

**STAFF INVESTIGATION
OF
SHUTTLE EXPRESS, INC.**

DOCKET TC-120323

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TABLE OF CONTENTS

Executive Summary3

Purpose, Scope & Authority5

Background6

Investigation.....8

Analysis of Operations.....14

Staff Findings and Recommendations19

Appendices.....26

EXECUTIVE SUMMARY

In December 2011, Shuttle Express, Inc. (Shuttle Express) filed a request for a tariff revision with the Washington Utilities and Transportation Commission (commission) to increase its rates for auto transportation service in Docket TC-112072. In order to determine if the increased rates were reasonable, commission staff reviewed the company's operations, including its revenues and expenses from October 2010 to September 2011. During that review, commission staff discovered revenues and expenses associated with services contracted by Shuttle Express to be provided by non-regulated independent contractor-owners. Commission staff assigned to the rate case reported that Shuttle Express considered the service to be regulated door-to-door service, charged customers the company's published tariff rate for door-to-door service, and contracted to provide the service using non-regulated owner-operator drivers and vehicles such as limousines. At the time of the rate case, commission staff did not have enough information to determine if the independent contractor program was appropriate under the commission's rules. The matter was turned over to the commission's Transportation Safety Enforcement staff for investigation. This report documents commission staff's findings.

This is not the first time the commission has investigated Shuttle Express for using independent contractors. In April 2008, the commission issued a penalty assessment to Shuttle Express for violating WAC 480-30-213(2), which requires the driver of a vehicle operated by a passenger transportation company to be the certificate holder or an employee of the certificate holder. Shuttle Express violated the rule when it used drivers who were not employees to provide auto transportation services authorized under Shuttle Express's commission certificate. The commission approved a settlement agreement between Shuttle Express and commission staff and imposed a \$9,500 penalty on Shuttle Express for using independent contractor drivers. Within the settlement agreement, Shuttle Express admitted the violations and agreed to comply with all applicable rules and statutes enforced by the commission.

In this investigation, based on a review of the information provided by Shuttle Express, commission staff finds that Shuttle Express violated the settlement agreement approved by commission Order 01 in Docket TC-072228, as well as three commission rules, when it used non-regulated independent contractor drivers to provide multi-stop service along its regulated routes between October 2010 and September 2011.

Staff recommends the commission file a complaint on its own motion setting forth any act or omission by Shuttle Express that violates any law, or any order or rule of the commission, as provided by RCW 81.04.110.

The commission could penalize Shuttle Express up to \$1,000 per violation for 22,860 total violations of commission rules, as provided by RCW 81.04.380. Through its enforcement

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

policy, the commission considers a number of factors when determining the level of penalty to be imposed. A full discussion of each of those factors and how they apply to Shuttle Express in this case is included in the “Staff Findings and Recommendations” section of this report, beginning on page 19.

Based on those factors, commission staff recommends a penalty of \$250,000.

PURPOSE, SCOPE, AND AUTHORITY

Purpose

The purpose of this investigation is to determine if the independent contractor program of Shuttle Express violates commission rules.

Scope

The investigation focuses on information obtained by commission staff relating to Shuttle Express's operations.

Authority

Staff undertakes this investigation under the authority of the Revised Code of Washington (RCW) 81.01.010, which adopts RCW 80.01, directing the commission to regulate passenger transportation providers in the public interest, and to adopt such rules and regulations as may be necessary to do so. In addition, RCW 81.04.510 makes it clear that the commission is authorized to conduct such an investigation. Appendix A includes copies of relevant laws and rules.

BACKGROUND

Shuttle Express has held a certificate of public convenience and necessity as a passenger transportation company since 1989 and provides auto transportation services in King, Pierce, Snohomish and Island counties. Shuttle Express is located at 800 Southwest 16th Street, Seattle, Washington, 98057. John Rowley is the company's president. Jimmy Sherrell is the company's secretary, chairman and director, and Kaaren Sherrell is the vice president, secretary, treasurer and director.¹ Shuttle Express reported approximately \$13.1 million in gross intrastate operating revenues for 2011.

Prior Enforcement – Docket TC-072228

In April 2008, commission staff completed an investigation into allegations that Shuttle Express was violating one or more commission rules by operating an independent contractor program. Following the investigation, the commission issued a penalty assessment to Shuttle Express for violating WAC 480-30-213(2), which requires the driver of a vehicle operated by a passenger transportation company to be the certificate holder or an employee of the certificate holder. As stated in the penalty assessment, Shuttle Express violated the rule when it used drivers who were not employees to provide auto transportation services authorized under Shuttle Express's commission certificate. In July 2008 the commission approved a settlement agreement between Shuttle Express and commission staff and imposed a \$9,500 penalty on Shuttle Express for using independent contractor drivers. Within the settlement agreement, Shuttle Express admitted the violations and agreed to comply with all applicable rules and statutes enforced by the commission, including those at issue in the current investigation.²

General Rate Case – Docket TC-112072

In December 2011, Shuttle Express filed a request for a tariff revision with the commission to increase its rates for auto transportation service in Docket TC-112072. In order to determine if the increased rates were reasonable, commission staff reviewed the company's operations, including its revenues and expenses from October 2010 to September 2011. During that review, commission staff discovered revenues and expenses associated with services contracted by Shuttle Express to be provided by non-regulated independent contractor-owners. Shuttle Express provided staff a copy of its most recent independent contractor contract, dated May 22, 2009.³ Commission staff assigned to the rate case reported that Shuttle Express considered the service to be regulated door-to-door service, charged customers the company's published tariff rate for door-to-door service, and contracted to provide the service using non-regulated owner-operator drivers and vehicles such as limousines.⁴

¹ Secretary of State Corporation Detail web page print out at Appendix B, page 41.

² TC-072228 - commission Order and settlement agreement at Appendix C, starting at page 42.

³ Shuttle Express Independent Contractor Agreement at Appendix D, starting at page 57.

⁴ TC-112072 Staff Open Meeting Memo at Appendix E, starting at page 76.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

At the time of the rate case, commission staff did not have enough information to determine if the independent contractor program was appropriate under the commission's rules. The matter was turned over to the commission's Transportation Safety Enforcement staff for investigation. This report is the result of that investigation.

INVESTIGATION

Independent Contractors

Commission staff requested specific information from Shuttle Express related to the current independent contractor program on March 30, 2012.⁵ Commission staff received Shuttle Express's response on May 21, 2012.⁶ In its response, Shuttle Express described portions of its operations as follows:

- Shuttle Express uses independent contractors for two functions: luxury transportation and “rescue” service.
- For luxury transportation, Shuttle Express accepts reservations for executive sedans, SUVs, and six- and eight-passenger limousines and refers those services to independent contractors.⁷ This type of passenger transportation is regulated by the Department of Licensing as either limousine carrier or for-hire service and is not regulated by the commission.
- Shuttle Express also uses independent contractors as a rescue service when delays may cause a customer to miss a flight.⁸ Mr. Sherrell explained that within the company's business model and “flight guarantee,” when a Shuttle Express van encounters heavy or slow traffic or the van is otherwise delayed, Shuttle Express uses all of its resources to transport customers on time for their flight. This includes contracting with an independent driver to pick up the customers and transport them over the regulated auto transportation route that the Shuttle Express van would have used had one been available.
- When Shuttle Express started operations in the late 1980's, the company used taxis to rescue customers when delays occurred. However, in the late 1990's, Shuttle Express's insurance company informed it that use of taxis for rescue services left Shuttle Express fully liable for any service or safety consequences. From that point forward, Shuttle Express has used independent contractors for rescue service.

Commission staff focused on Shuttle Express's rescue service operations in its investigation of the current independent contractor program.

⁵ March 30, 2012, commission staff information request at Appendix F, starting at page 80.

⁶ May 14, 2012, Shuttle Express response at Appendix G, starting at page 84.

⁷ Id.

⁸ Id.

Rescue Service

On June 8, 2012, commission staff sent a letter that asked Shuttle Express to describe its rescue service in detail.⁹ In response, Shuttle Express explained that on occasions when a vehicle assigned to pick up a party breaks down, is delayed due to traffic, has the wrong location information or gets lost, Shuttle Express focuses on using whatever resource is necessary to pick up customers and transport them to their destination. Because the situations are time-critical, Shuttle Express's dispatchers may use another van, a town car, a limousine or even a bus – whichever option provides the best chance of a successful rescue.¹⁰

In the same letter, commission staff asked Shuttle Express to provide customer service records for all services provided as rescue services by independent contractors over the last two years, including trip records showing:

- The condition that caused the company to utilize the independent contractor for auto transportation services (e.g., traffic back-ups, inclement weather, etc.).
- The type of transportation provided.
- The number of passengers carried.
- The point each passenger boarded and disembarked the vehicle.
- The fare charged to each customer.

Shuttle Express did not provide the information requested. Shuttle Express stated that it does not differentiate between luxury transportation and rescue service in its reservation system and stated that it would be “cumbersome, time-consuming, and impractical to provide the information.” However, Shuttle Express offered to make its records available for commission staff to examine.¹¹

Shuttle Express stated that the company had over 420,000 reservations in 2011 and that 96 percent of those were completed within “normal operation guidelines.”¹² When commission staff asked Shuttle Express to define “normal operation guidelines,” Shuttle Express president John Rowley explained that normal operations are those trips completed within the standards the company feels are adequate to maintain customer loyalty. Abnormal operations are when the company is late picking up or dropping off a customer for any reason, including bad traffic, a reservation error, inadequate GPS information, or a flat tire.¹³

In the rate case filed by Shuttle Express in Docket TC-112072, the company reported annual revenue for regulated services, including revenue associated with independent contractors, of \$13,275,796. Shuttle Express also reported annual revenue for regulated services excluding

⁹ June 8, 2012, commission staff information request at Appendix H, starting at page 92.

¹⁰ July 16, 2012, Shuttle Express response at Appendix I, starting at page 95.

¹¹ Id.

¹² Id.

¹³ August 7, 2012, email from John Rowley to staff at Appendix J, starting at page 109.

revenue associated with independent contractors of \$12,565,358.¹⁴ This means independent contractor revenue totaled \$710,438 or approximately five percent of total company revenue.

Commission staff assumed that the \$710,438, or five percent of total revenue, that Shuttle Express reported as independent contractor revenues was generated in those cases where Shuttle Express did not complete reservations for regulated services “within normal operation guidelines.” Commission staff asked John Rowley how many trips comprised the \$710,438, or five percent of total revenue, associated with the independent contractors. If that information was not available, commission staff asked the company to explain why it was able to identify the amount of revenue but not how many trips the revenue represents.¹⁵

Mr. Sherrell responded, through Paul Kajanoff, Shuttle Express’s Chief Financial Officer, stating in part:

This does not mean 4 % were ‘not’ completed within normal guidelines. What it does mean is we are sensitive to the convenience/service to travelers using our services. . . . We feel there is a length of staging time that is acceptable and one that is not. Once we have a staging time in excess, which is . . . 45 minutes or longer, we seek to find these travelers an alternative to get them on their way. . . . Because we have affiliated independent towncar operator[s] who are regulated, licensed and insured, we have a viable, legal alternative. I address the legality due to they are licensed for one stop service. Our UTC license for Auto Transportation is multi stop. Conversely, if we were a single stop operator as the towncar affiliates are, we would not need a UTC license.

