

[Service Date February 25, 2011]

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application TC-091931 of)	DOCKET TC-091931
)	
SHUTTLE EXPRESS, INC.)	ORDER 04
)	
For Extension of Authority under)	
Certificate No. C-975, For a Certificate)	INITIAL ORDER GRANTING
of Public Convenience and Necessity to)	APPLICATION TO REMOVE
Operate Motor Vehicles in Furnishing)	RESTRICTIVE LANGUAGE IN
Passenger and Express Service as an)	CERTIFICATE NO. C-975
Auto Transportation Company)	
)	
.....)	

1 ***Synopsis:** This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective as described in the notice at the end of this order. This order grants Shuttle Express’s application for an extension of authority by removing restrictive language in its original certificate that limited the size and capacity of the vans the company could operate.*

2 **NATURE OF PROCEEDING.** Docket TC-091931 involves an Application filed by Shuttle Express, Inc. (Shuttle Express or Applicant) with the Washington Utilities and Transportation Commission (Commission) on December 16, 2009, seeking an extension of Certificate No. C-975 for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company (Application). Specifically, Shuttle Express seeks to remove the restriction in its existing certificate of public convenience and necessity stating that “service may be provided in vehicles no larger than a seven passenger van.” The Commission published Notice of the Application in its weekly Docket of December 22, 2009.

3 **PROCEDURAL HISTORY.** On January 20, 2010, Seatac Shuttle, LLC d/b/a Whidbey Seatac Shuttle (SeaTac Shuttle) electronically filed a protest to the Application. One week later, on January 27, 2010, the Commission received a copy of SeaTac Shuttle’s protest by mail.

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- 4 On February 4, 2010, Shuttle Express moved to strike SeaTac Shuttle's protest as untimely. On February 10, 2010, SeaTac Shuttle electronically submitted its response to the motion. One week later, on February 17, 2010, the Commission received a copy of SeaTac Shuttle's response by mail.
- 5 On February 25, 2010, Administrative Law Judge (ALJ) Adam E. Torem entered Order 01, an Interlocutory Order Granting Motion to Strike Protest; Canceling Prehearing Conference; Initial Order Terminating Adjudicative Proceeding.
- 6 On March 12, 2010, SeaTac Shuttle filed a Response to Interlocutory Order, seeking to have the Commission reinstate its protest. On March 22, 2010, Shuttle Express filed an Answer to Petition for Administrative Review.
- 7 On August 25, 2010, the Commission entered Order 02, an Order Granting Petition for Review, accepting SeaTac Shuttle's protest as timely filed and directing that the prehearing conference be rescheduled in order to initiate an adjudicative proceeding to address the Application.
- 8 The Commission conducted a prehearing conference on September 28, 2010, setting deadlines for the parties to exchange witness and exhibit lists and scheduling a hearing for November 30, 2010. The Commission held the evidentiary hearing as scheduled, in Seattle, Washington, before Judge Torem.
- 9 **APPEARANCES.** Brooks E. Harlow, Seattle, Washington, represents Shuttle Express. John Solin and Mike Lauver, Oak Harbor, Washington, are co-owners and represent SeaTac Shuttle, *pro se*.

MEMORANDUM

- 10 The standard governing this application for extension of authority is the same as that for an original application for authority to operate as an auto transportation company.¹ The law requires the Commission to address two questions in deciding the application:

¹ RCW 81.68.040 and WAC 480-30-126.

- a. Does the public convenience and necessity require the proposed service?
- b. Does an existing auto transportation company operating in the territory at issue provide service to the satisfaction of the Commission?

In this matter, as Shuttle Express does not seek any extension of its established territory, the Commission focuses mainly on the public need for the proposed change to the certificate already held by Shuttle Express.

