

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

SEATAC SHUTTLE, LLC, C-0177	)	DOCKET TC-072180
	)	
Complainant,	)	
	)	
v.	)	ORDER 04
	)	
KENMORE AIR HARBOR, LLC	)	
(Certified),	)	ORDER GRANTING LEAVE TO
	)	WITHDRAW PETITION TO AMEND
Respondent.	)	COMPLAINT; CLOSING DOCKET
	)	
.....	)	

**MEMORANDUM**

- 1 On November 13, 2007, SeaTac Shuttle, LLC (SeaTac Shuttle) filed with the Washington Utilities and Transportation Commission (Commission) a formal complaint alleging that Kenmore Air Harbor, LLC, (Kenmore Air) is in violation of certain sections of WAC 480-30 and RCW 81.68. These violations were alleged to result from Kenmore Air providing scheduled passenger service over a regular route without the authority required under RCW 81.68 and WAC 480-30.
  
- 2 The presiding Administrative Law Judge entered Order 02, his Initial Order dismissing the complaint on grounds of preemption by federal law, on February 4, 2008. In Order 03, entered on October 31, 2008, the Commission denied in part Seatac Shuttle’s Petition for Administrative Review of the Initial Order, and affirmed the Initial Order’s determination that federal law governing air carriers preempts the Commission from regulating the price, route or service of Kenmore Air’s ground operations between Boeing Field and SeaTac Airport, and Lake Union and SeaTac Airport. However, the order remanded the matter to the presiding administrative law judge to:

(1) allow Seatac Shuttle the opportunity to amend its complaint to fully address the question of whether the Commission has jurisdiction over the licensing, insurance requirements and safety regulations governing Kenmore Air's ground transportation operations, and, if necessary, (2) consider the issue through hearing or briefing.<sup>1</sup>

3 An amended complaint would be necessary, the Commission explained, because:

The Initial Order did not address the issue [related to safety regulation] as Seatac Shuttle did not clearly make this claim in its complaint, and no party briefed the issue on summary determination. Seatac Shuttle raises this issue for the first time in its petition for review, and only Staff discusses the issue in its answer.<sup>2</sup>

4 On November 10, 2008, SeaTac Shuttle filed its Petition to Amend Original Complaint. On November 24, 2008, the Commission issued a Notice of Prehearing Conference in this matter for December 11, 2008, at 1:30 p.m. On December 9, 2008, Seatac Shuttle filed a letter with the Commission requesting permission to withdraw its Petition to Amend, and to cancel the scheduled prehearing conference for December 11, 2008. On the same day, Commission Staff and Kenmore Air filed letters supporting Seatac Shuttle's requests. Seatac Shuttle's request stated the parties had resolved their differences by "stipulation" but they did not file a stipulation. The Commission cancelled the prehearing conference and, by notice, sought clarification concerning whether there was any stipulation that should be filed for its review in connection with this proceeding. Seatac Shuttle supplemented its request to withdraw on January 13, 2008, clarifying that there is no stipulation or other agreement between the parties concerning any matters pertinent to this docket and renewing its request to withdraw.

5 It appears the complainant, Seatac Shuttle, has decided it does not wish to expend further resources pursuing the question it raised in its brief and which the Commission, on remand, gave it an opportunity to pursue in an amended complaint. It is apparent, too, that neither Kenmore Air nor Staff wishes to pursue the question of the extent of the Commission's safety jurisdiction in this docket. Staff states in a letter filed on December 24, 2008, that: "The Commission can address outside this

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<sup>1</sup> *Seatac Shuttle, LLC v. Kenmore Air Harbor, LLC*, Docket TC-072180, Order 03- Final Order Denying in Part Petition for Administrative Review; Upholding Initial Order; Remanding Issue for Consideration, ¶ 46 (October 31, 2008).

<sup>2</sup> *Id.*, ¶ 42.

docket issues such as safety jurisdiction over Kenmore Air's ground transportation services." Inasmuch as Seatac Shuttle has decided not to file an amended complaint, which would be a necessary first step to further consideration of the remanded issue in this docket, there remains no basis upon which to proceed. As Staff states in its letter, the Commission can pursue this matter by some alternative process outside this docket, if it wishes to do so.

- 6 Seatac Shuttle does not wish to go forward and the Commission has alternative means to consider the issue of its safety jurisdiction identified in Order 03. Thus, there is good cause to grant Seatac Shuttle's request to withdraw its Petition to Amend Original Complaint and to close this docket.

**ORDER**

- 7 THE COMMISSION ORDERS That Seatac Shuttle's request to withdraw its Petition to Amend Original Complaint is granted. If this Initial Order becomes final on review, or by operation of law in the absence of further review, this docket will be closed.

DATED at Olympia, Washington, and effective January 15, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS  
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 81.01.060(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 does not 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 eight copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250