Thus, when staging time is starting to get in excess and there a[re] towncars available, we offer travelers . . . the option of upgrading their travel from a multi-stop van to a single stop towncar at no additional cost. . . . These travelers receive a single stop trip, and thus is a viable option to waiting for a multi stop Shuttle Express ride at a later time. It is important to understand there are two distinct services/qualifications for using a towncar. Going to the airport the concern is making a flight and the consequences that this entails. This is what we deem to be a rescue by a towncar, limo or whatever other means we may find available. . . .

As you questioned, last year we had revenues of \$710,438 (12,075 trips), which is approximately 5% of Shuttles regulated revenue. . . . Rescue is a part of the number, as well as upgrades out of the airport. We handle rescues differently than upgrades out of

¹⁴ Docket TC-112072, commission staff Open Meeting memo at Appendix E, starting at page 76.

¹⁵ August 28, 2012, email from Betty Young to John Rowley at Appendix K, starting at page 126.

the airport with relation to legality. Out of the airport is a single stop, rescues is [*sic*] getting travelers to the airport as required.¹⁶

Commission staff remained unclear about how rescue trips are actually provided and, on October 17, 2012, asked the following clarifying questions of Mr. Sherrell by email:¹⁷

1. Are rescue trips provided as single stops by town cars or limos as well?
2. If one of your multi-stop vans has a flat tire or another condition exists that requires a “rescue service” while picking up or dropping off multiple passengers at different locations, how do you transport the waiting/stranded passengers?
 - a. Do you dispatch another van to pick people up?
 - b. Do you upgrade passengers to limo or town car service? If so,
 - i. Are limos or town cars sent to pick up each individual customer?
 - ii. Do limos or town cars make multiple stops to pick up multiple passengers?

Mr. Sherrell responded that when a rescue is required, the type of vehicle is secondary to the services required. Shuttle Express guarantees people will make their flight.¹⁸

Because Mr. Sherrell’s response did not fully answer commission staff’s questions, David Danner, then-Commission Executive Director and Secretary, sent Mr. Sherrell a data request on October 31, 2012.¹⁹ Mr. Danner’s data request reiterated staff’s previous questions and informed Mr. Sherrell that if commission staff did not receive specific answers to the questions, it would ask the commission to order Shuttle Express to provide the information.

Mr. Sherrell responded that delays create the need for Shuttle Express to provide rescue service, and the most common source of delays is bad traffic. If traffic or other circumstances cause a delay to a share-ride Shuttle Express van, a dispatcher checks to see if another van is in the area and determines if it will not inconvenience other travelers. If another Shuttle Express van is used, dispatch re-routes and changes assignments to other vans to get back on schedule. Independent contractors are used as a last resort in these cases and are not scheduled ahead of time for regulated service.²⁰

¹⁶September 21, 2012, email from Jimmy Sherrell (through Paul Kajanoff) to Betty Young at Appendix L, starting at page 129.

¹⁷October 17, 2012, email from Betty Young to Jimmy Sherrell (through Paul Kajanoff) at Appendix M, starting at page 131.

¹⁸October 19, 2012, email from Jimmy Sherrell to Betty Young at Appendix N, starting at page 132.

¹⁹October 31, 2012, letter from David Danner to Jimmy Sherrell at Appendix O, starting at page 133.

²⁰November 15, 2012, letter from Jimmy Sherrell to staff at Appendix P, starting at page 139.

In response to commission staff’s question of whether Shuttle Express utilizes limousines and for-hire vehicles to provide multi-stop service along its regulated routes when it provides rescue services, Mr. Sherrell stated,

“Yes, when absolutely necessary as a last resort. Our share-ride vans are used whenever possible.”²¹

In the event Shuttle Express dispatches an independent contractor, it notifies the traveler of the change, the estimated time of arrival and the route to the airport.

In response to commission staff’s question about how many of the 12,075 trips represent rescue trips and how many were upgrades out of the airport, Mr. Sherrell responded that Shuttle Express does not have data to differentiate between rescue trips and upgrades out of the airport.

In response to commission staff’s question about how many rescue trips involved multiple stops to pick up or drop off passengers, Mr. Sherrell stated that according to the company’s records in its last rate case, 5,715 trips were multi-stop trips – approximately 15.5 per day.²² Shuttle Express provided a breakdown of the 5,715 trips showing how many occurred each month:²³

Month/Year	Trips
Oct 2010	316
Nov 2010	283
Dec 2010	486
Jan 2011	453
Feb 2011	393
Mar 2011	434
Apr 2011	381
May 2011	445
Jun 2011	572
Jul 2011	622
Aug 2011	705
Sep 2011	625
Total	5,715

Mr. Sherrell explained that because Shuttle Express’s vans are now allowed to use the high occupancy vehicle (HOV) lanes, the company is experiencing fewer traffic delays. Because of this, and because the company loses revenue when it uses independent contractors, Shuttle Express changed its policies and procedures in January 2012. A dispatcher is now stationed at

²¹ Id.

²² Id.

²³ January 25, 2013, response from John Rowley at Appendix Q, starting at page 143.

the airport, enabling the company to improve efficiency. According to Mr. Sherrell, the amount of multi-stop rescues using independent contractors has dropped to an average of 0.26 per day. This is a decrease from the average of 15.65 trips per day during the investigation period (5,715 divided by 365 days). However, Mr. Sherrell stated that each day's traffic is unpredictable and rescues will undoubtedly continue to be needed.

ANALYSIS OF OPERATIONS

Independent Contractors – General Operations

In commission staff's prior enforcement investigation of Shuttle Express's independent contractor program in 2007, commission staff found that Shuttle Express violated WAC 480-30-213(2) because the vehicles driven by the independent contractors were actually being "operated" by Shuttle Express. To make that determination, commission staff evaluated the independent contractor program in the following categories: management, contracts, operation of vehicles, compensation, reservations and dispatching, fare tickets, and advertising.²⁴

In the current investigation, commission staff evaluated Shuttle Express's present independent contractor program in a similar way, focusing on rescue services. Commission staff did not address advertising, as Shuttle Express does not advertise to provide rescue services.

Management and Contracts

Commission staff asked Shuttle Express to provide a list of all independent contractors Shuttle Express has contracted with since the inception of the independent contractor program. Commission staff asked Shuttle Express to include the following information for each independent contractor:

- Name and contact information for the company.
- Beginning and end (if applicable) dates of the independent contractor relationship.
- Applicable independent contractor agreement(s) if not the May 22, 2009, agreement already provided.
- The number of referrals Shuttle Express made to the independent contractor over the term of each applicable agreement.
- The number of referrals accepted by the independent contractor over the term of each applicable agreement.
- Records of all routes traveled by the independent contractor in providing service subject to the agreement(s).
- Copies of all reservation records referred to the independent contractor for services under the agreement(s).
- Copies of all invoices submitted by the independent contractor for payment for services rendered under the agreement(s).²⁵

Shuttle Express provided the first two items only. For the remaining items, Shuttle Express stated that the information was not available without an extensive, highly labor-intensive effort of

²⁴ Docket TC-072228 - staff investigation report.

²⁵ March 30, 2012, letter from commission staff to Shuttle Express at Appendix F, starting at page 80.

combing through archived records. Shuttle Express did, however, state that records could be made available for commission staff to inspect.

According to Shuttle Express, independent contractors must meet specific criteria before entering into an independent contractor contract, including standards and legal requirements for chauffeurs serving at SeaTac airport as well as requirements of RCW 46.72A (Limousines), the Department of Revenue, the Department of Licensing, the Port of Seattle and local cities.²⁶

Operation of Vehicles

Under Shuttle Express's independent contractor program, independent contractors own their own vehicles and do not lease vehicles from Shuttle Express or companies owned by Shuttle Express. Independent contractors are required to provide their own liability insurance in the amount of \$1,050,000. Shuttle Express provided a copy of what it refers to as an "umbrella" \$5 million combined single limit insurance policy, which it claims would cover any vehicle under dispatch by Shuttle Express. In the copy of Shuttle Express's insurance policy provided to staff, an endorsement to the policy titled "Hired Autos Specified as Covered Autos You Own" shows coverage for "any hired auto while under dispatch for Shuttle Express, Inc."²⁷ It appears the rescue vehicles operated by non-Shuttle Express employees are covered under the Shuttle Express insurance policy for the required \$5 million combined single limit amount.

Customer Charges and Contractor Compensation

In commission staff's Open Meeting memo in Shuttle Express's general rate case in Docket TC-112072, commission staff stated that Shuttle Express charged customers the company's published tariff rate for door-to-door service for services provided by independent contractors.²⁸ In response to commission staff in this investigation, Shuttle Express stated that during rescue service, the passengers pay the fare quoted in the reservation, pay a discounted fare or receive a complimentary fare.²⁹ Commission rules state that no auto transportation company may assess rates that are higher, lower, or different from those contained in the company's filed tariff. No auto transportation company may accept a payment for service provided that is higher, lower, or different from the rates contained in the company's filed tariff.³⁰ It is unclear how many Shuttle Express passengers paid a discounted fare or received a complimentary fare during rescue service.

²⁶ May 14, 2012, response from Shuttle Express at Appendix G, starting at page 84.

²⁷ Shuttle Express insurance policy page at Appendix G, page 91.

²⁸ March 8, 2012, Open Meeting memo in Docket TC-112072 at Appendix F, starting at page 80.

²⁹ July 16, 2012, response from Shuttle Express at Appendix I, starting at page 95.

³⁰ WAC 480-30-276, Tariffs and time schedules, companies must comply with the provisions of filed tariffs and time schedules.

Shuttle Express charges independent contractors 34 percent of collected fares to cover Shuttle Express's fees. The contractors collect fares from customers, pay Shuttle Express's fees and keep the remainder for themselves. Shuttle Express processes credit card payments on behalf of the contractors, and excess funds from credit card prepayments accumulate at Shuttle Express. Twice a month, Shuttle Express settles accounts with the contractors to return these funds.³¹

During the test year for Docket TC-112072, Shuttle Express reported \$710,438 revenue from independent contractors. The company paid the independent contractors \$468,889, and retained 34 percent, or \$241,549, for services (such as making reservations, dispatching, etc.) that Shuttle Express provided to independent contractors.

Regulated Revenues Shuttle Express Received from Customers	\$710,438
Shuttle Express Payment to Independent Contractors	\$468,889
Amount of Revenue Shuttle Express Retained for Providing Services (reservations, dispatch, etc.) to Independent Contractors	\$241,549

Reservations and Dispatching

Shuttle Express makes customer referrals to the independent contractors using vMDT (vehicle Multiple Data Terminal) technology. The vMDT data transmitted to independent contractors includes customer names, addresses, phone numbers, airline arrival and departure times, pick-up time, fare information and other information as needed.³²

When commission staff asked Shuttle Express if the company gets written permission from its rescue service passengers to share their customer information with the independent contractors, Shuttle Express replied, "In a rescue situation, of course not."³³ Commission rules prohibit the release of customer information (i.e., customer's name, address, and telephone number) without the written permission of the customer.³⁴

Fare Tickets

Shuttle Express produces the fare tickets, which are then used by independent contractors to "verify pre-paid reservations and to pass on information regarding clients who are directly billed for services."³⁵ The copies of fare tickets provided to commission staff show the printed name of Shuttle Express at the top of the ticket. Drivers are identified by driver number or first name.³⁶ Receipts for services provided by the independent contractors vary. Some contractors use a

³¹ May 14, 2012, response from Shuttle Express at Appendix G, starting at page 84.

³² Id.

³³ July 16, 2012, response from Shuttle Express at Appendix I, starting at page 95.

³⁴ WAC 480-30-456, Fair use of customer information.