- 11 Shuttle Express presented the testimony of two witnesses on the issue of public need: Courtney Touw, a company customer from Seattle, and Stacy Mattson, the Port of Seattle's manager of ground transportation operations at Seattle-Tacoma International Airport. Shuttle Express also presented the testimony of John Rowley, President of Shuttle Express, on the issue of the company's knowledge, experience, resources, fitness, willingness, and ability to continue providing its services without a restriction on the size or capacity of its vehicles. In support of its protest, SeaTac Shuttle presented the testimony of its co-owners, John Solin and Mike Lauver.
- 12 Mr. Touw testified that he has been a Shuttle Express customer for approximately 10 years. Mr. Touw lives in Seattle and has been happy with the service provided by Shuttle Express to him and to his family. Mr. Touw supports eliminating the limit on the company using only seven passenger vans because he prefers having a larger van available for family trips when his family has a need to transport 5-10 persons. Mr. Touw also touted the environmental and efficiency benefits of using larger vans.
- 13 Ms. Mattson testified that she is familiar with the Port of Seattle's exclusive concession agreement with Shuttle Express. She stated that the Port of Seattle works with certificate holders within the limits of their authority from the Commission and expects Port concessionaires to work with the Commission to resolve any disputes regarding their certificates of public convenience and necessity. Ms. Mattson explained that until quite recently, she was unaware of the seven passenger van limit contained in the Shuttle Express certificate; there is no such restriction contained in the Port of Seattle's concessionaire agreement with Shuttle Express.
- 14 Ms. Mattson believes that eliminating the seven passenger capacity constraint is in the public interest because with 10 passenger vans, Shuttle Express is able to make fewer trips into and out of the airport, which reduces congestion as well as auto emissions.

Ms. Mattson also stated that Shuttle Express' use of larger vans cuts down passenger wait times for door-to-door shared ride services.

- 15 Mr. Rowley testified that he believes the original seven passenger capacity limitation was included in the company's certificate in order to distinguish Shuttle Express from Gray Line, a protestant of Shuttle Express' initial application. In subsequent years, Shuttle Express expanded its territory by acquiring certificates held by two of its competitors; as neither of these certificates contained any size or capacity limitations, Mr. Rowley contended that Shuttle Express was not obligated to seek an extension to its certificated authority before acquiring 10 passenger vans. Mr. Rowley explained that Shuttle Express filed its current application seeking to extend its certificated authority in order to clarify any misperceptions with the company's authority.
- 16 Mr. Rowley acknowledged that the Shuttle Express fleet consists mainly of Ford Econoline 10 passenger vans with the back seating bench removed to accommodate a luggage cage. He explained that strictly enforcing and imposing the seven passenger capacity restriction would severely handicap operations for Shuttle Express, including an inability to meet peak demand. Mr. Rowley also testified to the company's exemplary safety record as well as its fitness and ability to continue providing door-to-door services with 10 passenger vans.² According to Mr. Rowley, the Commission has never contacted Shuttle Express regarding complaints of unsatisfactory service.
- 17 Under cross-examination, Mr. Rowley conceded that Shuttle Express no longer owns any seven passenger vans, even though some potentially useful models are still available on the market. Further, he acknowledged that the company's average passenger count was 3-4 customers per trip; only occasionally do individual trip capacities exceed seven passengers. In extreme circumstances, Shuttle Express uses its largest vehicles (greater than 10 passenger capacity) to address peak loads. In addition, Mr. Rowley accepted that the company brochure carried in its vans was not current with the company tariff on file with the Commission.³ Finally, Mr. Rowley noted he could recall Shuttle Express vans being involved in a few rollover accidents.

² See Exhibits 3 and 4 regarding the company's safety record and equipment; see Exhibits 2, 6, 7, and 8 regarding the company's fitness and ability to continue to provide airport shuttle services.

³ See Exhibit B (Shuttle Express Tariff 7) and compare listing of service area ZIP codes with Exhibit 2 (company schedule/brochure). Mr. Rowley noted that Exhibit 2 was printed in August 2010 and that new ZIP codes had been added to the company's service territory in May 2010 and again in September 2010. Mr. Rowley stated that he would immediately arrange to have updated brochures printed.

