

**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)	PETITION FOR ADMINISTRATIVE
Certificate No. C-975, For a Certificate)	REVIEW OF INITIAL ORDER
of Public Convenience and Necessity to)	GRANTING APPLICATION TO
Operate Motor Vehicles in Furnishing)	REMOVE RESTRICTIVE LANGUAGE
Passenger and Express Service as an)	IN CERTIFICATE NO. C-975 OF
Auto Transportation Company)	SEATAC SHUTTLE, LLC
)	
.....)	

Seatac Shuttle, LLC. , C-1077, protestant in the above captioned matter hereby seeks Administrative Review of Order 04.

CAUSE FOR REVIEW

Order 04, Initial Order, is both factually incorrect and in its Conclusions of Law.

NATURE OF PROCEEDING

The Nature of the Proceeding is as noted in Order 04 para.(s) 2-9. Additionally the Initial Order was issued with a Service Date of February 25, 2011.

NARRATIVE

Shuttle Express has testified that it has not been in compliance with its Certificate of Authority for at least fifteen years and so found the Initial Order.(TR.108: 21-25 109:1-5) WAC 480-30-086 requires strict compliance with the approved authority: (6)(a) *A company must operate strictly within the authority described in its certificate.* Additionally any deviation from that authority must be pre-approved in writing by the Commission: WAC 480-30-006(4) *No deviation from these rules will be permitted without written authorization by the commission. Violation will be subject to penalties as provided by law.* No such approval was ever sought or granted. As noted by the Initial Order, an extension of authority must be treated as any other including new applications; *“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 ”.* (Or-04 par. 10) WAC 480-30-126 requires all applicants for a certificate to be fit, willing and able; (1) *A person applying for a certificate to provide auto transportation company services must have the knowledge, experience, and resources to conduct the service it proposes in its application. The applicant must be fit, willing and able to comply with state law and the*

requirements of this chapter.

Shuttle Express is the largest shuttle operator in Washington with an operating history that goes back well over twenty years. It has had more than ample opportunity and a statutory operating requirement to be familiar and compliant with the rules and regulations of the Commission. Over the past fifteen years or more Shuttle Express has shown a willful disregard for those rules and regulations and does not meet the test of “fit, willing and able”.

The Order incorrectly placed an unsupported supposed public need above the rules and regulations and ignored the required compliance in granting the application. WAC 480-30-126(2) requires that “ *The commission **must** determine that the public convenience and necessity **requires** the proposed service when considering an application for a new certificate or extension of an existing certificate.*” In testimony Shuttle Express President, John Rowley, stated that his vans operate at less than 1/3 capacity which in no way can be construed to support a public necessity for 10 seat vans (TR. 137:5-10 138: 2-7)

DISCUSSION

Paragraph 10 of Order 04 states:

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. The law requires the Commission to address two questions in deciding the application:

- 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?

The testimony does not support either of these requirements. Furthermore, the standard includes that an applicant must be fit, willing and able. Shuttle Express seeks to expand its authority to legalize its current and historical use of vehicles with a capacity of more than seven seats. In the first instance;”Does the public convenience and necessity require the proposed service?”; only one witness with limited use of Shuttle Express’ services testified to an occasional need for a vehicle with more than seven seats. Shuttle Express is the largest shuttle operator in Washington State carrying over half a million passengers a year, yet could only provide one witness who “*preferred*” larger vehicles and whose main reason for supporting the expansion of authority was because of the “*green*” implications of larger vehicles.(TR 033: 1-12) Neither preference nor green implications, whether real or imagined, are a consideration of the Commission and his testimony to those issues have no bearing on this matter.

Does the public convenience and necessity require the proposed service?

Mr. Touw, witness for Shuttle Express, testified that he and his wife use the shuttle to go to the airport, and that when he travels with his expanded family he goes in groups of 5 to 10 and that the largest group he has booked on Shuttle express is 15 to 16 persons. He could not recall when these events took place or when he had traveled.(TR 038: 1-15) In the exceptional instances that Mr. Touw required vehicles with a capacity of more than seven seats, Shuttle Express had the ability to charter an exclusive vehicle to Mr. Touw under their Certificate CH-171 without size restriction, yet they chose to provide services in defiance of their sanctioned authority C-975. Mr. Touw's requirements could have been met legally but as Shuttle Express stated it operates only ten passenger or larger vehicles in its shuttle operation despite its seven passenger restriction.

Mr. Rowley, President of Shuttle Express testified that Shuttle Express' average passenger load is 3.2 passengers per trip (TR 137: 5-10 138: 2-7) with peak periods sometimes exceeding seven passengers on an individual trip. He also testified that Shuttle Express has the ability to work outside the scope of its authority utilizing its charter certificate. (TR 124: 13-25) Operating 10 passenger vehicles, as Shuttle Express does, 3.2 passengers per trip provides less than a 33% load factor. In 7 passenger vehicles it does not even create a 50% load factor. These passenger counts do not show a public need for vehicles of more than seven seats. All shuttle operators experience some peak demands that at a particular time may exceed the capacity of a single vehicle. The solution is to add more vehicles to that particular instance to cure the immediate problem, not violate your authority. All shuttle operators, including Shuttle Express, have reserve or surplus vehicles to handle this situation as well as maintenance down time. Shuttle Express has testified at various times to having between 70 and 100 vans in their fleet, more than enough to meet any expected peak demand even with 7 seats. The inconvenience to the public is non-existent and the overall cost to the operator is lower. There is no excuse for violating the authority.