³⁵ May 14, 2012, response from Shuttle Express at Appendix G, starting at page 84.

³⁶ July 16, 2012, response from Shuttle Express at Appendix I, starting at page 95.

standard business-card type receipt which is printed by Shuttle Express. If requested, the customer may use the fare ticket as a receipt.³⁷ It is unclear how fare tickets are handled by Shuttle Express during rescue service.

Safety

Because the independent contractors are either licensed limousine carriers or for-hire (town car) operators, they are not subject to the same vehicle safety inspections or driver qualifications as auto transportation companies. Limousines must be inspected annually by the Washington State Patrol (WAC 204-95-080). Limousine carriers' business records are subject to inspection by DOL (WAC 308-83-130). Limousine chauffeurs must obtain medical certification every two years, must be drug tested prior to certification and must participate in a random drug testing program (WAC 308-83-140). Town car operators are not subject to vehicle inspections and have no requirements for inspection of books and records.

When Shuttle Express utilized non-regulated independent contractors to provide multi-stop trips on its regulated routes, those independent contractors became subject to the auto transportation rules. Commission rules define "commercial motor vehicle" as any motor vehicle used by an auto transportation company to provide passenger transportation services over the public highways of Washington state.³⁸ For auto transportation companies, all commercial motor vehicle drivers must meet the same safety requirements as limousine carriers, plus other, more stringent safety standards. For example, auto transportation company drivers must follow strict requirements about hours of service to ensure drivers are not fatigued. Auto transportation company drivers must also conduct specific pre- and post-trip inspections of their vehicles and document any maintenance or safety issues.

Commission staff routinely inspects auto transportation companies' vehicles, books and records to ensure the company is meeting its safety responsibilities. The commission has specific safety regulations for auto transportation companies, including parts of Title 49 Code of Federal Regulations (CFR), adopted by reference, related to vehicle and driver safety requirements (WAC 480-30-999). Auto transportation companies must follow all the requirements adopted by the commission, including³⁹:

- Part 40 – Procedures For Transportation Workplace Drug and Alcohol Testing Programs
- Part 382 – Controlled Substance and Alcohol Use and Testing
- Part 383 – Commercial Driver's License Standards; Requirements and Penalties
- Part 379 – Preservation of Records
- Part 380 – Special Training Requirements

³⁷ May 14, 2012, response from Shuttle Express at Appendix G, starting at page 84.

³⁸ WAC 480-30-211, Commercial vehicle, defined.

³⁹ WAC 480-30-221, Vehicle and driver safety requirements.

- Part 385 – Safety Fitness Procedures
- Part 390 – Safety Regulations, General
- Part 391 – Qualification of Drivers
- Part 392 – Driving of Motor Vehicles
- Part 393 – Parts and Accessories Necessary for Safe Operation
- Part 395 – Hours of Service of Drivers
- Part 396 – Inspection, Repair, and Maintenance
- Part 397 – Transportation of Hazardous Materials, Driving and Parking Rules

The vehicles and records of the non-regulated independent contractors Shuttle Express used to provide multi-stop trips on Shuttle Express's regulated routes were not inspected by commission staff. This means that commission staff has no way to determine if the independent contractors' vehicles, books and records meet the commission's safety requirements that auto transportation companies must follow. It also means Shuttle Express's customers, who were transported by non-regulated independent contractors during multi-stop trips on Shuttle Express's regulated routes, may not have had the same safety protections as those customers transported by Shuttle Express's drivers in Shuttle Express's vehicles.

STAFF FINDINGS AND RECOMMENDATION

Commission staff has determined that Shuttle Express violated the settlement agreement approved by commission Order 01 in Docket TC-072228. Within the settlement agreement, Shuttle Express admitted violating WAC 480-30-213 and agreed to comply with all applicable rules and statutes enforced by the commission.⁴⁰

RCW 81.04.010(11) states that a common carrier "... includes ... auto transportation companies..."

RCW 81.04.010(16) states that a public service company "... includes every common carrier."

RCW 81.04.380 Penalties – Violations by public service companies states, in part:

"Every public service company ... shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense ..."

Between October 2010 and September 2011, Shuttle Express violated the settlement agreement approved by commission Order in Docket TC-072228 when it utilized independent contractor drivers, in violation of WAC 480-30-213(2), to provide multi-stop service along its regulated routes to provide rescue services at least 5,715 times.

Commission staff has determined that Shuttle Express's current independent contractor program also violates these commission rules:

- **WAC 480-30-213(2), Vehicles and Drivers**, which requires the driver of a vehicle operated by a passenger transportation company to be the certificate holder or an employee of the certificate holder.

In its current independent contractor program, Shuttle Express admits that it uses independent contractor drivers to provide multi-stop service along its regulated routes to provide rescue services. The independent contractors do not have auto transportation certificates and they are not employed by Shuttle Express, yet the independent contractors' vehicles appear covered under the liability insurance policy of Shuttle Express.

⁴⁰ TC-072228 commission Order and settlement agreement at Appendix C, starting at page 42.

Commission staff finds that Shuttle Express operates the passenger transportation of these independent contractors because it dispatches them to pick up passengers and transport them along Shuttle Express’s regulated routes and because Shuttle Express provides liability insurance coverage for the independent contractors’ vehicles.

Between October 2010 and September 2011, Shuttle Express violated WAC 480-30-213(2) when it utilized independent contractor drivers to provide multi-stop service along its regulated routes to provide rescue services at least 5,715 times.

- **WAC 480-30-216(6), Reserve Equipment**, requires all auto transportation companies to maintain sufficient reserve equipment to insure the reasonable operation of established routes and fixed time schedules. Shuttle states that it does not overbook and has sufficient vans and drivers to handle each day.⁴¹

In Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter’s (Capital Aeroporter) application for an extension of its certificate in Docket TC-111619, Capital Aeroporter sought to extend its certificate to provide service within Shuttle Express’s existing service territory. Shuttle Express protested the application stating, in part:

“Shuttle Express operates a fleet of approximately 100 vans and 15 buses. ... There is no public need for the Applicant’s proposed, duplicative service, as *Shuttle Express’s existing equipment is not fully utilized and is available to provide additional service should the need and opportunity arise*”⁴² (emphasis added).

Commission staff finds Shuttle Express does not maintain sufficient equipment because the company did not have its own equipment to provide “rescue service” and, instead, contracted out its auto transportation service to independent contractors.

Shuttle Express violated WAC 480-30-216(6) when it utilized non-regulated independent contractors at least 5,715 times to provide multi-stop trips on Shuttle Express’s regulated routes between October 2010 and September 2011.

- **WAC 480-30-456, Fair Use of Customer Information**, prohibits the release of customer information (i.e., customer’s name, address, and telephone number) without the written permission of the customer.

⁴¹ November 15, 2012, letter from Jimmy Sherrell to commission staff at Appendix P, starting at page 139.

⁴² Relevant excerpt of Shuttle Express protest in Docket TC-111619 at Appendix R, starting at page 145.

Shuttle Express shares the customer's name, address, and telephone number with independent contractors when making referrals to the contractors for rescue transportation services.⁴³

Commission staff finds Shuttle Express does not obtain written permission from the customer to share personal customer information.

Shuttle Express violated WAC 480-30-456 when it shared customer information, without written customer permission, with independent contractors through referrals for rescue transportation services at least 5,715 times between October 2010 and September 2011.

Recommendation

Staff recommends the commission file a complaint on its own motion setting forth any act or omission by Shuttle Express that violates any law, or any order or rule of the commission, as provided by RCW 81.04.110.

The commission could penalize Shuttle Express up to \$1,000 per violation for 22,860 total violations of commission rules, as provided by RCW 81.04.380. Through its enforcement policy, the commission considers the following factors when determining the level of penalty to be imposed:

1. How serious or harmful the violation is to the public.

Commission staff believes that Shuttle Express's use of independent contractors to provide auto transportation service did not put the public in imminent danger. However, staff has no way to determine if the independent contractors' operations, vehicles, books and records meet the safety requirements that auto transportation companies must follow. Shuttle Express's customers, who were transported by non-regulated independent contractors during multi-stop trips on Shuttle Express's regulated routes, did not have the same safety protections as those customers transported by Shuttle Express's drivers in Shuttle Express's vehicles.

Shuttle Express's use of independent contractors may have been harmful to other auto transportation providers. In Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter's (Capital Aeroporter) application for an extension of its certificate in Docket TC-111619, Capital Aeroporter sought to extend its certificate to provide service within Shuttle Express's existing service territory. Shuttle Express protested the application on the basis that its existing equipment was not fully utilized and available to provide additional service should the need and opportunity arise. However, Shuttle Express did

⁴³ May 14, 2012, Shuttle Express response to commission staff's information request at #4 at Appendix G, starting at page 84.

not use its existing equipment to provide rescue service on 5,715 occasions during the investigation period.

2. Whether the violation is intentional. Factors include:

- Whether the company ignored staff's previous technical assistance.
- Whether the company committed previous violations of the same statute or regulation.
- Whether there is clear evidence through documentation or other means that show the company knew of and failed to correct the violation.

Commission staff believes Shuttle Express willfully and intentionally violated commission rules. We offer the following in support of this statement:

- Shuttle Express has deliberately ignored commission staff's previous technical assistance regarding independent contractors. As outlined in commission staff's investigation in Docket TC-072228, the commission and its staff have provided technical assistance to Shuttle Express about the use of independent contractors many times, beginning in 2004. When Shuttle Express first proposed its independent contractor program, commission staff advised the company that such a financial, legal and operational arrangement between Shuttle Express and its independent contractor drivers would constitute a lease of Shuttle Express's certificate, requiring commission approval and requiring the independent contractor drivers to obtain auto transportation certificates. Commission staff also advised Shuttle Express that it would be in violation of state law if it conducted business with independent contractors in the manner proposed.

Commission staff repeatedly advised Shuttle Express to either petition the commission for a declaratory ruling about the legality of the company's independent contractor program or to file an application to lease the company's certificate. Instead, the Commission found in TC-072228 that Shuttle Express chose to operate an independent contractor program in violation of commission rules, heedless of commission staff's technical assistance and advice.

In the current investigation, commission staff found that Shuttle Express intentionally chose to continue operating an independent contractor program despite previous technical assistance.

- Shuttle Express committed previous violations of the same rule. In April 2008, the commission penalized Shuttle Express \$9,500 for violations of WAC 480-30-213(2). In the current investigation, commission staff identified at least 5,715 violations of the same rule.

- Between October 2010 and September 2011, Shuttle Express knew or should have known that it violated the settlement agreement approved by commission Order in Docket TC-072228, and that it violated WAC 480-30-213(2), when it utilized independent contractor drivers to provide multi-stop auto transportation service along its regulated routes to provide rescue service.

3. Whether the company self-reported the violation.

Shuttle Express did not self-report the violations outlined in this investigation report.

4. Whether the company was cooperative and responsive.

Shuttle Express did not display full cooperation or responsiveness during staff's investigation. Rather, Shuttle Express delayed and obstructed the investigation by providing nonresponsive answers to staff's information requests. Further, the company refused to provide specific information requested by staff on several occasions, stating it would be "cumbersome, time-consuming and impractical to provide the information." However, Shuttle Express offered to make its records available for commission staff to review. At one point during the investigation, the commission's Executive Director sent Shuttle Express a data request on behalf of commission staff because of the company's failure to provide specific information. This ultimately prompted the company to provide some, but not all, of the requested information.

