good morning, Your Honor.

10

JUDGE LOVINGER: Good morning. Good morning.

11

We left off yesterday with -- that Mr. Fricke was

12

going to bring in some more witnesses today, or at least one.

13

I'm not sure if there's more than one. And unless there's

14

anything preliminary to that, we'll take that up in just a

15

moment.

16

I did want to remind the parties that we had

17

discussed the possibility of doing oral argument after the

18

evidence, and I would also want to remind the parties that the

19

main evidence that we're looking for here -- or the main

20

arguments that we're looking for here would be those that go to

21

the areas where there's overlap in the applications.

22

You know, we -- while there are a lot of standards

23

that people are looking for, I think there's been a fairly good

24

showing of a willingness and readiness to perform. I think at

25

this point, what we need to really be looking at is how do we do

0199

1 those areas where there's overlap in the applications.

2 All right. Mr. Fricke, it's said that -- I think  
3 your corporate representative has indicated that it's going to  
4 be a couple more minutes before you have your witness; is that  
5 correct?

6 MR. FRICKE: Yes. We had asked her to make it about  
7 five after just so that we get the preliminary started here and  
8 so --

9 JUDGE LOVINGER: Okay.

10 MR. FRICKE: -- in a couple more minutes, she should  
11 call.

12 JUDGE LOVINGER: Does anybody have anything else  
13 preliminary before we -- since we have a couple of minutes?

14 Anybody heard any funny jokes recently? No. I'm  
15 kidding.

16 Let's go off the record for a couple of minutes.

17 (A break was taken from 10:03 a.m.  
18 to 10:08 a.m.)

19 JUDGE LOVINGER: Let's go on the record.

20 Mr. Fricke?

21 MR. FRICKE: Your Honor, our witness problems here of  
22 trying to communicate with them even by phone is that they're  
23 travel agents, and the particular one that we thought we had  
24 lined up here just was advised by her boss she had to go on a  
25 webinar. But she happens to be the only person in her office

0200

1 this day as well, and the alternative, their Tacoma office, we  
2 haven't been able to establish communication with this morning.  
3 I don't know how long the webinar is. She didn't say that, so I  
4 don't know whether we're really going to be able to do it in a  
5 short time here or not in terms of establishing communication.

6 JUDGE LOVINGER: Are you making a request?

7 MR. FRICKE: Well, I guess I would like to request a  
8 little extra time here, you know, I suppose within the hour,  
9 because there may be even a possible third one within the hour  
10 that we found out after yesterday, in communication after we  
11 ended, that she had an appointment until eleven.

12 JUDGE LOVINGER: I'm open for input from any of the  
13 other parties.

14 MS. CAMERON-RULKOWSKI: Your Honor, Staff would not  
15 have any objection to recessing and coming back a little bit  
16 later. I don't think that Staff's presentation will take longer  
17 than five or ten minutes.

18 JUDGE LOVINGER: Mr. Harlow?

19 MR. HARLOW: Yeah. We kind of anticipated this  
20 yesterday. What's reasonable is -- the more it gets turned.  
21 But it's a long drive north and a long drive back south.

22 Their witnesses, if they don't show, we do have a  
23 hard stop at noon, I understand. I think we ought to allow  
24 maybe as much as 45 minutes or even an hour for argument.

25 So do we think 10:30 would -- would be reasonable to

0201

1 make sure that we have time for the rest of the witnesses and  
2 oral argument?

3 MR. FRICKE: I don't know whether we're actually  
4 going to be able to reach any one of the three necessarily in  
5 the next 20 minutes. I know the one I spoke to yesterday  
6 afterwards here in person had an appointment scheduled till  
7 eleven o'clock.

8 I don't know how long this webinar that just got  
9 called at between the time just before the hearing and right  
10 after we just started all of a sudden was dropped on her lap,  
11 that that was the priority she had to deal with.

12 MR. HARLOW: I mean, do we really need another  
13 witness to establish need for Thurston, Lewis, Mason, Grays  
14 Harbor, and Pierce Counties, or are we there?

15 JUDGE LOVINGER: I don't think that's what you were  
16 getting a witness for, is it, Mr. Fricke?

17 MR. FRICKE: Yes. It was in additional witness in  
18 relation to everything outside of the airport to the piers.

19 JUDGE LOVINGER: Was this for a Rainier and...

20 MR. FRICKE: Grays Harbor -- well, no. This was for  
21 Grays Harbor -- no. This -- I'm sorry.

22 This is for between points in Grays Harbor, Lewis,  
23 Mason, Thurston, Pierce, and King Counties to the piers. We had  
24 the one in person, Irene Emmens, yesterday as the...

25 JUDGE LOVINGER: Right.

0202

1 (Mr. John Fricke confers with Mr. Fricke.)

2 MR. HARLOW: It's certainly not our contention  
3 there's not a need for the service from the counties south of  
4 King.

5 JUDGE LOVINGER: Commission Staff, you're the ones  
6 who raised the point that it couldn't be by stipulation.

7 And do you feel that there's been a sufficient level  
8 of testimony here now that it goes beyond stipulation on the  
9 issue of whether or not there's a need for airport shuttle  
10 services to Grays Harbor and Lewis County and points in between?

11 MS. CAMERON-RULKOWSKI: I think I misunderstood  
12 yesterday what exactly this witness was going to be offered for,  
13 and I'm trying to recall now what the record was yesterday from  
14 the other travel agency owner.

15 But if that was also showing a need from points  
16 within the -- those southern counties to the piers, then that  
17 would seem sufficient to Staff.

18 MR. FRICKE: Okay.

19 JUDGE LOVINGER: I think --

20 MR. FRICKE: And my concern about Staff -- about the  
21 Staff's advice here, or concern was whether it was how one  
22 interpreted the establishing of need in the entire region that  
23 is being requested as to whether that witness who was here in  
24 person was sufficient testimony to establish a need or the need.