- 18 Mr. Solin testified that SeaTac Shuttle provides passenger service from Whidbey Island to Seattle-Tacoma International Airport. SeaTac Shuttle filed its protest because it discovered a restriction in Shuttle Express' certificate that it felt was being ignored, both by the company and by Commission Staff.
- 19 Mr. Solin confirmed that SeaTac Shuttle's protest was not a claim of territorial infringement. Further, Mr. Solin acknowledged that removing the seven passenger capacity restriction from Shuttle Express' certificate would not harm SeaTac Shuttle's business in any way.
- 20 Mr. Lauver testified that SeaTac Shuttle's protest was designed to draw attention to the Commission's lack of enforcement of its own regulations. In Mr. Lauver's opinion, the effort that SeaTac Shuttle puts into complying with the terms of its own certificate is devalued when the Commission allows other auto transportation companies, including Shuttle Express, to ignore the restrictions in their certificates.
- 21 **COMMISSION DECISION.** Pursuant to WAC 480-30-126(2), the Commission must determine that a public need exists for the proposed service before granting an application for an extension of authority. The applicant must support its application with independent witnesses who actually require the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority.⁴
- 22 The Commission will not accept as support an applicant's own statements that its proposed service is needed by the public.⁵ The Commission has historically disregarded such testimony and viewed it as self-serving.⁶ Furthermore, for an

⁴ WAC 480-30-136(3)(g)(ii).

⁵ WAC 480-30-136(3)(g)(i). In accordance with this rule, the Commission did not consider Mr. Rowley's testimony when evaluating the public need for services in larger vans.

⁶ *In re Application of SeaTac Shuttle, LLC, d/b/a SeaTac Shuttle, For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Docket TC-030489, Order No. 02 at 21 (September 8, 2003); *In re Application of Sharyn Pearson & Linda Zepp d/b/a Centralia-SeaTac Airport Express, for an extension of their Certificate No. C-993 to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Hearing No. D-76533, Order M.V.C. No. 2057 at 4 (June 24, 1994).

applicant to establish a prima facie case for public need the evidence presented by the applicant must relate to a period of time within one year of the application.⁷

- 23 Shuttle Express presented sufficient evidence regarding public need. Mr. Touw expressed his satisfaction with the company's reliance on 10 passenger vans and his preference to having the option to use a single vehicle to transport all of his extended family to and from the airport. In addition, Ms. Mattson explained the public benefits of having larger capacity vans service the Port of Seattle's door-to-door transportation concession. Both of these witnesses are independent of Shuttle Express and their testimony is suitable for consideration by the Commission on the subject of public need. The Commission finds that Shuttle Express has met its burden of proof that the public need requires the extension of authority requested.
- 24 Pursuant to WAC 480-30-136(4), if an applicant requests an extension of authority for a territory already served by another certificate holder, the applicant must show that the existing transportation company or companies will not provide service in that territory to the satisfaction of the Commission under RCW 81.68.040. In this case, there is an existing and previously approved overlap between the territories of Shuttle Express and SeaTac Shuttle. Neither party presented evidence that the other's services have caused passengers delay or inconvenience or evidence that their competitor's routes are circuitous and not direct, which would speak to inadequacy of service. Therefore, the Commission will not disturb the territorial limits already established in Certificate C-975.
- 25 Having made these findings, the Commission turns to the fundamental question in this matter: whether or not Shuttle Express should be permitted to bring its existing certificate into conformance with its ongoing operations. Although in most instances the Commission's regulatory staff initiates enforcement actions to bring a regulated company's operations into line with applicable law, regulations, and tariffs, in this case a protest is being used as a vehicle to draw the Commission's attention to an auto transportation company's alleged violation of a restriction in its certificate.
- 26 WAC 480-30-086(6) states that auto transportation companies must "operate strictly within the authority described in its certificate" and allows the Commission to take administrative actions against companies who fail to adhere to their certificates. In

⁷ *Id.*, at 4.

addition, WAC 480-30-006(4) states that no deviation from the Commission's rules will be permitted without written authorization from the Commission, at risk of being subject to penalties as provided by law. Here, Commission Staff did not undertake any action to enforce the seven passenger capacity restriction in Certificate C-975.