5. Whether the company promptly corrected the violations and remedied the impacts.

Shuttle Express has told commission staff that it adjusted its business practices in January 2012 to reduce the use of independent contractors to provide multi-stop rescue services on its regulated routes.

6. The number of violations.

Commission staff considers the number of violations in this investigation to be significantly high (22,860 violations over a 23-month time period). Commission staff's previous investigation of Shuttle Express's independent contractor program identified 95 violations during a one-month investigation period.

7. The likelihood of recurrence.

While Shuttle Express has adjusted its business practices to reduce the use of independent contractors to provide multi-stop rescue services on its regulated routes, the company also stated that each day's traffic is unpredictable and rescues will undoubtedly continue to be needed. This means the violations likely continue today and will recur.

8. The company's past performance regarding compliance, violations, and penalties.

Commission staff reviewed Shuttle Express's penalty and compliance history for the past ten years. The company has consistently demonstrated compliance with commission rules and regulations in the following areas:

- Annual reports and regulatory fees
- Regulatory filings (tariff, rate case, etc.)
- Safety compliance reviews

The only penalty assessment the commission issued to Shuttle Express during this time period was \$9,500 in Docket TC-072228 for violations of WAC 480-30-213(2). Pursuant to a settlement in this proceeding between commission staff and Shuttle Express, which the commission adopted, Shuttle Express committed not to violate WAC 480-30-213(2) or any other applicable laws and rules enforced by the commission.

9. The company's existing compliance program.

Shuttle Express complies with commission rules, with the notable exception of those rules that the company has violated in order to continue to use independent contractor drivers. Continuing to operate an independent contractor driver program, in direct violation of the settlement agreement adopted by the commission in Docket UT-072228 and with full knowledge that the practice violates commission rule, reveals an ongoing, willful and deliberate disregard for compliance with commission regulation.

10. The size of the company.

Based on the number of annual intrastate miles traveled, Shuttle Express is the largest auto transportation company regulated by the commission. The company reported just over 7.1 million miles traveled and approximately \$13.1 million in gross intrastate operating revenues for 2011.

Summary

In 2005, commission staff clearly explained to Shuttle Express that its independent contractor program was contrary to statute and would constitute a lease of the company's certificate. In 2006, the commission advised Shuttle Express in a rulemaking that the law does not allow auto transportation companies to use independent contractors as the company had proposed. In 2008, the commission assessed a penalty of \$9,500 against Shuttle Express for using independent contractor drivers in 95 violations of commission rule, or \$100 per violation. Shuttle Express entered into a settlement agreement with commission staff, agreeing to the penalty and agreeing, in the future, to comply with all applicable rules and statutes enforced by the commission, including those at issue in the current investigation.

Despite prior technical assistance and enforcement action, Shuttle Express crafted a revised independent contractor program to provide regulated services that was even broader in scale,

providing illegal service in 5,715 instances, violating commission statutes, rules, and the settlement agreement.

Commission staff considers each of the 22,860 total violations found in this case to be more serious than the 95 violations in the 2008 case because the company had full knowledge that the practice violated commission rule, and it reveals an ongoing, willful and deliberate disregard for compliance with commission regulation. In addition, the company knowingly violated the terms of the settlement agreement and commission order.

Shuttle Express should have never entered into the independent contractor agreements, should have never provided the illegal service in 5,715 instances, and should have never retained \$241,549 revenue generated by the illegal services.

Considering all of the factors and information outlined above, commission staff recommends a penalty of \$250,000, which represents the approximate amount of revenues retained by Shuttle Express from the company's independent contractor program. This penalty, staff believes, strikes a balance between the number of the violations and the company's willful and deliberate disregard of commission regulation.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

APPENDIX G

Shuttle Express

RECEIVED

May 14, 2012

MAY 21 2012

Washington Utilities and Transportation Commission
 1300 S. Evergreen Park Drive SW
 Box 47260
 Olympia, WA 98504-7260
 Attention: Betty Young,

WASH. UT & TP COMM

Re: Independent Contractor Program – Information Request

Dear Ms. Young:

Shuttle Express was born twenty five years ago. At that time the State did not know how to classify its service because it is neither a scheduled service nor a taxi -- it falls some where in between. Shuttle Express serves the public by combining together multiple customer stops from a general area or along a route. Transporting multiple parties using this "share-the-ride" service model means service costs are spread among multiple parties. Fares are then structured on the presumption of multiple stops. The resulting fares are lower than for a service transporting only one party at a time.

To maintain reasonable fares coupled with pay sufficient to retain good drivers, a timely operation is extremely important. Thus, grouping together multiple stops to the airport, and efficiently grouped routing back out of the airport -- in a timely manner -- is absolutely necessary to run a successful transportation business. With poor timing and inefficiency, company costs are increased -- which exerts upward pressure on fares. The end result is poor service and reduced ridership.

Shuttle Express has become very adept to this routing and timing challenge with overwhelming success -- as evidenced by a customer base which has climbed to over 750,000 users. One of the biggest challenges in Seattle and neighboring communities is traffic snarls. Traffic snarls restrict van movement both on local arterials and on state routes. While Shuttle Express maintains reasonable fares, it's operation must also be timely, as airport-bound customers will miss flights if arriving late. Thus, customer's main concern centers around arriving at the airport on time. To help alleviate customer time concerns, Shuttle Express offers a "flight guarantee" that customers will make their flight. On occasion when a van is hung up in traffic or other delays, Shuttle Express uses all its resources as a rescue to transport customers on time for their flight.

Shortly after the birth of Shuttle Express, a plan was devised to rescue customers when delays threatened a missed flight. Initially, Shuttle Express used taxicabs for rescues. Shuttle Express guaranteed the booked tariff to the customer, and paid the taxi company the difference between the taxi fare and the Shuttle Express tariff. After some ten years, Shuttle Express's insurance company informed us that use of a taxi for rescue left Shuttle Express fully liable for any service or safety consequences.

It was clear that Shuttle Express had no control over this taxi use liability. In conversation with the president of a major taxi company we were told that if that company drug tested its drivers, they would probably lose half of them. Clearly, Shuttle Express needed to respond to such liability concerns. At that same time, Shuttle Express had introduced a town car service. Because the taxi industry was in shambles, Shuttle Express totally discontinued using taxis as a rescue resource. From that time forward, Shuttle Express has used only affiliate independent contractors who adhere to strict safety standards of Shuttle Express, who are completely current with state and local licensing, background check, and drug testing requirements, and who are monitored to insure compliance with all the requirements stated in this reply document.

There have been no complaints for upgrading service and honoring fares for customers using an affiliate of Shuttle Express. This service is actually an upgrade which allows travelers to depend on the promised services of Shuttle Express. Without this rescue program, travelers would miss flights, pay higher taxi fares, or pay expensive airport parking fees, and most certainly not use Shuttle Express services to the degree that they do today.

Regulations are not violated, as town cars and limos are licensed to provide single stop service.

Respectfully submitted,

Jimmy Sherrell
 President

Enc: Shuttle Express Response to WUTC letter dated March 30, 2012
 Independent Contractor Roster
 Independent Contractor Agreements (7/14/05, 4/19/07, 9/26/08, 5/22/09)
 Shuttle Express Insurance Policy

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

Shuttle Express Response to WUTC letter dated March 30, 2012**INDEPENDENT CONTRACTOR PROGRAM****1. When did the current independent program begin?**

The first independent contractor signed an Agreement with Shuttle Express on October 31, 2005.

2. In the context of the rate case, Shuttle Express provided commission staff with a copy of the "Shuttle Express, Inc. Independent Contractor Agreement" dated March 22, 2009.

Is this the most recent version of the agreement?

Yes.

Were there earlier versions of this agreement dating back to the program's inception? If so, please provide copies of each version.

There were earlier versions of the Agreement.

7/14/05, 4/19/07, 9/26/08, 5/22/09

Copies attached.

3. Please describe in detail how the independent contractor program works.

Shuttle Express, a transportation company which offers transport via various modes, accepts reservations for "luxury transportation" using executive sedans, SUVs, and six- and eight-passenger limousines. To accomplish the work, Shuttle Express contracts with a number of independent contractors to provide the specific luxury service. Shuttle Express offers specific referrals to available contractors – who either accept or reject an offer of work.

Each contractor, as an independent business, provides all necessary licenses, credentials, permits, vehicle(s), communication devices (smart phones, vMDT units, etc.), fees, and other "tools" needed to perform work as a luxury transportation carrier. As the contractor providing service, each one collects fares for the transportation and pays all expenses associated with running their business from the fares they collect – same as any business would. Those who accept referrals from Shuttle Express pay Shuttle Express a fee for marketing the services, for managing the reservations, for doling out the referrals, and for processing the credit card payments.

Independent contractors serve other transportation companies as well as their own stand-alone business clients.

4. If not answered in #3 above, please answer the following questions:

Are the services provided by independent contractors considered regulated service, included within the authority provided to Shuttle Express in its certificate issued by the commission?

Limousine chauffeurs (the individuals) and carriers (the businesses) are regulated under RCW 46.72A, the Limo Law and WAC 308-83.

How does Shuttle Express make customer referrals to the independent contractors? What information does the referral include? (e.g. customer name, address, telephone number)?

Technology has changed the communication process between Shuttle Express and the contractor businesses. At one time, the referrals were communicated by pager with feedback via cell phone. As smart phones came into existence, a computer program allows for use of smart phone technology via touch-screen smart phones or touch-screen tablets. Presently, communication happens via this vMDT (vehicle Multiple Data Terminal) technology.

vMDT communication includes the obviously-needed name of client, address, phone contact information, airline arrival or departure information, pick-up time, fare information, and any other information needed to support the contractor in providing as quality of service as possible.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

Do fare tickets or receipts for services provided by the independent contractors display Shuttle Express's name or the independent contractor's name?

"Fare Tickets" display both names. The ticket is produced by Shuttle Express to be used among a variety of services, but is only used by independent contractors to verify pre-paid reservations and to pass along information regarding clients who are directly billed for service.

Receipts vary. Some contractors use a standard business-card type receipt which is printed by Shuttle Express, and if requested by a client, may use a fare ticket as a receipt. Many contractors use a card which identifies them as an Independent Chauffeur with their own cell number, and a Reservation note to call Shuttle Express as their booking agent. The card also explains to the client how to engage the contractor as their "preferred driver."

Those cards are provided by a contractor at their expense. Shuttle Express does not approve the Shuttle Express logo for use on cards provided by a contractor

How are independent contractors paid by Shuttle Express? Please describe the process.

Independent contractors are NOT "paid" by Shuttle Express. As mentioned above, the contractor collects the fare from the client, pays all their expenses, and keeps the remainder ("profit") for themselves.

How does Shuttle Express receive the fares received by the customers of the independent contractors? Please describe the process.

See the above response. Because Shuttle Express processes credit card payments on behalf of the contractor (which is part of the fee charged by Shuttle Express for their work), excessive monies (from the credit card pre-payments) accumulate at Shuttle Express. Twice a month, Shuttle Express settles accounts with independent contractors, to return credit card monies which belong to them.

When you spoke with commission staff Mike Young on January 12, 2012, you indicated that drivers are paid a commission for "other services." Please describe what those services are and the amounts that your company pays independent contractors to provide them.

Not sure what the reference to "other services" is.

What does Shuttle Express charge independent contractors in terms of fees? Please describe the process.

As stated above, Shuttle Express charges a fee for the marketing, reservation, dispatching, and credit card processing services which are provided to independent contractors.

Presently that fee is 34% of the collected fares.

Please describe the "Preferred Driver" program.