25 JUDGE LOVINGER: I will tell you what I'm going to



0203

1 do. I think that there's some indication here from the parties  
2 that they're not arguing that point with your application. I'm  
3 going to put us at recess until 10:30 to give you a chance to  
4 communicate with your various witnesses to see if you can line  
5 somebody up.

6                   Unfortunately, as Mr. Harlow pointed out, we do have  
7 a time when we have to be out of this room.

8                   MR. FRICKE: I understand.

9                   JUDGE LOVINGER: I think people have come down here  
10 prepared for argument. You've certainly had 60 days in which to  
11 line up your witness.

12                   MR. FRICKE: I understand.

13                   JUDGE LOVINGER: While I understand that they're free  
14 people and they have busy schedules, the fact is, is that at  
15 some point in that, you need to get witnesses who can actually  
16 testify.

17                   MR. FRICKE: Okay.

18                   JUDGE LOVINGER: So let's break until 10:30 and give  
19 you a chance to try and line up your witnesses.

20                   MR. FRICKE: Okay.

21                   JUDGE LOVINGER: And we'll see what we do at that  
22 point. I would come back at that point prepared to resume. I'm  
23 assuming Mr. Gomez will be testifying and then be prepared after  
24 that to follow with oral argument.

25                   MR. FRICKE: Okay.

0204

1 JUDGE LOVINGER: Thank you.

2 MR. HARLOW: Thank you, Your Honor.

3 MR. FRICKE: Thank you.

4 MS. CAMERON-RULKOWSKI: Thank you, Your Honor.

5 (A break was taken from 10:16 a.m.

6 to 10:30 a.m.)

7 JUDGE LOVINGER: It's appears to be 10:30. We're  
8 back in session.

9 Mr. Fricke, have you been able to resolve your issue,  
10 or ready to call a witness?

11 MR. FRICKE: Your Honor, we have not been able to  
12 communicate with them either due to the fact that they're with  
13 clients, or getting ready for an eminent cruise event for their  
14 customers.

15 We have asked when we were off the record of the  
16 possibility of a Staff witness related to the restriction  
17 removal to Longmire, Ashford, et cetera, to establish that that  
18 was a restriction, because it was another company and  
19 certificate in operation at that time.

20 And we were asking for a Staff witness to simply  
21 verify -- or recall a Staff witness to verify the fact that that  
22 certificate no longer exists.

23 JUDGE LOVINGER: Okay. And you are going to be  
24 calling that witness?

25 MR. FRICKE: That's -- yes. We would like to call

0205

1 Penny Ingram of the Staff to verify that that certificate no  
2 longer exists.

3 JUDGE LOVINGER: Does anybody object?

4 MS. CAMERON-RULKOWSKI: Your Honor, Staff does not  
5 object to recalling Ms. Ingram for that limited purpose.

6 JUDGE LOVINGER: Mr. Harlow?

7 MR. HARLOW: No objection.

8 JUDGE LOVINGER: Thank you. Is Ms. Ingram here?

9 MS. CAMERON-RULKOWSKI: Apparently not, Your Honor.

10 JUDGE LOVINGER: Okay.

11 MS. CAMERON-RULKOWSKI: I believe she will be back.  
12 I believe she's refreshing her memory on that issue, Your Honor.

13 JUDGE LOVINGER: Okay. Well, let's go off the record  
14 again for a couple more minutes, please. Thank you.

15 (A break was taken from 10:31 a.m.

16 to 10:33 a.m.)

17 JUDGE LOVINGER: Let's go back on the record.

18 THE WITNESS: I'm glad I came back.

19 JUDGE LOVINGER: Ms. Ingram, you know you're still  
20 under oath, right?

21 THE WITNESS: Yes.

22 JUDGE LOVINGER: Thank you.

23 Are we going to have Mr. Fricke do the questions  
24 or...

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

0206

1 JUDGE LOVINGER: Mr. Fricke?

2

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

4 BY MR. FRICKE:

5 Q. Ms. Ingram, can you verify that Rainier Shuttle and  
6 the certificate that they held no longer operates nor does that  
7 certificate exist?

8 A. Yes. Rainier Shuttle petitioned the Commission to  
9 voluntarily cancel its certificate in Docket TC-082248.

10 Q. And under that certificate, they had provided  
11 transportation between Sea-Tac Airport and what locations?

12 A. Unfortunately, I wasn't able to get a copy of their  
13 certificate right now.

14 Q. Oh, okay.

15 MR. FRICKE: Those are the locations that we were  
16 restricted because they were in operation at that time, Your  
17 Honor, and those are the ones we're asking to be removed from  
18 our -- from our certificate, which includes Longmire --

19 JUDGE LOVINGER: Well, Mr. Fricke, I really would  
20 rather have testimony coming from sworn witnesses --

21 MR. FRICKE: Okay.

22 JUDGE LOVINGER: -- at this time.

23 ////

24 ////

25 ////

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

2 BY JUDGE LOVINGER:

3 Q. Ms. Ingram, is it your understanding that the  
4 certificate covered the transportation -- shuttle transportation  
5 between Rainier, Longmire and the airport and the cruise lines?

6 A. It's subject to check. I'd need to look at the  
7 certificate. I don't have the certificate available for me  
8 right at this moment.

9 Q. Okay. And so you don't know what the content -- at  
10 all what the contents of Rainier's certificate was?

11 A. Not off the top of my head.

12 MS. CAMERON-RULKOWSKI: Your Honor, could I address  
13 the witness?

14 JUDGE LOVINGER: Thank you.

15

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

17 BY MS. CAMERON-RULKOWSKI:

18 Q. Ms. Ingram, is it your understanding that the  
19 territory, the expanded territory that Capital Aeroporter is  
20 proposing to serve, which contains Elbe, Ashford, Longmire, and  
21 Mount Rainier, that that currently is not served?

