

[Service Date December 13, 2013]

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET TC-132141
	)	
SHUTTLE EXPRESS, INC.,	)	ORDER 01
	)	
For Exemption From WAC 480-30-	)	
213(2) and WAC 480-30-456,	)	ORDER GRANTING PETITION
Pursuant To WAC 480-07-110	)	WITH CONDITIONS
	)	
.....	)	

**BACKGROUND**

- 1 Shuttle Express, Inc. (Shuttle Express or Company) is an auto transportation company that operates a share ride, door-to-door, on-demand service between Sea-Tac Airport and homes and businesses throughout most of King County and portions of neighboring counties. For circumstances when Shuttle Express is unable to provide that service using Company-owned vans and employed drivers, Shuttle Express has developed what it calls a “rescue service,” which substitutes a limousine or town car owned and operated by an independent contractor that is licensed by the Department of Licensing as a limousine carrier under RCW Ch. 42.72A. Most of these substitutions involve a single person or party, but Shuttle Express sometimes combines groups, resulting in more than one stop by the limousine carrier to pick up or drop off passengers.
- 2 On May 1, 2013, the regulatory staff (Staff) of the Washington Utilities and Transportation Commission (Commission) filed a complaint against Shuttle Express in Docket TC-120323, alleging that between October 2010 and September 2011, the Company’s operation of its “rescue service” was an unlawful independent contractor program. The Complaint alleged that Shuttle Express violated WAC 480-30-213(2) on 5,715 occasions by relying on independent contractors to transport passengers, rather than using Company employees as required by the rule. The Complaint also alleged that Shuttle Express improperly released private customer information to these contractors in violation of WAC 480-30-456.
- 3 On November 1, 2013, an administrative law judge entered an initial order in that docket finding that the Company had violated WAC 480-30-213(2) and WAC 480-30-456 and imposed penalties for those violations. Shuttle Express requested until

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January 3, 2014, to file for administrative review of that order, and the Commission granted that request.

- 4 On November 19, 2013, Shuttle Express filed a petition pursuant to WAC 480-07-110 for a temporary and conditional exemption from compliance with WAC 480-30-213(2) and WAC 480-30-456 (Petition) to permit Shuttle Express to operate its “rescue service” through the holiday period beginning on December 13, 2013 and ending on January 15, 2014. The Company believes that its “rescue service” does not violate Commission rules. However, pending a final determination of those issues in Docket TC-120323, Shuttle Express asks that the Commission exempt the Company from compliance with WAC 480-30-213(2) and WAC 480-30-456 during this particularly busy time of year.
- 5 WAC 480-07-110(1) provides, “The commission may grant an exemption from or modify the application of its rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes.” Shuttle Express contends that the requested exemptions satisfy these criteria. “Rescue service,” according to the Company, has benefitted the public interest because “a number of passengers received more timely transportation to or from the airport than they would have had without the rescue.”<sup>1</sup> In addition, Shuttle Express states that “rescue service is the ‘safety valve’ that makes share ride door-to-door service possible at a viable cost and price to airport passengers.”<sup>2</sup>
- 6 Similarly, Shuttle Express contends, the “rescue service” is aligned with the purposes of the rules. The requirement in WAC 480-30-213(2) to use Company employees to drive the vehicles ultimately preserves Commission oversight and enhances passenger safety, and Shuttle Express believes that the conditions it already imposes, along with the additional conditions it proposes in its Petition, would ensure more than adequate oversight. The Company maintains that the purpose underlying WAC 480-30-456(3) is to prohibit release of customer information to third parties for purposes unrelated to the providing or billing of the transportation services requested, but “[s]ince Shuttle Express only allows limousine drivers to use the customer information to serve the customer’s request for airport ground transportation, the underlying purpose of WAC 480-30-456(3) is already met.”<sup>3</sup>

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<sup>1</sup> Petition ¶ 11.

<sup>2</sup> *Id.* ¶ 12.

<sup>3</sup> *Id.* ¶ 28.

7 Staff opposes the Petition. Staff states that the exemption would be meaningless because “rescue service” violates the requirements in RCW 81.68 that prohibit any company from providing auto transportation service without a certificate from the Commission, and the independent contractors Shuttle Express uses hold no such certificate. Staff also contends that Shuttle Express has other options available that would enable the Company to provide a comparable service without violating the statute or Commission rules. Staff maintains that since 2002, Shuttle Express has refused to conform its operations to these rules or use proper procedures to seek changes to them, and the Company’s eleventh hour request for expedited exemption now is unwarranted and without merit.