The reservation program used by Shuttle Express allows a guest to designate a preferred limo or towncar driver – either for a single transport, or as a permanent preference for all future transfers using a limo or towncar. A program has been developed such that clients who particularly enjoy the service provided by a specific chauffeur can contact the limousine operation manager to request that specific chauffeur be added to their data base profile as their "preferred driver."

Subsequently, whenever that client calls Shuttle Express for a limo or towncar transport, the preferred driver's name comes up for the dispatch office to see. Dispatch calls the contractor chauffeur – asking them if they are available and wish to accept the work. The contractor has the yes/no option, and if no, then the work is offered to another contractor. The preferred driver program is intended to give contractors an opportunity to build a clientele within the database of guests regularly served through Shuttle Express for limo's or towncars only.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

5. Please provide a list of all independent contractors Shuttle Express has contracted with since the inception of the Independent contractor program. For each Independent contractor, include the following information.

The following information is readily available and included in attached documents:

- Name and contact information for the company
- Beginning and end (if applicable) dates of the Independent contractor relationship

The following information is not available without extensive, highly labor intensive effort combing through archived records. Records can be made available for UTC personnel to look at.

- Applicable Independent agreement(s) if not the May 22, 2009 agreement
- The number of referrals Shuttle Express made to the Independent contractor over the term of each applicable agreement.
- The number of referrals accepted by the independent contractor over the term of each applicable agreement.
- Records of all routes traveled by the Independent contractor in providing service subject to the agreement(s).
- Copies of all reservation records referred to the Independent contractor for services under the agreement(s)
- Copies of all invoices submitted by the Independent contractor for payment for services rendered under the agreement(s)

DRIVERS

6. Commission staff assumes none of the Independent contractor drivers are employees of Shuttle Express. Is this accurate?

Yes.

7. Does Shuttle Express have any minimum qualifications drivers must meet before entering into an Independent contractor relationship? What are those qualifications?

Shuttle Express's Independent Contractor Information Sheet gives the following information regarding standards and legal requirements for chauffeurs serving SeaTac airport:

- A current Washington Drivers License in good standing (CDL is not required.)
- Have had possession of a valid driver's license for a minimum of the past 5 consecutive years
- A proven safe-driving record and demonstration of safe driving habits on the road
 - No more than 3 moving violations and/or preventable accidents in the past 3 years
 - No history of suspended or revoked license
 - No convictions for any motor vehicle involved felony or DUI / DWI violations
- Independent Contractor chauffeurs must be at least 22 years of age.
- Able to pass a D.O.T. physical exam
- Pass initial and continuing random drug tests
- Pass a nation-wide criminal background check
- Able to obtain a Chauffeur Credential
- Insurance companies may require 2 years of commercial driving experience (or equivalent)
- Ability to sit and drive for long periods
- Ability to manage luggage of clients
- Proficient English language communication, both verbally and in writing, in order to:
 - understand and be understood by guests and Shuttle Express dispatchers
 - fill out varied forms (fare tickets, credit card slips, daily invoices, accident reports) correctly and legibly
- Possess computation abilities sufficient enough to do simple math as required to:
 - read and comprehend posted fares and schedules
 - accept various forms of payment and give correct change
 - properly and accurately complete invoice forms.
- Ability to use the Thomas Street Guide Directory and GPS units to find the correct location of addresses in a three-county area

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

In addition, there are multiple requirements from various agencies: State DOR, State DOL, Port of Seattle, local cities, as well as requirements established in RCW 46.72A. Those qualifications are listed below. Shuttle Express maintains a file for each independent contractor containing written verification that each of these requirements are met. Shuttle Express requires written confirmation of renewal for any expired item prior to offering any referrals subsequent to the expiration date.

DOR

Current open UBI account (Master Business License)
State Limousine Carrier License

DOL

State Limousine Vehicle Certificate
Vehicle Safety Inspection
Certificate of Liability Insurance (\$1,050,000 CSL)

RCW 46.72A

Minimum 21 years of age
Current WDL
Successful completion of Chauffeur Training Course & Exam
WSP Background Check
Drug Test and Random Drug Testing
Satisfactory Driving Record
Current DOT Medical Card

Port of Seattle

Ground Transportation Permit
Liability Insurance (\$1,050,000)
Vehicle Limo Certificate (from DOL)
King County For Hire license, or
Port-approved Chauffeur Credential
(Mirrors RCW requirements plus Successful completion of National Safety Council on-line Defensive Driving Course)

Local Cities

Some require a city business license if operator picks up within the city

VEHICLES

8. Do the independent contractors own or lease their own vehicles?
Own

Do any independent contractors lease vehicles from Shuttle Express or companies owned by Shuttle Express?
No.

INSURANCE COVERAGE

9. It appears the contract requires independent contractors to provide their own liability insurance.
Is this accurate?
Yes.

What levels of insurance does Shuttle Express require independent contractors to maintain?
As required by the State and Port of Seattle – both currently \$1,050,000 CSL

Does Shuttle Express verify the Independent contractor has the required insurance?
Yes,
If so, how?

Requires current Certificate of Insurance with Shuttle Express named as additional insured.
Shuttle Express to be notified in event of policy cancellation for any reason.

With respect to each independent contractor, please provide documentation of all the insurance verifications Shuttle Express performed during the past year.
UTC staff are welcome to inspect files maintained for each independent contractor which includes a complete record of all Certificates of Liability Insurance since contract was activated.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

You previously told commission staff that Shuttle Express holds an "umbrella" insurance policy which would cover the independent contractors in case of an accident. Please describe how this policy works and provide a copy of the insurance copy.

Any vehicle under dispatch by Shuttle Express is covered with \$5 million CSL.
Attachment enclosed.

SHUTTLE EXPRESS TRADE MARKS / INSIGNIA

10. It appears the independent contractor agreement grants independent contractors the use of Shuttle Express's licensed property (e.g., trade marks, trade names, logos, insignias, colors, and color combinations).

Please describe how independent contractors use Shuttle Express's licensed property while fulfilling Shuttle Express referrals.

The only situation where independent contractors make use of Shuttle Express's licensed property is the logo on the hand-held signs used at the airport to facilitate contact with clients – a common practice in the industry.

Do independent contractors display Shuttle Express's certificate in their vehicles?

No.

CUSTOMER INFORMATION AND COMPLAINTS

11. Does Shuttle Express inform customers when service will be provided by an independent contractor?

When Shuttle Express uses an independent contractor to rescue a Shuttle Express customer, customers are notified and explained the necessity of the rescue. At that time a customer may cancel the reservation without penalty. To the best of my knowledge no customer has refused to ride in a limo or towncar when offered as it is a free upgrade in service and vehicle.

12. Do independent contractor drivers identify themselves as "Shuttle Express" to customers they transport on referral from Shuttle Express?

Independent contractors identify themselves as independent contractors, and explain that they have a working relationship with Shuttle Express, and the customers have been notified prior to arrival of the independent contractor.

13. Please provide copies of all customer complaints Shuttle Express has received based on transportation provided by the independent contractors.

Customer complaints on transportation provided by independent contractors do not exist as there have not been any complaints.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

APPENDIX H

STATE OF WASHINGTON
 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
 1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
 (360) 664-1160 • TTY (360) 586-8203

June 8, 2012

Jimmy Sherrell, President
 Shuttle Express, Inc.
 800 SW 16th Street
 Renton, Washington 98057

RE: Independent Contractor Program – Additional Information Needed

Dear Mr. Sherrell:

Thank you for your response to the Washington Utilities and Transportation Commission (commission) staff's request for information about Shuttle Express Inc.'s (Shuttle Express) current independent contractor program. Staff reviewed the response and determined that additional information is needed.

By **July 16**, please provide the following documents and information:

Independent Contractor Program

Shuttle Express's response appears to describe the services provided by the independent contractors as two separate and distinct forms of service: 1) limousine and town car "luxury transportation" service and 2) "rescue" service for auto transportation passengers.

1. **"Luxury Transportation" service:** In its response, Shuttle Express states that it accepts reservations for "luxury transportation" which includes executive sedans, SUVs and limousines.¹ The Department of Licensing confirmed that Shuttle Express does not have its own limousine or for-hire licenses. Therefore, it appears that Shuttle Express either acts as a third-party broker to the independent contractors who provide limousine or for-hire services under their own licenses and in their own vehicles or, uses independent contractors with

¹ Shuttle Express May 14 response at question three.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

Jimmy Shorroll
 June 8, 2012
 Page 2

“luxury transportation” vehicles to provide auto transportation services for Shuttle Express, or both. Please describe specifically how Shuttle Express operates its luxury transportation service.

2. “Rescue” service: Shuttle Express states that it offers a “flight guarantee” to ensure that auto transportation customers will make their flights. When a van is hung up in traffic or otherwise delayed, Shuttle Express uses the independent contractor companies to fulfill the auto transportation service.²
 - o Please describe the process when a customer is “rescued” It seems improbable that a customer already on a van and headed for the airport becomes stuck in traffic and is then transferred to an independent contractor’s vehicle.
 - o How does Shuttle Express differentiate between these types of services (“luxury transportation” vs. “rescue” service) in its reservation system?
 - o Are the passengers utilizing the “rescue” service charged Shuttle Express’s tariffed auto transportation rates?
 - o Does Shuttle Express get written consent from its “rescue” passengers to share their customer information with the independent contractors?
 - o Does the “Preferred Driver” program only apply to “luxury transportation” services?

Records Request

WAC 480-30-056 requires Shuttle Express to maintain complete and accurate copies of records pertaining to customer service on file in its general office for at least three years.

For the last two years (May 2011-May 2012), for all services provided as “rescue” services by independent contractors, please provide the following customer service records. Please provide the same information for any time during the last two years when independent contractors with “luxury transportation” vehicles provided auto transportation services for Shuttle Express.

- o Trip records by route or by trip, showing:
 - a. The condition that caused the company to utilize the independent contractor for auto transportation services (e.g., traffic back-ups, inclement weather, etc.).
 - b. The type of transportation provided.
 - c. The number of passengers carried.
 - d. The point each passenger boarded and disembarked from the vehicle.
 - e. The fare charged each customer. Please indicate if the fares were collected by the independent contractor or by Shuttle Express.

² Shuttle Express May 14 cover letter.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

Jimmy Sherrell
June 8, 2012
Page 3

- f. Copies of ten fare tickets each for “rescue” and “luxury transportation” services provided by independent contractors.

Shuttle Express may provide information related to items a) through c) in spreadsheet or table format.

Please direct your response to Betty Young, Compliance Investigator, Transportation Safety, at the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, WA 98504-7250. Ms. Young can be reached at 360-664-1202 or by e-mail at byoung@utc.wa.gov.

Sincerely,



David Pratt
Assistant Director, Transportation Safety

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

APPENDIX I

Shuttle Express

RECEIVED

July 16, 2012

JUL 19 2012

Washington Utilities and Transportation Commission
 Attention: Betty Young
 Compliance Investigator,
 Transportation Safety
 P.O. Box 47250
 Olympia, WA 98504-7250

WASH. UT. & TP. COMM

Re: Independent Contractor Program – Additional Information Needed

Dear Ms. Young:

The following comments in reply to your letter dated June 8, 2012.

1. Please describe specifically how Shuttle Express operates its luxury transportation service.

In our earlier response to your inquiry, we did describe how Shuttle Express operates its "luxury transportation" service. However it may be worthwhile clarifying the term "luxury transportation" as used in that response.