22 A. Yes.

23 Q. And up until the time that the transportation -- the  
24 auto transportation company that was serving that territory --  
25 that there -- that there was service from that territory to --

0208

1 to the airport and back?

2 Let me rephrase the question.

3 JUDGE LOVINGER: Thank you.

4 BY MS. CAMERON-RULKOWSKI:

5 Q. Do you happen to know approximately when the auto  
6 transportation company that was serving that area ceased  
7 service?

8 A. Yes. December 29, 2008, according to a Commission's  
9 order that canceled their certificate.

10 Q. And do you have any knowledge as to whether any auto  
11 transportation companies have been serving between these four  
12 locations and Sea-Tac Airport since 2008?

13 A. No.

14 MS. CAMERON-RULKOWSKI: Thank you. I have no further  
15 questions.

16 JUDGE LOVINGER: Thank you.

17 MR. HARLOW: No questions.

18 JUDGE LOVINGER: Any further questions, Mr. Fricke?

19 MR. FRICKE: No. Thank you, Your Honor.

20 JUDGE LOVINGER: You're excused. Thank you very  
21 much.

22 Do you have any other witnesses, Mr. Fricke?

23 MR. FRICKE: I have no other witnesses at this time,  
24 Your Honor.

25 JUDGE LOVINGER: Thank you.

0209

1 Commission Staff?

2 MS. CAMERON-RULKOWSKI: Thank you, Your Honor. I  
3 would like to recall David Gomez at this time.

4 JUDGE LOVINGER: Mr. Gomez, you know you're still  
5 under oath?

6 THE WITNESS: Yes, Your Honor.

7 JUDGE LOVINGER: Thank you.

8

9 D I R E C T E X A M I N A T I O N (Resumed)

10 BY MS. CAMERON-RULKOWSKI:

11 Q. Good morning, Mr. Gomez.

12 A. Good morning.

13 Q. Have you been listening to the testimony given during  
14 the hearing yesterday and today?

15 A. Yes.

16 Q. Does any of the evidence from this hearing, or any of  
17 Shuttle Express's regulatory history with the Commission, of  
18 which you are aware, cause you concern about granting Shuttle  
19 Express's requested extension of authority?

20 A. No.

21 Q. Does any of the evidence from this hearing, or any of  
22 Capital Aeroporter's regulatory history with the Commission, of  
23 which you are aware, cause you concern about whether Capital  
24 Aeroporter is able to comply and about whether it has the  
25 requisite knowledge, experience, and resources, and is fit and

0210

1 willing to provide the service extensions it proposes?

2 A. Can you repeat the question? I'm sorry. I want to  
3 make sure I answer the right "yes" or "no."

4 Q. Certainly. Did you have any concern?

5 A. No.

6 MS. CAMERON-RULKOWSKI: Thank you. I have no further  
7 questions for Mr. Gomez at this time.

8 JUDGE LOVINGER: Mr. Harlow?

9 MR. HARLOW: Thank you, Your Honor.

10

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

12 BY MR. HARLOW:

13 Q. Mr. Gomez, with reference to the testimony you just  
14 gave, as well as your testimony yesterday, I just want to  
15 clarify what I don't think I heard. I do not think I heard any  
16 testimony from you on whether or not Shuttle Express is serving  
17 between Sea-Tac Airport and the piers in downtown Seattle to the  
18 satisfaction of the Commission.

19 Am I correct that you're not intending to address  
20 that question?

21 MS. CAMERON-RULKOWSKI: I'd like to object. Part of  
22 that question is a legal question, and so perhaps we could parse  
23 that out, that question out a little bit more. And I think that  
24 what you are trying to address is whether you have any concerns  
25 about the -- about whether there are any service problems, that



0211

1 sort of issue.

2 MR. HARLOW: Let me put it this way, if I could, just  
3 to clarify that.

4 JUDGE LOVINGER: Please.

5 BY MR. HARLOW:

6 Q. All right. My understanding is you're not intending  
7 to give a professional opinion, not a legal opinion, but as a  
8 regulator on that question, the question of satisfaction?

9 A. Would the question be whether one party is better  
10 over the other?

11 Q. Yeah. I'm just not hearing that you've addressed  
12 whether or not Shuttle Express is currently providing  
13 satisfactory service between Sea-Tac and the piers.

14 MS. CAMERON-RULKOWSKI: Again, I'm going to object,  
15 because it really is -- you're asking for -- you say that you're  
16 asking for an expert opinion.

17 MR. HARLOW: No, no. I'm asking him to confirm that  
18 he's not offering an opinion on that issue in this proceeding.

19 THE WITNESS: Staff has not offered an opinion as to  
20 any particular segment of Shuttle Express's service, whether  
21 it's being performed in a satisfactory fashion or not.

22 In general, the information that we have as a  
23 regulator is a matter of our internal records and proceedings  
24 that we've had in the past, and to that extent, Staff is not  
25 aware in general that Shuttle Express is not performing

0212

1 consistent with its authority or with the terms and conditions  
2 of service as it's contained in its tariff.