- 27 Shuttle Express is a relatively large auto transportation company. However, its President acknowledged at hearing that the company did not have a regulatory compliance division or specific delegation of that duty to any one employee.⁸ As the above-referenced regulatory provisions make clear, Shuttle Express is responsible for strictly complying with the terms of its certificate and fails to do so at its own peril.⁹
- 28 The situation presented by this Application is irregular. Shuttle Express has come to the Commission and seeks to ensure that its operations are fully compliant with its certificated authority. In order to obtain this assurance, it appears necessary to alter the existing certificate by removing a presumably outdated restriction on vehicle size and capacity. Strict adherence to the restriction language could force Shuttle Express out of business, at least temporarily, negatively impacting the public.
- 29 As the record in this case makes clear, Shuttle Express's operations have already evolved beyond the point of seven passenger vans. The company's equipment list consists of mainly 10 passenger vans.¹⁰ Given the evidence of public need for larger vehicles in this industry and the lack of any commercially-based protest against larger vans, there is no legitimate dispute concerning whether the company has satisfied the standard for approval of its application for extension of authority. The issue is the extent to which Shuttle Express' failure to seek to amend its certificate before deploying its larger vans provides sufficient grounds to deny the application.
- 30 We do not endorse the sequence of actions taken by Shuttle Express in this matter. Shuttle Express should have requested Commission authority before obtaining the larger vans. Nevertheless, Shuttle Express has now come before the Commission and seeks to bring its operations into compliance with all applicable rules.

⁸ Rowley, TR. 152:12-21. Mr. Rowley, however, has recently been in contact with Commission Staff to obtain technical assistance interpreting the certificate. *See* TR. 154:6-21.

⁹ Nevertheless, this case is *not* an enforcement proceeding. In fact, Commission Staff did not participate in any manner whatsoever.

¹⁰ *See* Exhibit 1, pages 3-5.

- 31 The Commission's policy is to ensure compliance with its rules and regulations. Although Commission Staff may yet investigate this matter to evaluate whether or not penalties should be imposed, this proceeding does not hinge on whether Shuttle Express should be penalized for seeking forgiveness rather than asking permission. The public need exists for larger capacity vans than are currently allowed in Certificate C-975. Because Shuttle Express has satisfied the applicable standard and seeks, however tardily, to bring its operations into compliance with applicable rules, we will approve the Application.
- 32 The allegations raised by SeaTac Shuttle regarding Shuttle Express' compliance with other Commission rules and regulations similarly are not germane to the application before us. We nevertheless remind the company that WAC 480-30-276 requires that auto transportation companies abide by the tariffs and time schedules on file with the Commission and that WAC 480-30-286 directs carriers to post in each vehicle a copy of the schedule and fares for each route served by that vehicle. Commission Staff may also wish to investigate these claims further.

FINDINGS OF FACT

- 33 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:
- 34 (1) On December 17, 2009, Shuttle Express, Inc., d/b/a Shuttle Express filed an application with the Commission requesting an extension of its authority under Certificate No. C-975 in order to remove a restriction limiting Shuttle Express to vehicles no larger than seven passenger vans.
- 35 (2) On January 20, 2010, SeaTac Shuttle, LLC, d/b/a Whidbey-SeaTac Shuttle, filed a protest to the application.
- 36 (3) Shuttle Express is currently relying on 10 passenger vans to provide the requested service.
- 37 (4) A public need exists for the extension of authority requested by Shuttle Express.

38 (5) Shuttle Express is not seeking to expand its established service territory.

CONCLUSIONS OF LAW

39 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:

40 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties to and the subject matter of this application.

41 (2) Shuttle Express has shown a public need for its requested extension of authority.

42 (3) SeaTac Shuttle has failed to prove that Shuttle Express is not providing convenient, direct, and expedient service to the traveling public.

43 (4) The public convenience and necessity require that the applicant be granted an extension of authority to operate as an auto transportation company without being restricted to seven passenger vehicles.

ORDER

44 **THE COMMISSION ORDERS That** the Application of Shuttle Express, Inc., is GRANTED and the language in Certificate C-975 restricting vehicle size and capacity shall be stricken.

Dated at Olympia, Washington, and effective February 25, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO THE PARTIES

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

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

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

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

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and four (4) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
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