The "luxury transportation" term, as is often used internally, refers to the towncars, the limousines, and the SUVs to which Shuttle Express has access via independent contractors. Those vehicles, and chauffeurs who drive them, provide an elevated level of service and comfort from other vehicles used by Shuttle Express. However, the service is operated very much the same as other transportation services: requests for service are taken, reservations made, and the work is offered by dispatchers to chauffeurs who drive the vehicles. If there is any difference in this process, it would be that independent contractors are free to accept or reject referral offers of work. Other than that, the operation runs in much the same way.

To refresh comments from our previous response:

"Shuttle Express, a transportation company which offers transport via various modes, accepts reservations for "luxury transportation" using executive sedans, SUVs, and six- and eight-passenger limousines. To accomplish the work, Shuttle Express contracts with a number of independent contractors to provide the specific luxury service. Shuttle Express offers specific referrals to available contractors – who either accept or reject an offer of work.

"Each contractor, as an independent business, provides all necessary licenses, credentials, permits, vehicle(s), communication devices (smart phones, VMDT units, etc.), fees, and other "tools" needed to perform work as a luxury transportation carrier. As the contractor providing service, each one collects fares for the transportation and pays all expenses associated with running their business from the fares they collect – same as any business would. Those who accept referrals from Shuttle Express pay Shuttle Express a fee for marketing the services, for managing the reservations, for doling out the referrals, and for processing the credit card payments."

To use wording from your last request, it is a correct description that "Shuttle Express...acts as a third-party broker to the independent contractors who provide limousine...services under their own licenses and in their own vehicles..."

2. "Rescue" service

- Please describe the process when a customer is "rescued." It seems improbable that a customer already on a van and headed for the airport becomes stuck in traffic and is then transferred to an independent contractor's vehicle.

Of course it is improbable that a customer already in a vehicle is transferred to another vehicle – with the exception of a mechanical breakdown or an accident. In those situations, Shuttle Express sends the nearest useful vehicle to rescue those in the stranded vehicle.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

However other situations more commonly occur which also call for help from a second vehicle. On occasion it happens that a vehicle assigned to pick up a party breaks down, or is delayed in severe traffic, or has been given wrong location information, or (God forbid) gets lost to the point of not getting to the pick-up point in time. In such a situation, just as in the ones mentioned in the preceding paragraph, Shuttle Express focuses on using whatever resource necessary to pick up the customers and transport them to the destination (most often the airport) in time to make their flight, or meet whatever time-critical obligation the customer has.

As one can imagine, these situations are time-critical, and don't offer much wiggle-room of choice. Shuttle Express dispatchers may use another van, a Towncar, a limousine, an SUV ("luxury vehicles"), or even a bus in such a situation if that decision offers the best opportunity for a successful "rescue."

- How does Shuttle Express differentiate between these types of services ("luxury transportation" vs. "rescue service") in its reservation system.

There is no difference in terms of the chauffeur or vehicle used for a rescue as described above. Clearly Shuttle Express does not anticipate a problem when a reservation is made, so no reservations are made under any sort of "Rescue" list. All work passes through the dispatch section – whether it be a point-to-point transfer, an airport transfer, or a rescue of another vehicle which is stuck in one of the situations mentioned above.

Being that a "rescue" is a last-second response to an unexpected need which Shuttle Express must accommodate in a timely fashion within our normal operation, there is no place for "rescue reservations." When a vehicle is called on to make a rescue, a note is often added to the reservation to help explain why the original vehicle did not complete the run, as well as to provide information to compensate the "hero" driver for making the rescue.

- Are the passengers utilizing the "rescue" service charged Shuttle Express's tariffed auto transportation rates?

Shuttle Express works to a higher standard than to take advantage of the traveling public due to accidents, traffic delays, our own internal errors, or driver mistakes. When a problem occurs which requires the use of a second vehicle to provide transport service, the passenger(s) either pay the fare quoted in their reservation, or more commonly, a discounted fare, or even a complimentary fare -- due to the abnormal situation and stress on the traveler. There is never an upcharge to a guest due to a rescue situation, and Shuttle Express absorbs any added costs – most usually compensation to both drivers involved in the process.

- Does Shuttle Express get written permission from its "rescue" passengers to share their customer information with the independent contractors?

In a rescue situation, of course not. By its very nature, those situations are short on time, and quickly put together. There is neither time nor practicality to get written permission. Shuttle Express has received no complaints about rescuing travelers whose time element is truncated due to unforeseen abnormal circumstances. Customer information from a rescue situation is the same information on any reservation: name, address location, pick-up time, destination, fare.

- Does the "Preferred Driver" program only apply to "luxury transportation" services?

The short answer is probably "Yes." Much of the work done by Shuttle Express is of the nature that the "next piece of work" is dispatched to the next driver in line." And a preferred driver program doesn't work well in that environment; it simply creates complexity and confusion.

However, any single transport event could have a preferred driver listed in the reservation – and it works very well for the "luxury" work as described above. One example; a group leader may request a specific driver for a long bus trip (e.g.: Seattle to Spokane). A better application is the independent contractor model where a specific chauffeur can be alerted in advance, in order to accept and be ready to perform the work if he or she is listed as the preferred driver for the traveler desiring transport. A preferred driver program clearly cannot be applied to work where drivers' availability is random.

Records Request

Shuttle Express had some 420,000+ reservations in 2011. 98% were completed within normal operation guidelines. It is cumbersome, time-consuming, and impractical to provide the information requested below. As stated in a previous response, (such) "...information is not available without extensive, highly labor intensive

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

effort combing through archived records. Records can be made available for UTC personnel to examine."

Trip records by route or by trip, showing:

a. The condition that caused the company to utilize the independent contractor for auto transportation services (e.g.: traffic back-ups, inclement weather, etc.).

As indicated in the copy above, reservations are not sorted according to rescue efforts.

b. The type of transportation provided

c. The number of passengers carried.

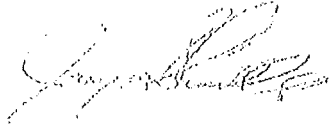
d. The point each passenger boarded and disembarked from the vehicle.

e. The fare charged each customer. Please indicate if the fares were collected by the independent contractor or by Shuttle Express.

f. Copies of ten fare tickets each for "rescue" and "luxury transportation" services provided by independent contractors.

Attached.

Sincerely,



Jimmy Sherrell

Attached: Fare tickets

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

APPENDIX K

** Attachment referenced in this email is available at Appendix C.

From: Young, Betty (UTC)
To: "John Rowley"
Subject: RE: Shuttle Express response to staff's information request - Independent contractor program
Date: Tuesday, August 28, 2012 2:22:00 PM
Attachments: TC-112072 memo.pdf
Importance: High

John – Thank you for your response.

Based on what we've heard from you and Mr. Sherrell in recent responses to UTC staff's data requests, we assume that 4% of Shuttle Express's reservations were provided by independent contractors. (Mr. Sherrell stated that "... 96% of Shuttle Express's 2011 reservations were completed within normal operation guidelines." This means that 4% were not completed within normal guidelines. When asked how that 4% of reservations were completed, you stated those reservations were completed "... when we are late for whatever reason -- bad traffic, a reservation error, inadequate GPS information or a flat tire.")

In the rate case filed by Shuttle Express in Docket TC-112072, Shuttle Express reported annual revenue for regulated services, including revenue associated with "independent contractors," of \$13,275,796. Shuttle Express also reported annual revenue for regulated services, excluding revenue associated with independent contractors, of \$12,565,358. This means independent contractor revenue totaled \$710,438, or 5% of total company revenue. This is close to the 4% reported by Mr. Sherrell. (See copy of UTC staff's open meeting memo, attached.)

By September 7, 2012, please respond to the following:

Our assumption is that this \$710,438 was generated from independent contractors in those cases where Shuttle Express did not complete reservations for regulated services "within normal operation guidelines" and had to send a replacement vehicle to service a regulated auto transportation customer because, for whatever reason, the originally-scheduled vehicle was unable to pick up the customer. Is this accurate? If not, please explain.

Since Shuttle Express was able to arrive at a figure of \$710,438 for revenues associated with independent contractors for the rate case in Docket TC-112072, we assume the company keeps records for those 4-5% of customers served outside "normal operation guidelines." Is this accurate? If not, please explain.

Please tell us how many trips comprise the revenue of \$710,438 associated with independent contractors. If this information is not available, please explain why the company is able to identify the amount of revenue associated with independent contractors and not how many trips this revenue represents.

Thank you,

Betty Young

Shuttle Express, Inc. -- Staff Investigation Report

TC-120323

Compliance Investigator
 Transportation Safety Enforcement
 Washington Utilities and Transportation Commission
 Phone: 360-664-1202
 Fax: 360-586-1172

From: John Rowley [mailto:jrowley@shuttleexpress.net]
 Sent: Tuesday, August 07, 2012 4:54 PM
 To: Young, Betty (UTC)
 Subject: RE: Shuttle Express response to staff's information request - Independent contractor program

Hi Betty,

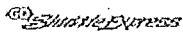
Under records request "Normal operations" are those trips completed within the standards we feel are adequate to maintain our guests' loyalty. Abnormal are those when we are late for whatever reason -- had traffic, a reservation error, inadequate GPS information or a flat tire. Note again we have never had complaints in part because we focus on our standards being met and take whatever measures are necessary to get people to their flights. All our business is carried by our vans except in extreme circumstances when a rescue is in order and then any vehicle may be used. When we are late or running abnormal operations, there is no change to the guest in how we complete the reservations whether we send a rescue vehicle or not. For instance a guest may not even know the originally assigned van had a flat tire, when another rescue van is sent by our dispatcher.

I have attached a report on a few different days. We use this report to determine how we did.

I hope this helps,

Thanks,

John Rowley
 President
 425-981-7070



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From: Young, Betty (UTC) [mailto:BYoung@utc.wa.gov]
 Sent: Monday, August 06, 2012 7:16 AM
 To: John Rowley (jrowley@shuttleexpress.net)
 Subject: Shuttle Express response to staff's information request - Independent contractor program
 Importance: High

Mr. Rowley,

In his attached response, Mr. Sherrill states that 96% of Shuttle Express's 2011 reservations were completed within "normal operation guidelines." (See section titled "Records Request.")

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

1. Please define what “normal operation guidelines” are.
2. Please describe how the remaining 4% of the reservations were completed.

Thank you for your prompt response.

Betty Young
Compliance Investigator
Transportation Safety Enforcement
Washington Utilities and Transportation Commission
Phone: 360-664-1202
Fax: 360-586-1172

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

APPENDIX L

From: Paul Kejanoff
 To: Young, Betty (UTC)
 Cc: "John Rowley"
 Subject: Shuttle Express response to staff's information request - Independent contractor program
 Date: Friday, September 21, 2012 1:46:08 PM
 Importance: High

Dear Ms. Young,

Jimmy Sherrell requested I send the following response on his behalf:

This is in response to your request for further clarification of Independent Contractor Program.

Question; 4% not completed within normal guidelines. As stated by Mr. Rowley, "...within standards we feel are adequate to maintain our guests' loyalty"

This does not mean 4% were "not" completed within normal guidelines. What it does mean is we are sensitive to the convenience/service to travelers using our services. Included in Mr. Rowley's response are copies of staging times at the airport. On these reports is noted traveler staging times. We feel there is a length of staging time that is acceptable and one that is not. Once we have a staging time in excess, which is easy to identify on the recent report attachment of 45 minutes or longer, we seek to find these travelers an alternative to get them on their way, staying in the convenience/service time zone. Because we have affiliated independent towncar operator who are regulated, licensed and insured we have a viable legal alternative. I address the legality due to they are licensed for one stop service. Our UTC license for Auto Transportation is multi stop. Conversely, if we were a single stop operator as the towncar affiliates are, we would not need a UTC license.