3 MR. HARLOW: Thank you, Mr. Gomez. That's all I have  
4 for you.

5 JUDGE LOVINGER: Mr. Fricke, do you have any  
6 questions?

7 MR. FRICKE: I have no questions.

8 JUDGE LOVINGER: Anything further, Counsel?

9 MS. CAMERON-RULKOWSKI: No redirect. Thank you.

10 JUDGE LOVINGER: Mr. Gomez, you're excused.  
11 Are there any other witnesses at this time for any  
12 party?

13 MR. HARLOW: We have no rebuttal, Your Honor.

14 JUDGE LOVINGER: Okay. We will move into oral  
15 argument. I like to give people a few minutes to prepare.

16 How much time do you think you would take before  
17 you'd be ready to go?

18 MR. HARLOW: I'm ready.

19 MS. CAMERON-RULKOWSKI: I'm ready also, Your Honor.

20 MR. FRICKE: Ready.

21 JUDGE LOVINGER: Okay. Then we'll...

22 MR. HARLOW: If we could, Your Honor, off the record,  
23 maybe discuss the order of argument briefly?

24 JUDGE LOVINGER: Okay. Can we please go off the  
25 record?

0213

1 (Discussion off the record.)

2 JUDGE LOVINGER: Back on the record, please.

3 MS. CAMERON-RULKOWSKI: I have a very brief closing  
4 statement for the Commission on behalf of Commission Staff.  
5 Staff will not be providing a recommendation on the legal  
6 questions, but I will go ahead and set them out.

7 As I had indicated at one point, Staff typically has  
8 not picked winners in protested auto transportation application  
9 cases. In this case, as in all cases, Staff has participated in  
10 the proceeding in order to ensure a clear record, especially  
11 because they were parties who were unrepresented by counsel.

12 Staff has fulfilled its task with respect to the  
13 record, so I'll move to the setting out of the legal questions.

14 The applicable statute is RCW 81.68.040. Under this  
15 law, an auto transportation company may not operate without  
16 first obtaining a certificate from the Commission declaring that  
17 public convenience and necessity require such operation.

18 Pursuant to Commission Rule, WAC 480-30-126, the  
19 Commission determines whether an Applicant has the knowledge,  
20 experience, and resources to conduct the proposed services;  
21 whether an Applicant is fit, willing, and able to comply with  
22 State law and the Commission rules in Chapter WAC 480-30  
23 governing auto transportation providers; whether the public  
24 convenience and necessity requires the proposed service; and  
25 whether -- or rather -- and if an existing auto transportation

0214

1 company is already serving in a same territory proposed to be  
2 served and protests the application, the Commission also  
3 determines whether the existing certificate holder is providing  
4 service to the satisfaction of the Commission. To make these  
5 determinations, the Commission examines the criteria in WAC  
6 480-30-136.

7           The requested authority that is really at issue in  
8 this proceeding is Capital Aeroporter's request for expanded  
9 authority to serve between the airport and the cruise terminals.  
10 It is Staff's position that Shuttle Express currently holds this  
11 authority, as does Evergreen Trails, and I thought I would take  
12 a moment to point that out in the certificate.

13           I'm referring to Exhibit JR-4, which is Shuttle  
14 Express's certificate, and Shuttle Express's authority to serve  
15 between Sea-Tac Airport and the cruise terminals is on that  
16 first page.

17           Shuttle Express is authorized to serve between  
18 Sea-Tac and also between Sea-Tac and points within 15 miles  
19 beyond the municipal line of Seattle. And in addition, Shuttle  
20 Express is authorized to serve from the Sea-Tac -- from Sea-Tac  
21 Airport and within the 25-mile radius of the airport. And both  
22 of these expressions of authority would encompass the route  
23 between Sea-Tac Airport and the cruise terminals.

24           From Staff's perspective, because both Shuttle  
25 Express and Capital Aeroporter have provided service under the

0215

1 Commission's regulation for such a long period of time and  
2 without consumer complaint, the legal issue at the heart of this  
3 case is whether the territory between the airport and the cruise  
4 terminals is already served, which question is part of the  
5 analysis of whether Shuttle Express is providing service to the  
6 satisfaction of the Commission within this territory.

7 And that concludes Staff's closing.

8 JUDGE LOVINGER: Thank you.

9 Mr. Harlow, we'll follow with you.

10 MR. HARLOW: Thank you, Your Honor.

11 I'm not going to cover the same ground as  
12 Ms. Cameron-Rulkowski. I appreciate her analyzing the  
13 certificate. Obviously, we agree Shuttle Express has the  
14 authority to serve between Sea-Tac and the piers and is, indeed,  
15 serving that authority.

16 The purpose of Shuttle Express's application in this  
17 case is to expand its authority, an extension, if you will, and  
18 it's to add all other points in King County, with the  
19 carve-outs, the exceptions that are stated, and to the Seattle  
20 piers. So, for example, the Bellevue hotels, residences in East  
21 King County, any points that are regulated and not carved out.

22 There has been no protest to this request for  
23 authority. No other carrier holds the authority, although we do  
24 have a concurrent application by Capital Aeroporter, which I'll  
25 address in a moment.

1           Accordingly, Shuttle Express only needs to present a  
2 prima facie case that it is fit, willing, and able, and that its  
3 proposed service is in the public convenience and necessity.

4           It bears, I think, looking closely at Capital  
5 Aeroporter's described request for extension of its authority.  
6 Shuttle Express has no interest in the removal of the  
7 restrictions and takes no position on that.

8           In terms of service to the piers, Capital has applied  
9 for Grays Harbor, Lewis, Mason, Thurston, Pierce, and King  
10 County to the piers, but all via Sea-Tac Airport. So if their  
11 authority were granted as applied for, all of their  
12 transportation would have to go through Sea-Tac Airport.

13           And I think based on the limited evidence we have  
14 seen, the main target market is for the points south of King  
15 County via the airport to the piers. As to all of the counties  
16 proposed to be served other than King, Shuttle Express has no  
17 position one way or the other on whether that should be granted.

18           Shuttle Express has protested the application; that  
19 Shuttle's concern is the request for authority to serve King  
20 County, and, specifically, we protest the whole thing because,  
21 you know, conceivably, operations could expand someday.  
22 Although we don't think it wouldn't necessarily be a very  
23 attractive service to serve Bellevue hotels via Sea-Tac to the  
24 piers. It doesn't sound like direct. Nevertheless, our protest  
25 goes to the entire county.