### **DISCUSSION**

8 We share Staff’s concern with Shuttle Express’s history of disregarding these Commission rules and agree with the dissent of Chairman Danner on this point. The Company has a legitimate business interest in ensuring that all passengers to whom it has promised service receive that service, but we expect the Company, like all regulated companies, to comply with applicable legal requirements while pursuing that interest. Shuttle Express’s apparent continuing refusal to do so, or to work with Staff and the Commission to modify those requirements, is an issue we anticipate will be presented for resolution in Docket TC-120323.

9 On a going-forward basis in this docket, however, we nevertheless conclude that we should grant the Company’s requested temporary and conditional exemption from compliance with WAC 480-30-213(2) and WAC 480-30-456. We base our decision on three considerations.

10 Our primary concern in these circumstances is for consumers. Passengers who have booked transportation to or from Sea-Tac Airport should receive that service, and “rescue service” furthers that goal. Moreover, Staff confirmed that the Commission has not received any customer complaints about this service. Based on the information before us, exempting the Company from these two rules for a short time during this busy holiday period, despite the history recited in the dissent, would not harm consumers and would be consistent with the public interest.

11 Second, the Commission recently has undertaken substantial efforts to reduce regulation on auto transportation companies. Travellers have many options for

getting to and from the airport. To the extent appropriate and permissible under applicable statutes, the market, rather than prescriptive regulations of the Commission, should discipline company behavior. The “rescue service” responds – and is subject – to these competitive pressures. The requested exemption thus is consistent with the Commission’s regulation of auto transportation companies.

- 12 Finally and consistent with the purposes of the specific regulations at issue here, Shuttle Express has agreed to conditions (included in Appendix A to this Order) that enhance consumer protection and Commission oversight of the “rescue service.” Those conditions also limit the scope and scale of the service to less than five percent of the Company’s total business for a one-month period during a busy travel season. Such a finite, well-documented pilot program will provide the Commission with information that will be useful in developing a long-term solution to the business issues Shuttle Express raises.
- 13 We emphasize, however, that we are not condoning Shuttle Express’s past practices and do not address, much less make any determinations on, the issues raised in Docket TC-120323. Nor are we endorsing the “rescue service” or making any conclusion that this service is authorized or permissible under applicable law, including RCW 81.68 and Commission rules governing auto transportation companies. The relief we approve is narrowly tailored and in effect for a limited time. We grant Shuttle Express an exemption from compliance with WAC 480-30-213(2) and WAC 480-30-456 for one month during the holidays solely for the benefit of the Company’s customers.

### **FINDINGS AND CONCLUSIONS**

- 14 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including automobile transportation companies, and has jurisdiction over the subject matter of this proceeding.
- 15 (2) Shuttle Express, Inc., is an auto transportation company and holds a certificate of public convenience and necessity to transport passengers.
- 16 (3) This matter came before the Commission at its regularly scheduled meeting on December 12, 2013.

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- 17 (4) Granting Shuttle Express an exemption from compliance with WAC 480-30-213(2) and WAC 480-30-456 during the period of December 15, 2013, through January 15, 2014, subject to the conditions in Appendix A would be consistent with the public interest and the purposes underlying regulation of auto transportation companies.

**ORDER**

THE COMMISSION ORDERS That

- 18 (1) The Petition of Shuttle Express, Inc., for temporary and conditional exemption from compliance with WAC 480-30-213(2) and WAC 480-30-456 is GRANTED subject to the company's compliance with the conditions in Appendix A to this Order;
- 19 (2) The exemption is effective upon Shuttle Express, Inc.'s compliance with the conditions in Appendix A, but no earlier than December 15, 2013, and the exemption expires on January 15, 2014, without the opportunity for renewal; and
- 20 (3) The Commission retains jurisdiction to enforce the terms of this Order.