Thus, when staging time is starting to get in excess and there a towncars available, we offer the travelers who are exceeding the 45-minute staging time the option of upgrading their travel from a multi stop van to a single stop towncar at no additional cost. This is offered verbally and travelers invariably take this option. These travelers receive a single stop trip, and thus is a viable option to waiting for a multi stop Shuttle Express ride at a later time. It is important to also understand that whether a reservation is booked through our reservation office or at the airport the same people handle both booking for share a ride and towncar single stop service. The only difference is at the time of booking when a traveler at their own option upgrades to a towncar, then the towncar rate is charged. Conversely when Shuttle upgraded service due to a long staging time there is no additional upgrade charge.

Question; when we are late due to bad traffic.....flat tire.

It is important to understand there are two distinct services/qualifications for using a towncar. Going to the airport the concern is making a flight and the consequences that this entails. This is what we deem to be a rescue by a towncar, limo or whatever other means we may find available. This is where the traffic...flat tire plays its biggest roll. The integrity of the promised trip and arrival

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

at the airport to meet a flight carries a significant degree of promised service and liability.

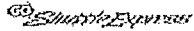
Exceeding standard staging time is a service/convenience issue. Offering an upgrade service that is direct, not multiple stops helps us keep and meet our service standards out of the airport. As you questioned, last year we had revenues of \$710,438 (12,075 trips), which is approximately 5% of Shuttles regulated revenue as shown in Docket TC-112072. Rescue is a part of the number, as well as upgrades out of the airport. We handle rescues differently than upgrades out of the airport with relation to legality. Out of the airport is a single stop, rescues is getting travelers to the airport as required.

It is my intention to answer all your questions on this matter, if you need further clarification please let us know.

Respectfully,

Jimmy Sherrell

Paul Kajanoff
Chief Financial Officer
(425)981-7063



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Shuttle Express, Inc. – Staff Investigation Report

TC-120323

APPENDIX M

From: Young, Betty (UTC)
To: Paul Kajanoff (pkajanoff@shuttleexpress.net)
Cc: John Rowley (jrowley@shuttleexpress.net)
Subject: FW: Shuttle Express response to staff's information request - Independent contractor program
Date: Wednesday, October 17, 2012 8:00:00 AM
Importance: High

Please respond by October 26. Thank you.

From: Young, Betty (UTC)
Sent: Wednesday, October 17, 2012 7:59 AM
To: 'Paul Kajanoff'
Cc: 'John Rowley'
Subject: RE: Shuttle Express response to staff's information request - Independent contractor program
Importance: High

Mr. Sherrell:

Thank you for your response. You differentiate between upgrades out of the airport and "rescue" service. You state clearly that upgrades out of the airport are provided as single stop service by town cars or limos; however, the response was not as clear about rescue service.

Please clarify the following statement by answering each of the questions below:

"Out of the airport is a single stop, rescues is getting travelers to the airport as required."

1. Are rescue trips provided as single stops by town cars or limos as well?
2. If one of your multi-stop vans has a flat tire or another condition exists that requires a "rescue service" while picking up or dropping off multiple passengers at different locations, how do you transport the waiting/stranded passengers?
 - a. Do you dispatch another van to pick people up?
 - b. Do you upgrade passengers to limo or town car service? If so,
 - i. Are limos or town cars sent to pick up each individual customer?
 - ii. Do limos or town cars make multiple stops to pick up multiple passengers?
3. As I requested previously, please tell us how many trips comprise the revenue of \$710,438 associated with independent contractors. If this information is not available, please explain why the company is able to identify the amount of revenue associated with independent contractors and not how many trips this revenue represents.

Betty Young
 Compliance Investigator
 Transportation Safety Enforcement
 Washington Utilities and Transportation Commission
 Phone: 360-664-1202
 Fax: 360-586-1172

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

APPENDIX N

From: Jimmy Sherrell
To: Young, Denny (UIC)
Cc: John Rowley; Paul Kalanoff
Subject: Rescue
Date: Friday, October 19, 2012 10:36:58 AM

A rescue trip is just that, we use what ever form of transportation is available in the area. Shuttle does not have vans / cars stationed at base just waiting to be dispatched. If possible and we have a van, if it is in the area, pick up multiple passengers. This includes single or multiple stops. However, the selection of vehicle also depends on its location to the rescue needed and flight/ arrival time to the airport for the other people on the van or people yet to be picked up by that van. AND when a rescue is required the type vehicle used is secondary to the services required, Shuttle guarantees people will make their flight. What ever it takes we get people to their flight with services we know meets Shuttles standards.

I do not know where these questions are going. Bottom line, we have commitment to the traveling public to get them to their flight on time and we do. Shuttle is knowledgeable of the regulations and performs within these regulations. Up grading people out of the airport without up-charging is providing excellent service within the regulations. I feel we have answered all questions to the best of our records and knowledge. If you wish to discuss personally please feel free to call me personally, 206-930-6057

Jimmy Sherrell

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

APPENDIX O



STATE OF WASHINGTON
 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
 (360) 664-1160 • TTY (360) 586-8203

October 31, 2012

Jimmy Sherrell, President
 Shuttle Express, Inc.
 800 SW 16th Street
 Renton, Washington 98057

RE: Data Request – Independent Contractors

Dear Mr. Sherrell:

On October 17, 2012, staff of the Washington Utilities and Transportation Commission (commission) sent a request for information about Shuttle Express Inc.'s (Shuttle Express) independent contractor program to you by email. You responded by email on October 17, 2012.¹ Staff believes the information you provided did not answer the questions fully, and therefore requests additional, specific information from Shuttle Express.

By November 14, 2012, please respond by providing specific answers to the following questions:

1. Shuttle Express has told staff that if one of its multi-stop vans has a flat tire, or another condition exists that requires a "rescue" while picking up or dropping off passengers, it uses independent limousines and for-hire vehicles to rescue the passengers. Under this scenario, please answer the following questions:
 - a. Please describe specifically the circumstances under which Shuttle Express uses its rescue service (e.g., flat tire, traffic problems, over-booking for which a Shuttle Express vehicle is not available),
 - b. Does Shuttle Express utilize limousines and for-hire vehicles to provide multi-stop service along its regulated routes when it provides rescue services?
 - " If so, please describe specifically how Shuttle Express or its independent contractors transport the waiting or stranded passengers.

¹ Copies of email correspondence enclosed.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

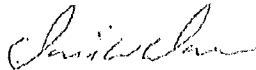
Jimmy Sherrell
October 31, 2012
Page 2

- If so, is this multi-stop service provided by independent contractor operators under contract with Shuttle Express in Shuttle Express' Independent Contractor Program?
2. Shuttle Express reported \$710,438 in revenues from independent contractors, which it states is approximately 5 percent of the company's regulated revenue and comprises 12,075 trips. Shuttle Express has told staff that it uses independent contractors for both rescue services as described above, and for upgrades to luxury transportation for individual passengers coming out of the airport.
- a. How many of these 12,075 trips represent "rescue" trips and how many were upgrades out of the airport?
 - b. Of the rescue trips, how many involved multiple stops to pick up or drop off passengers?

By law, the commission and its staff have the right, at any and all times, to inspect the accounts, books, papers and documents of Shuttle Express.² Please respond to each question specifically. If staff does not receive specific answers to these questions, it will ask the commission to order Shuttle Express to provide the requested information.

Please direct your response to Betty Young, Compliance Investigator, Transportation Safety, at the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, WA 98504-7250. Ms. Young can be reached at 360-664-1202 or by e-mail at byoung@ute.wa.gov.

Sincerely,



David W. Danner
Executive Director and Secretary

Enclosures

² RCW 81.04.070, enclosed.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

Young, Betty (UTC)

From: Jimmy Sherrell <jimmysh@attglobal.net>
Sent: Friday, October 19, 2012 10:38 AM
To: Young, Betty (UTC)
Cc: John Rowley; Paul Kajanoff
Subject: Rescue

A rescue trip is just that, we use what ever form of transportation is available in the area. Shuttle does not have vans / cars stationed at base just waiting to be dispatched. If possible and we have a van, IF it is in the area, pick up multiple passengers. This includes single or multiple stops. However, the selection of vehicle also depends on its location to the rescue needed and flight/ arrival time to the airport for the other people on the van or people yet to be picked up by that van. AND when a rescue is required the type vehicle used is secondary to the services required, Shuttle guarantees people will make their flight. What ever it takes we get people to their flight with services we know meets Shuttles standards.

I do not know where these questions are going. Bottom line, we have commitment to the traveling public to get them to their flight on time and we do. Shuttle is knowledgeable of the regulations and performs within these regulations. Up grading people out of the airport without up-charging is providing excellent service within the regulations. I feel we have answered all questions to the best of our records and knowledge. If you wish to discuss personally please feel free to call me personally. 206-930-6057

Jimmy Sherrell

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

Young, Betty (UTC)

From: Young, Betty (UTC)
Sent: Wednesday, October 17, 2012 8:01 AM
To: Paul Kajanoff (pkajanoff@shuttleexpress.net)
Cc: John Rowley (jrowley@shuttleexpress.net)
Subject: FW: Shuttle Express response to staff's information request - Independent contractor program

Importance: High

Please respond by October 26. Thank you.

From: Young, Betty (UTC)
Sent: Wednesday, October 17, 2012 7:59 AM
To: 'Paul Kajanoff'
Cc: 'John Rowley'
Subject: RE: Shuttle Express response to staff's information request - Independent contractor program
Importance: High

Mr. Sherrell:

Thank you for your response. You differentiate between upgrades out of the airport and "rescue" service. You state clearly that upgrades out of the airport are provided as single stop service by town cars or limos; however, the response was not as clear about rescue service.

Please clarify the following statement by answering each of the questions below:

"Out of the airport is a single stop, rescues is getting travelers to the airport as required."

1. Are rescue trips provided as single stops by town cars or limos as well?
2. If one of your multi-stop vans has a flat tire or another condition exists that requires a "rescue service" while picking up or dropping off multiple passengers at different locations, how do you transport the waiting/stranded passengers?
 - a. Do you dispatch another van to pick people up?
 - b. Do you upgrade passengers to limo or town car service? If so,
 - i. Are limos or town cars sent to pick up each individual customer?
 - ii. Do limos or town cars make multiple stops to pick up multiple passengers?
3. As I requested previously, please tell us how many trips comprise the revenue of \$710,438 associated with independent contractors. If this information is not available, please explain why the company is able to identify the amount of revenue associated with independent contractors and not how many trips this revenue represents.

Betty Young
 Compliance Investigator
 Transportation Safety Enforcement
 Washington Utilities and Transportation Commission
 Phone: 360-664-1202
 Fax: 360-586-1172

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

From: Paul Kajanoff [mailto:pkajanoff@shuttleexpress.net]
 Sent: Friday, September 21, 2012 1:46 PM
 To: Young, Betty (UTC)
 Cc: 'John Rowley'
 Subject: Shuttle Express response to staff's information request - Independent contractor program
 Importance: High

Dear Ms. Young,

Jimmy Sherrell requested I send the following response on his behalf:

This is in response to your request for further clarification of Independent Contractor Program.