0217

1           And certainly we have shown that we have -- provide  
2     satisfactory service, but I will address in rebuttal as we have  
3     reserved, Mr. Fricke's argument as to why overlapping authority  
4     should be granted between Sea-Tac and the piers.

5           So addressing simply at this point in time, the  
6     Shuttle Express application is a very high-level overview. As  
7     to fitness, Shuttle Express has shown that it carries over  
8     650,000 passengers a year. Has an exemplary safety record.  
9     Zero fatal accidents in over 20 years of operation. Clearly a  
10    very modern and efficient operation. No complaints to Staff, no  
11    concerns by Staff in this docket, and Shuttle Express has  
12    specific experience serving Pier 66 and 91 from the airport,  
13    which is within its existing authority. And as the evidence, I  
14    think, made very clear, that pier operation is a very  
15    complicated operation to serve because of the challenges of  
16    space for ground transportation. Again, more on that later.

17           As to the need for the service, Ms. Wheeler from the  
18    Bellevue Red Lion supported the need for both package services  
19    that the hotel might sell, as well as walk-up passengers going  
20    from the hotels to the piers.

21           Mr. Gudgel testified really as an expert in ground  
22    transportation, as well as of his own personal experience, and  
23    supported a need for bus service to the piers, to and from  
24    hotels, as well as the direct service to residences in King  
25    County.

0218

1                   Mr. Groesbeck, who was a delight, I think one of the  
2 most knowledgeable public witnesses I have ever seen and  
3 certainly the most knowledgeable in this proceeding, provided  
4 broad support for public need for a bus service throughout King  
5 County. He gave examples of people asking for this service to  
6 and from hotels and residences as opposed to having to take a  
7 taxi. In short, the Shuttle Express application is unopposed,  
8 well-supported, and should be granted.

9                   Turning again briefly to the Capital Aeroporter  
10 application, as I mentioned, our sole issue is with the King  
11 County operations to the piers, and, specifically, the operation  
12 that we're already providing. And we will hear what Mr. Fricke  
13 has to say about the satisfactory nature of that service, and  
14 we'll reserve further comment for rebuttal.

15                   Thank you, Your Honor.

16                   JUDGE LOVINGER: Before Mr. Fricke resumes, do you  
17 mind if I ask you a question?

18                   MR. HARLOW: Of course not.

19                   JUDGE LOVINGER: So Shuttle Express is protesting the  
20 portion of the application from Capital Aeroporter that requests  
21 to be able to provide service from East King County to the  
22 piers?

23                   MR. HARLOW: Yes, Your Honor. And I'll get ahead of  
24 myself, since you want to know.

25                   The two public witnesses that Capital Aeroporter had



0219

1 first was Ms. Emmens. And according to my notes, she testified  
2 to a need between Grays Harbor, Lewis, Mason, Thurston  
3 Counties -- I can't remember if she did Pierce, but she did not  
4 mention King County. I was obviously listening for that very  
5 carefully. So she did not support a public need for Capital  
6 Aeroporter's transportation from King County via the airport.

7 The second public witness they had was Ms. Fletcher,  
8 who was with the Port of Seattle, and we will obviously take  
9 issue with whether or not she provided support as a legal matter  
10 for any King County transportation. But her testimony was  
11 solely focused on the airport and her perceived need for --  
12 well, I don't know if she characterized it as a need, but she  
13 supported the request by Capital Aeroporter to be able to  
14 provide service between the airport and the piers. She did not  
15 support a request for any service beyond that one geographic  
16 location of King County to the piers.

17 So we do not think there's any evidence in the record  
18 to support a grant of authority throughout King County as it has  
19 been applied for, even under the restriction that it has to run  
20 through the airport.

21 JUDGE LOVINGER: All right. Thank you.

22 MR. HARLOW: You're welcome.

23 JUDGE LOVINGER: I wanted to make sure that that's  
24 what you're saying.

25 Mr. Fricke?

0220

1           MR. FRICKE: Your Honor, Capital Aeroporter, in its  
2 application here, has applied for three different pieces. One  
3 was the removal of restrictions to points en route to Mount  
4 Rainier on the basis that the restrictions were there at the  
5 time -- or were put there at the time of its last extension  
6 because of the fact that there was an operating company called  
7 "Rainier Shuttle" at the time, that has been documented before  
8 this proceeding no longer exists, neither the company, nor the  
9 certificate.

10           Secondly, for areas between Thurston, Mason, Lewis  
11 Grays Harbor, Pierce, and King Counties, all of that geographic  
12 entity to the cruise ship piers via Sea-Tac Airport, we contend  
13 that the witness, Ms. Emmens that we submitted here, established  
14 that there was a need in a significant portion of that entire  
15 regional area that is all contiguous.

16           Furthermore, because all of the requests would be via  
17 Sea-Tac Airport, it was our understanding that Shuttle Express  
18 wasn't really concerned about points within King County because  
19 of that factor; that it would be via the airport, and it  
20 certainly would not be practical in the northern part of the  
21 county to bring those people to Sea-Tac Airport and then back to  
22 the piers. So we certainly understand that. We are still  
23 interested, particularly in the southern part of the county, and  
24 are willing to reduce the King County part of it as to the area  
25 south of SR 512 via 405 to SR 169 and southwest of 169, from a

0221

1 practical point of view, to route via the airport.

2 (Mr. John Fricke confers with Mr. Fricke.)

3 MR. FRICKE: 518. Did I say 512? I meant 518 in my  
4 first reference there. That is from Burien through the southern  
5 part of Tukwila, and then as you go from SR 169 toward Enumclaw,  
6 then it would be southwest of that area in the southern part of  
7 King County. We believe that we have established that there is  
8 a need in that regional area.