DATED at Olympia, Washington, and effective December 13, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

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Chairman Danner, dissenting:

- 21 Shuttle Express requests expedited consideration of a petition for a one-month exemption of Commission rules so that it may continue to engage over the holidays in the same practices in which it has engaged almost continually since at least 2002, which it has known since 2002 may be illegal, which it has been advised by Staff and the Commission to cease, for which it was fined in 2008, and which are now the subject of an administrative law judge's initial order and penalty pending review by the Commission.
- 22 Like my colleagues, I am sympathetic to the Company's proposal to allow for the use of contactors in certain circumstances, and I am willing to entertain such a proposal at the conclusion of the enforcement proceedings in Docket TC-120323. However, I fear that in light of the Company's longstanding and apparently willful disregard of the Commission's rules and orders, the grant of the requested exemption before the conclusion of that proceeding sends a signal to this company and others that they may flaunt the Commission's regulations without consequence. I want to avoid sending such a signal.
- 23 The more appropriate message, in my view, is that the Commission's rules must be followed and that failure to do so will have consequences. This applies even to rules with which a company disagrees. Shuttle Express has had years to bring a petition to this Commission seeking an exemption or amendment to our rules. Until two weeks ago, after the issuance of an initial order imposing a \$125,000 fine, it did not do so, and instead chose to conduct its business in probable violation of our rules.
- 24 I know that my colleagues share this concern, and I note that they very clearly state that their decision today does not affect in any way the Commission's review of the initial order in Docket TC-120323. However, I would prefer to conclude that enforcement proceeding before considering exemptions, even temporary ones, to the same actions that gave rise to the violations found by the administrative law judge.
- 25 For these reasons, I respectfully dissent.

DAVID W. DANNER, Chairman

## Appendix A

## Conditions

- A. Shuttle Express may provide rescue service only for interrupted service or to serve a guest request when Shuttle Express is unable to timely fulfill its commitment due to circumstances not reasonably within its control.
- B. Shuttle Express may use only a company (independent contractor) licensed as a limousine carrier by the Department of Licensing (“DOL”) under RCW Ch. 42.72A to provide rescue service. The independent contractor must operate in accordance with the requirements of its license in all respects, except that under a single contract with Shuttle Express, unrelated parties may be carried on the same trip and multiple pickups and drop offs may be made.
- C. Shuttle Express must ensure that the independent contractor meets all Commission safety regulations applicable to auto transportation companies, including regulations governing equipment, operations, drug testing, drivers’ licenses, safe driving, etc.
- D. Shuttle Express must inform passengers verbally or in writing reasonably in advance (under the circumstances of the exigent event) of the pickup and give them option to use rescue service. Shuttle Express will provide passengers who decline rescue service with a full refund of any prepaid fare and any courtesy adjustment (*e.g.* reimburse airport parking or airline fees or fare increases) consistent with Shuttle Express’s policies for late or delayed service.
- E. Shuttle Express may not provide rescue service as a scheduled or planned event as part of the Company’s regulated service. Shortage of equipment is not a viable reason for a rescue, but an unexpected shortage of drivers or equipment not being timely available at the particular pickup location is.
- F. No up-charge may be levied on the passenger receiving rescue service; the original tariffed or quoted fares must be honored.
- G. In the aggregate during the exemption period, no more than five percent of Shuttle Express’s total business – by trips or revenue, whichever is less – may be served by rescue service.
- H. Shuttle Express may use rescue service to the airport only when Shuttle Express cannot otherwise ensure the passenger will make their flight.
- I. Shuttle Express may use rescue service from the airport only when wait times exceed reasonable staging times – typically more than 45 minutes – caused by unexpected circumstances or unforeseen numbers of passengers seeking service that were not pre-booked.

- J. The independent contractor must agree to voluntarily submit to Commission safety inspections upon request under the same conditions applicable to vans owned and operated by Shuttle Express and other auto transportation companies.
- K. Shuttle Express and the independent contractor must procure insurance covering the contractor for rescue trips in an amount that collectively is no less than the amount of coverage the Commission requires Shuttle Express to maintain.
- L. The independent contractor must not use customer information for any sales or marketing purposes of its own and must protect and not disclose customer information to the full extent required by WAC 480-30-456. Any violation of that rule by a contractor will be deemed and treated as a violation of WAC 480-30-456 by Shuttle Express itself.
- M. Shuttle Express shall be liable for any violation of law an independent contractor commits while participating in the rescue service to the same extent Shuttle Express would be liable if Shuttle Express committed the violation.
- N. Shuttle Express must require the independent contractor to provide a notice to each customer to whom rescue service is provided identifying Shuttle Express as the operator of the service and explaining the reasons for the service. Shuttle Express must work with Commission Staff and obtain its approval on the appropriate content and wording of that notice before commencing rescue service under this order.
- O. Shuttle Express must compile records on the operation of the Company's rescue service sufficient to show compliance with these conditions, and Shuttle Express must maintain those records in its primary company office. These records must include drug testing records and documentation of insurance for each independent contractor. Shuttle Express must provide a report to the Commission by February 1, 2014, on the operation of that service during the period in which the rule exemptions are in effect.