Question; 4% not completed within normal guidelines. As stated by Mr. Rowley, "...within standards we feel are adequate to maintain our guests' loyalty"

This does not mean 4% were "not" completed within normal guidelines. What it does mean is we are sensitive to the convenience/service to travelers using our services. Included in Mr. Rowley's response are copies of staging times at the airport. On these reports is noted traveler staging times. We feel there is a length of staging time that is acceptable and one that is not. Once we have a staging time in excess, which is easy to identify on the recent report attachment of 45 minutes or longer, we seek to find these travelers an alternative to get them on their way, staying in the convenience/service time zone. Because we have affiliated independent towncar operator who are regulated, licensed and insured we have a viable legal alternative, I address the legality due to they are licensed for one stop service. Our UTC license for Auto Transportation is multi stop. Conversely, if we were a single stop operator as the towncar affiliates are, we would not need a UTC License.

Thus, when staging time is starting to get in excess and there a towncars available, we offer the travelers who are exceeding the 45-minute staging time the option of upgrading their travel from a multi stop van to a single stop towncar at no additional cost. This is offered verbally and travelers invariably take this option. These travelers receive a single stop trip, and thus is a viable option to waiting for a multi stop Shuttle Express ride at a later time. It is important to also understand that whether a reservation is booked through our reservation office or at the airport the same people handle both booking for share a ride and towncar single stop service. The only difference is at the time of booking when a traveler at their own option upgrades to a towncar, then the towncar rate is charged. Conversely when Shuttle upgraded service due to a long staging time there is no additional upgrade charge.

Question; when we are late due to bad traffic.....flat tire.

It is important to understand there are two distinct services/qualifications for using a towncar. Going to the airport the concern is making a flight and the consequences that this entails. This is what we deem to be a rescue by a towncar, limo or whatever other means we may find available. This is where the traffic...flat tire plays its biggest roll. The integrity of the promised trip and arrival at the airport to meet a flight carries a significant degree of promised service and liability.

Exceeding standard staging time is a service/convenience issue. Offering an upgrade service that is direct, not multiple stops helps us keep and meet our service standards out of the airport. As you questioned, last year we had revenues of \$710,438 (12,075 trips), which is approximately 5% of Shuttles regulated revenue as shown in Docket TC-112072. Rescue is a part of the number, as well as upgrades out of the airport. We handle rescues differently than upgrades out of the airport with relation to legality. Out of the airport is a single stop, rescues is getting travelers to the airport as required.

It is my intention to answer all your questions on this matter, if you need further clarification please let us know.

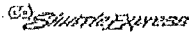
Respectfully,

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

Jimmy Sherrell

Paul Kajanoff
Chief Financial Officer
(425)981-7063



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Shuttle Express, Inc. – Staff Investigation Report

TC-120323

APPENDIX P

From: [John Rowley](#)
To: [Young, Betty \(UTC\)](#)
Subject: UTC response 11-15-12.docx
Date: Thursday, November 15, 2012 9:03:54 AM

Attachments: [UTC response 11-15-12.docx](#)

Hi Betty,

I just noticed an editing comment I had not deleted on page 2. No worries if too late.

Thanks, JR

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

1. Shuttle Express has told staff that if one of its multi-stop vans has a flat tire, or another condition exists that requires a "rescue" while picking up or dropping off passengers, it uses independent limousines and for-hire vehicles to rescue the passengers. Under this scenario, please answer the following questions:
 - a. Please describe specifically the circumstances under which Shuttle Express uses its rescue service (e.g., flat tire, traffic problems, overbooking for which a Shuttle Express vehicle is not available).

Shuttle Express airport service is not a typical line run operation like most that are regulated by the UTC. The majority of our airport business is share-ride. Share-ride service is a "plan as you go" routing service. Morning share-ride reservations are routed the night before to make the trips most efficient, while giving the best rides to our guests. Consideration is given to locations and number of stops. The rest of the reservations to the airport are routed a few hours ahead of time. From the airport, routes are created in real time as guests check in with us at our airport location. In real time, ALL routes are adjusted as changes occur making our service much different than a line run operation where routes are planned *and submitted* ahead of time.

Shuttle Express uses "rescue service" to prevent passengers from missing a flight or from waiting extraordinarily long at the airport. It should be noted Airport Management uses taxis for multi stop share ride when rescue service is needed out of the airport to keep travelers from waiting long especially during winter storms. This action by the airport sets its expectation/standard for getting travelers out of the airport timely and on their way at all times. To the airport, we cannot fail by being late or our guest will possibly miss their flight. Rescue service for share-ride is perhaps the single most important strategic function creating success within our operation and company and is the primary function of our dispatch crew.

There are many unforeseen circumstances that may lead to a rescue. Delays create the need for rescue service. The most common source of delays is bad traffic. There are many other situations that arise causing us to be delayed and they are too numerous to list. The main cause of delay that leads to a rescue is bad traffic.

If traffic or any other circumstance causes a delay to a share-ride van in either direction it also has the same effect on the coinciding trip. Thus to catch up with demand a rescue is mandatory unless travelers are just left to their own demise. If no action was taken not only the travelers on the effected route would be left stranded, but subsequent routes would also be affected. Because Shuttle carries travelers both inbound and outbound for the airport each segment has a direct effect on other segments. This is uniquely unlike airport taxi's that only take travelers one direction and have single stops. They do not have the challenges of multi stop two-way transportation to the extent that Shuttle Express does.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

I want to make it perfectly clear that Shuttle does NOT OVERBOOK. We have sufficient vans and drivers to handle each day. Our challenge is matching the demands of the travelling public each hour each and every day. Demands are very different each day and therefore share-ride routes are very different each day. Using our technology, the focus of a point person and our overall experience, Shuttle uses a sophisticated process to gather future and past data to project what will be needed 24 hours a day, 7 days a week. Unforeseen circumstances are the core reasons changes occur to projections which cause the rescue situations we have learned to react to so very well. Still, the goal of our planners and our dispatchers daily (and hourly) is to limit the number of rescues needed by forecasting as close as possible what will happen each day.

When a circumstance causes the need for a rescue, the first resource considered is a share-ride van. A dispatcher sees if a van is in the area AND determine if it will not inconvenience other travelers that have already been assigned to that van. If another van is used, dispatch reroutes and/or changes assignments to other vans to catch up and be back on schedule. Uses of Independent Contractors are only our last resort. Independent Contractors are NEVER scheduled ahead of time for regulated service. To our guests their experience seems to be our standard on-time service and the vehicle used is our vans in most cases. When a luxury service vehicle is used it is an upgrade at no extra charge.

The WUTC does not receive complaints from the traveling public for missed flights or long airport waits because of Shuttle's reaction and use of its resources to perform rescue service.

b Does Shuttle Express utilize limousines and for-hire vehicles to provide multi-stop service along its regulated routes when it provides rescue services?

Yes, when absolutely necessary as a last resort. Our share-ride vans are used whenever possible. This is answered in (a.).

- o If so, please describe specifically how Shuttle Express or its independent contractors transport the waiting or stranded passengers.

In the event an Independent Contractor is sent, dispatch notifies the traveler of the change, estimated time of arrival and the route to the airport.

- o If so, is this multi-stop service provided by independent contractor operators under contract with Shuttle Express in Shuttle Express' Independent Contractor Program?

In previous correspondence we included a copy of the independent operator contract. We use only operators with whom we have a contract with and are covered under our company insurance and meet the many qualifications and requirements determined by state and/or federal regulations.

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

2. Shuttle Express reported \$710,438 in revenues from Independent contractors, which it states is approximately 5 percent of the company's regulated revenue and comprises 12,075 trips. Shuttle Express has told staff that it uses independent contractors for both rescue services as described above, and for upgrades to luxury transportation for individual passengers coming out of the airport.
- a How many of these 12,075 trips represent "rescue" trips and how many were upgrades out of the airport?
We don't have data to differentiate between rescue trips and upgrades out of the airport.
 - b Of these rescue trips, how many involved multiple stops to pick up or drop off passengers?

According to our records in the last rate case 5,715 trips were multi-stop – approximately 15.5 per day. In recent legislation, championed by Shuttle and signed into law, multi ride vehicles are now allowed to use the HOV lanes when traffic is not totally gridlocked. The qualification for using these lanes has been left with a loose interpretation. Thus, Shuttle driver's decision to use the lanes has been a confidence building process of law interpretation of when to use or not use these lanes. We have seen and will see a further decrease in vans experiencing traffic delays because of our ability to use the HOV lanes, which in turn reduces required rescues. Dispatchers scheduling trips are seeing a continuing improvement in van travel times the more drivers use these lanes.

This and the WUTC investigation have caused us to reexamine our policy and performance capabilities.

When Shuttle uses an Independent Operator it loses revenue that could have been generated by the vans and thus is not cost advantageous to Shuttle. As a result, starting in January Shuttle changed its policies and procedures to take advantage of this time savings and keep revenue in Shuttle. The challenge still remains to guarantee travelers reach their flight and don't experience long waits at the airport. To help with this challenge, a dispatcher is now stationed at the airport. This enables a dispatcher on site to develop routes that are more productive and in general improve efficiency.

The amount of multi-stop rescues using Independent Contractors since this change has dropped to an average of .26 per day which is negligible. That being said, each day's traffic is unpredictable and rescues will undoubtedly continue to be needed.

Our first priority is to ensure our guests are served timely and our responsibility to them is met whatever circumstances lie before us. Shuttle's complaint history proves we triumph over the trials of unforeseen circumstances and ultimately take care of our guests at no additional charge.

Shuttle Express at no time seeks to circumvent the regulations of the WUTC and wishes to both provide service to our guests and follow the rules put forward.

Respectfully, Jimmy Sherrell

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

APPENDIX Q

From: [John Rowley](#)
 To: [Young, Betty \(UTC\)](#)
 Cc: [Paul Kalanoff; "Jimmy Sherrell"](#)
 Subject: RE: UTC response 11-15-12.docx
 Date: Friday, January 25, 2013 4:27:13 PM

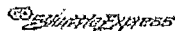
Hi Betty,

Here is the requested data:

Oct-10	316
Nov-10	283
Dec-10	486
Jan-11	453
Feb-11	393
Mar-11	434
Apr-11	381
May-11	445
Jun-11	572
Jul-11	622
Aug-11	705
Sep-11	625
	5715

Thanks and have a good weekend.

John Rowley
 President
 425-981-7070



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From: Young, Betty (UTC) [mailto:BYoung@utc.wa.gov]
 Sent: Thursday, January 17, 2013 9:22 AM
 To: John Rowley (jrowley@shuttleexpress.net)
 Subject: FW: UTC response 11-15-12.docx
 Importance: High

Hi John - In the attached response at #2, Mr. Sherrell stated,

"According to our records in the last rate case 5,715 trips were multi-stop – approximately 15.5 per day."

As the last rate case represents the time period of October 2010 through September 2011, please provide a breakdown of the 5,715 trips showing how many occurred each month. For example:

October 2010 – 500 trips

Shuttle Express, Inc. – Staff Investigation Report

TC-120323

November 2010 – 501 trips

Please provide the information by January 25, 2013.

Betty Young
Compliance Investigator
Transportation Safety Enforcement
Washington Utilities and Transportation Commission
Phone: 360-664-1202
Fax: 360-586-1172

From: John Rowley [mailto:jrowley@shuttleexpress.net]
Sent: Thursday, November 15, 2012 9:01 AM
To: Young, Betty (UTC)
Subject: UTC response 11-15-12.docx

Hi Betty,
I just noticed an editing comment I had not deleted on page 2. No worries if too late.

Thanks, JR