9 To the matter of most direct concern, as indicated by  
10 Shuttle Express, was -- or is providing cruise ship  
11 transportation, you know, on an auto transportation or a  
12 scheduled basis between Sea-Tac Airport and the waterfront,  
13 Seattle Waterfront.

14 Specifically, our interest in becoming involved in  
15 this was the fact that the transportation that was being  
16 provided from the south end of the terminal, has become very  
17 obscure in the change of ownership under the current owner of --  
18 operating as Gray Line Tours. And Gray Line Tours, while they  
19 may have authority there (1) did not protest our request, and is  
20 provided under 81.68.040, the Commission can grant authority  
21 if -- even in an existing territory if it is not objected to by  
22 an existing company.

23 Now, Shuttle Express, who has protested our  
24 application, we are asking for two things that are distinctively  
25 different than Shuttle Express's service to and from the cruise

0222

1 ship piers: (1) is that it be only from where the cruise ship  
2 departures are from the airport to the piers; and (2) that it  
3 would be closed-door; therefore, express or nonstop service to  
4 the waterfront.

5 Both features are distinctively different than what  
6 Shuttle Express offers to the cruise ship-bound passengers, and  
7 we believe that through our -- the testimony of our public  
8 witness, Ms. Fletcher, from the Port of Seattle, that we  
9 established that there is a need for a number of people who show  
10 up at the south end, and I think -- the south end of the  
11 terminal building as noted in Exhibit JF-5. You know, and  
12 you'll see that by that diagram, there is a -- I'm sorry -- JF-3  
13 that there is a significant difference -- distance for which  
14 people may need to travel from Door 00, south of the lot area,  
15 once they -- for those people who are not part of the chartered  
16 groups that are pre-vouchered for cruise ships to then go to the  
17 center of the diagram -- you'll see to the center of the parking  
18 garage -- up, over, and across and down to Island 2 in the  
19 center of the parking garage on a floor below -- or I guess it  
20 would be an equivalent floor, but they have to go up and across  
21 and down, a significant difference of retracking, if you will,  
22 to find transportation, whether it be Shuttle Express, taxi,  
23 limousine, et cetera, to go to the cruise ship piers.

24 As testified by Shuttle Express, their stops vary as  
25 to the number of stops that they may make between the airport

0223

1 and the cruise ship piers.

2 Our application, again, is to provide nonstop service  
3 to the piers, or at least to the waterfront, and then limited  
4 stops, obviously, at the waterfront itself to serve the various  
5 terminals there.

6 (Mr. John Fricke confers with Mr. Fricke.)

7 MR. FRICKE: We have indicated that we are fit,  
8 willing, and able to provide this. We would pray that the  
9 Commission would determine that, indeed, the existing service  
10 from there is not convenient for these parties at the south end  
11 and, therefore, would not be to the satisfaction of the  
12 Commission for those who arrive at that cruise ship check-in  
13 area at the south end, and this is the distinctions that we  
14 have.

15 As I've said, we are ready, willing, and able. We  
16 will add equipment as required as noted earlier in the record.  
17 We have a good record with the Commission itself and -- and make  
18 efforts as they do to provide for a convenient, safe, customer  
19 service-oriented business -- service. And, of course, that  
20 would also be an efficient return from the cruise terminals to  
21 the airport.

22 To address the one point that was made that the  
23 cruise ship terminals themselves are crowded in terms of space  
24 available for people to come in and out of there, we would  
25 simply contend that the more people that you can put on fewer

0224

1 vehicles, the less that that's -- the more that that's going to  
2 address the congestion at the terminals.

3 And as the cruise industry continues to grow with the  
4 limited space that they have to service people in and out of  
5 there, it makes more and more sense for people to travel to and  
6 from those terminals in multi-passenger vehicles rather than to  
7 drive and park and ride.

8 JUDGE LOVINGER: Thank you, Mr. Fricke.

9 Mr. Harlow, you had indicated you might wish to  
10 finish?

11 MR. HARLOW: Yes. Thank you, Your Honor, I would. I  
12 appreciate Mr. Fricke's presentation and the clarification of  
13 the satisfaction issues he sees.

14 The one area where we take issue with Staff a little  
15 bit is we do see a fitness issue with regard to Capital  
16 Aeroporter. They're a small operator. And as Mr. Fricke -- the  
17 other Mr. Fricke admitted on the stand, they're going to need to  
18 expand a little bit to add this scheduled operation between  
19 Sea-Tac and the piers.

20 Mr. Gudgel, who's known Capital Aeroporter for a long  
21 time, who's very active in the industry, noted that he had a  
22 history and a reputation for being slow to pay their bills.  
23 And, indeed, if we look at their applications -- this is Exhibit  
24 JF-1, specifically Section 5 -- and we went over this in cross,  
25 but they have current assets of fifty-four -- this is at the

1 peak of their season. This is their healthiest time of the year  
2 financially. Current assets at the time of application of  
3 54,000. That's cash in the banks and accounts receivable, and  
4 they owed -- had a current debt of \$187,000. So nearly four  
5 times as much current debt as current assets. That is a very,  
6 very unhealthy balance sheet, Your Honor.

7           And while we have no position on whether they should  
8 be allowed to continue to operate and carry their passengers on  
9 from Olympia and beyond to the piers, that's a minor extension  
10 of their operations. But to potentially have to buy additional  
11 vehicles with this kind of a balance sheet, could, we think,  
12 jeopardize their existing airporter service, and we don't think  
13 that's a very good gamble for the Commission to take with regard  
14 to the Sea-Tac -- to the pier portion of the application.

15           Next, let's address the two satisfaction arguments  
16 that were raised. And my hat is off to Mr. Fricke. He's come  
17 up with a creative approach to things, but it's simply not  
18 supported by the law.