Ms. Stacy Mattson, Port of Seattle's manager of ground transportation operations at Seattle-Tacoma International Airport also testified on behalf of Shuttle Express. Her testimony simply is not credible and does not support the application nor answer the question," Does the public convenience and necessity require the proposed service?" Ms. Mattson testified that she has never been a customer of Shuttle Express (TR 050:6-11) and has little information as to their operating procedures. (TR 045: 18-25 046:1-25 047: 1-9) She did, however, testify that by her direct observation, Shuttle Express had been and was currently operating 7 passenger vans at Seattle-Tacoma International Airport.(TR 049:20-25 050 1-2) This testimony was refuted by Mr. John Rowley, President of Shuttle Express. He testified that Shuttle Express had not been operating 7 passenger vans for approximately 15 years and currently have none in their fleet. (TR 108: 1-13). The only testimony that had any credibility from Ms. Mattson was that the Port of Seattle did not validate and was not concerned with the status of the operating authority of a carrier. If violation were brought to their attention they would ask the operator to resolve them. (TR 048: 17-25 049: 1-9) She speculated that bigger is better concerning vans, but as she was completely unaware of the vehicles being operated by shuttle express currently such speculation is without any foundation.

Does an existing auto transportation company operating in the territory at issue provide service to the satisfaction of the Commission?

“...to the satisfaction of the Commission is key”. The Order, while stating this requirement as one of two to be satisfied, did not address it. Rather, it looked solely to perceived public need. As demonstrated by its 3.2 passenger per load, there is no public need for 10 passenger vans. While Shuttle Express may have some business model that calls for them or they perceive them to be more cost effective for some unexplained reason, there is no public necessity. We are left then with the question stated by the Order; Does an existing auto transportation company operating in the territory at issue provide service to the satisfaction of the Commission? By definition if one habitually operates outside the scope of one’s authority in contradiction to the rules and regulations of the Commission, one cannot be operating to the satisfaction of the Commission. To find otherwise would render the Commission moot and without authority. The Order makes reference to the protestant bringing the issue of non-compliance before the ALJ in this matter and suggests that while an uncontested violations have occurred over an extended period of time by the most experienced operator in the state, the public need outweighs habitual disregard for the rules and regulations. *“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”*.(OR 04 para. 32) These are not allegations, they are admitted in testimony by Shuttle Express and are therefore fact and speak directly to the question of fitness. Seatac Shuttle does not ask for sanctions or penalties for the transgressions under this docket, but submits them as evidence of the applicant not being fit, willing or able to abide by the rules and regulations of the Commission.

The Order further states as a conclusion that denying the application “could force out of business, at least temporarily, negatively impacting the public” (OR: 04 para. 28). This is simply not true. No such testimony was provided to support this conclusion. Again it has been stated by Shuttle Express and the Order recognizes that the average passenger load for a Shuttle Express trip is 3.2 passengers. Merely removing one bench seat from the 10 passenger vans will reduce their capacity to 7 and create a larger more efficient luggage area in the rear of the vans. This will not impact either the company or the public and will bring Shuttle Express into compliance demonstrating a level of fitness, willingness and the ability to serve to the satisfaction of the Commission. After the timeframe specified in WAC Shuttle Express could then file a new application for Expansion of Authority to request whatever it feels would best serve it.

SUMMARY

The Order goes to great lengths explain that it does not condone the actions of Shuttle Express and admonishes it for non-compliance with the rules and regulations. Yet despite this and the specific requirements of WAC 480-30-126 and -006 and RCW 81.68.040 the Order takes the

position that “*Shuttle Express’ operations have evolved beyond the point of seven passenger vans.*” Ergo the Commission will sanction them after the fact. First; testimony and the Order itself do not support the public necessity for the increased capacity. Second; Shuttle Express has failed the test of satisfaction of the Commission. Order 04 states:

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. (OR: 04 para. 30) Quite the opposite is true. Shuttle Express seeks to bring the Commission into line with its operation. It is not seeking to comply with its authority but rather to amend its authority to reflect its non-compliant operation. Following this logic any operator who “evolves”, whatever that may mean, is not subject to the terms and conditions of their authority. If one may operate for fifteen or more years outside the scope of their authority and then in effect tell the Commission forgive us and amend our authority to fit our current non-compliant operation or if you don’t it may, in some fashion which we have not demonstrated, impact the public. One does not put the money back in the bank after the armed robbery and say never mind I didn’t know I wasn’t supposed to take it. There are repercussions for the thief and responsibilities of public protection and enforcement on the part of the authorities..

In this case the path is clear, there is no public need, Shuttle Express has not been serving to the satisfaction of the Commission and the application must be denied. Any other course of action demeans the Commission’s authority and the compliance of other operators sends a clear message to the other operators; do what thou wilt shall be the whole of the law. (Frater Perdurabo: A. Crowley, Liber CCCXXXIII,1912)

REQUEST OF SEATAC SHUTTLE

Seatac Shuttle, LLC, hereby requests that the Commission grant this Petition for Administrative Review and deny the application of Shuttle Express, Inc. for Expansion of Authority, Docket 091931.

:
:
:

Michael Lauver
Seatac Shuttle, LLC /dba / Whidbey Seatac Shuttle
C-1077

mike@seatacshuttle.com

360-679-4003