19           The one witness who supported this claim of need for  
20 service to Door 00 was Ms. Fletcher of the Port, but recalled  
21 that the statute provides the Commission may -- I'm going to  
22 skip some here.

23           (As read): "When an Applicant requests a certificate  
24 to operate in a territory already served by another certificate  
25 holder" -- and because of the way this actually is worded, I

0226

1 can't read it right, but the test, of course, as you read at the  
2 beginning of this hearing, is that the existing holder will not  
3 provide to the satisfaction of the Commission.

4           Let me emphasize two points there. The first one is  
5 the test is the satisfaction of the Commission. The  
6 satisfaction of a single property owner is not the test. In  
7 fact, that one single property owner with a very larger property  
8 is not satisfied, does not meet the test.

9           But, secondly, look at that word "territory," okay?  
10 The statute does not say a particular property. The statute  
11 thinks in terms of a broader area than Door 0 versus Door 20 at  
12 Sea-Tac Airport or the garage. And, of course, the rule tracks  
13 that statute and uses those terms as well, and that would be WAC  
14 40-30-126(5).

15           This interpretation of the statute is further  
16 supported by the nature of the certificates, all right? If  
17 you'll look at Shuttle Express's certificate, they weren't  
18 granted a certificate to serve the third floor of the garage at  
19 Sea-Tac Airport. They were granted the certificate to serve  
20 Sea-Tac Airport.

21           Likewise, Capital Aeroporter has not filed an  
22 application to serve Door 00 at Sea-Tac Airport, they have filed  
23 an application to serve Sea-Tac Airport, the exact same property  
24 that Shuttle Express has a certificate to serve.

25           The fact is the Commission doesn't have any say or



0227

1 control over where carriers are going to serve and stage at the  
2 airport. That issue, as Ms. Fletcher testified, is within the  
3 exclusive control of the Port of Seattle, the property owner.

4 The Port could move Capital Aeroporter to Floor 3 of  
5 the garage next to Shuttle Express tomorrow, for all we know,  
6 and Capital would have to move its operations there, and the  
7 certificate would still cover it, because the certificate covers  
8 the whole airport. Or they could move Shuttle Express to Door  
9 00 tomorrow. The same thing could be happened -- could happen.

10 The analogy that I think maybe would be helpful here  
11 to understand is let's take one of our other witnesses, the Red  
12 Lion.

13 Supposing the Red Lion told Shuttle Express all of a  
14 sudden, "We're no longer going to allow you to bring your buses  
15 on our property," and Shuttle Express now had to serve the Red  
16 Lion its airporter service by parking out on the curb out at the  
17 street. And now a competing Applicant comes in to serve the Red  
18 Lion, and Ms. Wheeler gets on the stand and says, "Well, I  
19 support this new Applicant, because Shuttle Express's passengers  
20 have to walk all the way through the parking lot in the rain and  
21 go out to the street to get the bus, and the new Applicant is  
22 going to come into the porte-cochere right to the front door,  
23 and that's inconvenient for the passengers."

24 In short, this is a self-inflicted problem for the  
25 Port. The Port's created the problem. We understand why.

0228

1 We're not here to trash the Port. It's a big, big property, and  
2 they do their best to organize and have signage and so on and so  
3 forth. But they have created the problem that they identified.  
4 It's not a problem created by the existing certificate holder.  
5 The existing certificate holder is serving the airport in all  
6 respects, according to all witnesses, in a satisfactory manner.  
7 The only issue is which door they go to, which this Commission  
8 can't really control, which the carriers can't really control.  
9 It's totally within the control of the Port.

10                 Second, and if you get beyond that, and I hope you  
11 don't have to, just note that the need was shown, was strictly  
12 one-way, okay?

13                 Ms. Fletcher only testified to the issue of the few  
14 passengers, and by the way, we don't -- we don't have no clue  
15 how many passengers that is. Out of maybe 7,000 passengers  
16 coming in on a busy day, you know, is it five? Is it six? Is  
17 it ten? Is it four? How many are going down to Door 00? It's  
18 obviously a very small number. Nobody's counting. Nobody's  
19 tried to change the signage.

20                 You know, these are people who come in. Obviously,  
21 they haven't prereserved through the -- through the cruise  
22 lines. They haven't prereserved through Shuttle Express. They  
23 haven't decided -- they haven't done their homework, in other  
24 words.

25                 And we know not everybody's going to do their

0229

1 homework, but do you grant an overlapping certificate which  
2 could have some public interest and negative impacts simply  
3 because a small, tiny, less than 1 percent of the public doesn't  
4 do things as efficiently as they might have? You know, we don't  
5 think the law supports that. But think about the reverse, and,  
6 of course, Capital Aeroporter has applied for both ways from the  
7 pier to Sea-Tac.

8           Where is their evidence that the passengers are going  
9 to come out of the ship at the piers, and they're going to find  
10 Capital Aeroporter right there, whereas they'll have to walk  
11 farther to get to the Shuttle Express van?

12           In fact, the opposite is likely to be true, because  
13 certainly at Pier 91, Shuttle Express has two reserved places  
14 and could use a third, and it could be Capital Aeroporter where  
15 the customers have to walk an additional -- well, a few hundred  
16 feet or whatever. So there's no need to support transportation  
17 in the other direction.

18           The second and concluding response I have is this  
19 issue of the nonstop service. And certainly everybody would  
20 rather take a nonstop bus than, you know what? We have to make  
21 a stop.

22           But remember the testimony, and if -- and if you  
23 don't remember it, you know, I hope you'll wait and look at  
24 the -- at the record, because Mr. Rowley was very concise.  
25 Ninety-five percent of their pier transportation to and from the

0230

1 airport is nonstop. That was the number he used.

2 Further, he testified that only during the off-peak  
3 periods do they sometimes have to combine the Sea-Tac traffic  
4 with the -- or the pier to Sea-Tac traffic with some other stop  
5 like, say, a downtown hotel.

6 And in that regard, I want to ask you, if you would,  
7 please, to turn to Exhibit JF-1, which is the application. Now  
8 we're later, and compare that with Exhibit JR-11, which is  
9 Shuttle Express's tariff.

10 So this would be...

11 JUDGE LOVINGER: I think JR-11 is actually NG- --

12 MR. HARLOW: And it's Schedule No. 1 of JF-1 --

13 JUDGE LOVINGER: There we go.

14 MR. HARLOW: -- and page 38 of JR-11. So these are  
15 the comparative time schedules, and if you're ready, I'll  
16 proceed.

17 JUDGE LOVINGER: Okay.

18 MR. HARLOW: If you'll look at Schedule No. 1, which  
19 is the proposed time schedule of Capital Aeroporter, you will  
20 see that traveling to the waterfront, they propose to serve  
21 between the hours of 10:30 a.m. to one p.m., and returning from  
22 the waterfront to the airport, they propose to serve from eight  
23 a.m. to 10:30 a.m. In essence, they are proposing the cream  
24 skin, the peak times from the airport and do it on a nonstop  
25 basis.

0231

1           Now, if you'll look at page 38 of Exhibit JR-11, you  
2 will see Shuttle Express is going to offer service from -- does  
3 offer service from four a.m. to 10:30 at night, and the other  
4 direction from 4:50 a.m. to -- I'm sorry. It's 20:30. That's  
5 8:30 at night. And this is the scheduled service, and, of  
6 course, there's also on call from 4:50 a.m. to ten p.m.

7           So of course at the off-peak periods, if you're going  
8 to run an efficient operation, you're going to have to try and  
9 pick up some other passengers. Running efficiently is not the  
10 same as running unsatisfactory. I suspect strongly that if  
11 Shuttle Express were to limit its operation to 2 1/2 hours a  
12 day, the peak periods, that they could probably guarantee they  
13 would all be nonstop as well.

14           In sum, there's simply no evidence that would support  
15 a finding as required by the statute that Shuttle Express's  
16 service is not satisfactory, and the convenience here of having  
17 an additional carrier is simply a convenience to Capital  
18 Aeroporter to be able to, if you will, fill up their van. And  
19 while that's also an efficient operation, the statute simply  
20 doesn't allow it.

21           And then, finally, you have to consider whatever  
22 slight benefit there might be, as perceived by Ms. Fletcher, to  
23 have only a few passengers not have to walk back to the  
24 certificated carriers area that they assign in the garage.  
25 That's offset. It is not a situation at the piers of the more

0232

1 the merrier.

2 Mr. Fricke's right. The fewer vehicles you have  
3 coming in and taking the most passengers, that is what is  
4 beneficial to the piers, but you don't achieve that by letting  
5 more carriers in. You achieve the opposite.

6 The best way to accomplish that is to have at most,  
7 one, or as we currently have, two operators that are  
8 coordinating their activities. There would be no coordination  
9 between Shuttle Express and Capital Aeroporter. It's just  
10 another van that they don't have room for when, as Mr. Rowley  
11 testified, he's already got room on his van, or his bus. So  
12 there is definitely a downside to the congestion and the public  
13 confusion at the piers, and that more than offsets any slight  
14 advantage there might be at Door 00.

15 We submit that that portion of Capital Aeroporter's  
16 application that goes to serving King County should be denied.

17 JUDGE LOVINGER: Thank you very much. I'll take it  
18 all under advisement. You will have an opinion -- you'll have  
19 the orders at some point.

20 I'm sorry. Mr. Fricke, what?

21 MR. FRICKE: Your Honor, do I have the opportunity to  
22 rebut his statements?

23 JUDGE LOVINGER: Well, his statement was rebuttal,  
24 and at this point -- and they are to the arguments that you  
25 made. We can go on back and forth with this over and over.

0233

1 I've actually heard all the evidence that I need to, and hearing  
2 both of you summarize the evidence again isn't going to really  
3 help me any.

4 MR. FRICKE: Well...

5 JUDGE LOVINGER: His argument is argument. It is not  
6 testimony. What's going to happen is the decision is going to  
7 be made based upon the testimony that was provided in this  
8 hearing, not based upon how well somebody argued or didn't argue  
9 their case. But the problem is, is that we would end up having  
10 you say something, and then Mr. Harlow would feel that he has to  
11 respond back to that, and we could just spend the rest of the  
12 day here hearing and go back and forth saying...

13 MR. FRICKE: Okay. I understand Your Honor's  
14 position here, but there were misstatements and actually  
15 conflicting statements made in what Mr. Harlow offered compared  
16 to testimony.

17 JUDGE LOVINGER: I understand. That's what I was  
18 trying to tell you. What we're going to be basing the orders  
19 on --

20 MR. FRICKE: Okay.

21 JUDGE LOVINGER: -- is going to be the testimony, not  
22 Mr. Harlow's arguments.

23 MR. FRICKE: Okay.

24 JUDGE LOVINGER: And if he stated something better  
25 for his side than it was stated in the testimony, it's not going

0234

1 to help the testimony be any better than it is.

2 But I appreciate the point that you're trying to  
3 make.

4 MR. FRICKE: Okay.

5 JUDGE LOVINGER: Thank you very much.

6 Does anybody have anything further at this time?

7 Well, then, Dockets TC-111619, TC-111446, and  
8 TC-111643 are now adjourned.

9 MS. CAMERON-RULKOWSKI: Thank you, Your Honor.

10 MR. HARLOW: Thank you, Your Honor.

11 (Proceeding concluded at 11:22 a.m.)

12 -o0o-

13

14

15

16

17

18

19

20

21

22

23

24

25



