BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application TC-091931 of SHUTTLE EXPRESS, INC. For Extension of Authority under Certificate No. C-975, For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company	DOCKET TC-091931 ORDER 04 ANSWER TO PETITION FOR ADMINISTRATIVE REVIEW

1 The Initial Order in this docket does an excellent job of reviewing the record and providing a legal and factual basis for why the application of Shuttle Express, Inc. should be and was granted. Given that the order is on solid footing, Shuttle Express sees no reason to belabor or repeat its solid factual foundation. Conversely, the Petition for Administrative Review (the "Petition") filed by the lone protestant, SeaTac Shuttle, lacks any legal foundation and merely attempts to reargue the undisputed facts. A brief reply on a few points will make clear the fundamental shortcomings of the Petition.

I. DISCUSSION

2 The Shuttle Express application sought a very narrow change to a portion of its certificate: the elimination of a restriction to use of vans no larger than seven passengers in portions of King and Snohomish County.[1] This restriction is an historic anachronism that resulted from protests filed against Shuttle Express's original application more than 20 years ago, intended to distinguish the door-to-door service in vans proposed by Shuttle Express from the more traditional high volume "bus" services offered by the protestants

[1] The 7 passenger restriction does not apply to the entire permit, only the first portion, which is what led to the confusion by Shuttle Express.

Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Dr., Ste 1200
McLean, VA 22102

from fixed stops.[2] Tr. at 87; *see also*, Order M. V. C. No. 1809, *In re San Juan Airlines, Inc., d/b/a Shuttle Express,* App. No. D-2566 (April 1989). Indeed, Shuttle Express has since acquired the permits of some of those protestants and believed, in good faith, that the acquisitions extended its permit to allow it to use larger vehicles.[3] *See,* Tr. at 88-89, Exh. A.

3 By the conclusion of the hearing, it became apparent that SeaTac Shuttle's protest was not properly founded, since Protestant disclaimed any interest in the impact of the application on its operations: "Our operation is irrelevant to this hearing. It has absolutely nothing to do with the application." Tr. at 167. Further, "It's never been a concern of ours. It's not part of our protest." Tr. at 190. SeaTac Shuttle admitted that granting the amendment to the Shuttle Express permit will not harm it in any way. Tr. at 170.

4 A protest is not valid to the extent it opposes an application for authority that exceeds the protestant's authority. Order M. V. C. No. 1444, *In re Richard & Helen Asche, Bremerton-Kitsap Airporter, Inc., d/b/a Bremerton-Kitsap Airporter, Inc., Kitsap-Sea-Tac Airporter, Inc., The Sound Connection,* App. No. D-2445 (May 1984). The restriction to be eliminated by the proposed amendment impacts only Shuttle Express' door-to-door service. Since SeaTac Shuttle admitted that it does not provide any door-to-door service under its permit, its protest goes beyond its own authority and is not a valid protest. *See* Tr. at 167-68. *See also*, WAC 480-30-116(2)(a)(iv) (protestant must have an "interest" in the proceeding).

---

[2] The principal party requesting that restriction, Gray Line, no longer has any interest in it and did not file a protest to the instant application. *See,* Tr. at 87.

[3] The lack of any Commission enforcement action—while of no legal consequence—contributed to that good faith belief. *See* Tr. at 89. Given the utter lack of public harm from Shuttle Express switching to larger vans, it is certainly not surprising that the Commission Staff would not make the matter a high priority for enforcement.

Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Dr., Ste 1200
McLean, VA 22102

5 SeaTac Shuttle finally disclosed the basis for its protest at the hearing—with evidence and a legal theory that are outside the scope of a cognizable protest. Its Petition for review continues to pursue a remedy that is not legally cognizable based on a protest to an extension application. Protestant is effectively attempting to turn this docket into an enforcement action, seeking the "penalty" of denial of the extension.[4]

6 No statute or rule supports the existence of a private enforcement right in the context of an extension application and protest. Nor can SeaTac Shuttle cite any law or rule that says a violation of a certificate is an automatic and complete bar to a conforming amendment. In fact, the law is to the contrary, as the Commission has held that an applicant's assurance of future compliance with Commission rules and laws, combined with objective manifestations of intent to comply, may establish an applicant's fitness, notwithstanding past violations. *E.g.,* Order M. V. C. No. 2041, *In re Sharyn Pearson & Linda Zepp, d/b/a Centralia-SeaTac Airport Express,* App. No. D-76533 (March 1994).

7 There are good public interest reasons the Commission has never had a hard and fast rule that a history of violations bars a carrier from obtaining or amending its permit. It would preclude correction of good faith errors, harm the public in cases like this, and discourage carriers from coming to the Commission voluntarily when they discover errors or ambiguities in their operations relative to their authority.

8 The Commission is charged to "regulate in the public interest." RCW 80.01.040. SeaTac Shuttle's protest and Petition for review ignores the public interest. The Protestant did not introduce a scintilla of evidence that permitting Shuttle Express to operate larger vehicles would be in any way contrary to the public interest, despite overwhelming evidence in the record—not to mention common sense—that use of larger

[4] Curiously, despite its vigorous if misguided attempt at "enforcement" in this docket, it has failed to ever complain about the 7 passenger restriction to the Commission. And even though it filed an informal complaint against Shuttle Express with the UTC recently, it did not think the vehicle size merited even a mention. Tr. 170-71.

Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Dr., Ste 1200
McLean, VA 22102

vans is in the public interest and supported by public need. SeaTac Shuttle attempts to dismiss that evidence in its Petition, but Shuttle Express undeniably made its prima facie case with independent public witnesses.

9 Contrary to the public interest, Protestant would have Shuttle Express shrink the size of its vans, thereby limiting its ability to carry large groups in a single van, increasing congestion at the Airport, reducing Shuttle Express' operating efficiency and ability to handle peak travel demand periods, increasing fuel consumption and air pollution, increasing operating costs per mile, and increasing passenger fares. It is a classic case of the "cure" being worse than the "disease" and makes no sense, as the Initial Order concluded.

10 The factual assertions of the Petition attempt to mischaracterize the record. At best, the fact arguments go to the weight of the evidence. But there is nothing to weigh Protestant's fact attacks against. SeaTac Shuttle presented zero evidence to contradict the evidence from two public witnesses[5] that there is a need for Shuttle Express to operate vans larger than 7 passengers. It would be reversible error for the Commission to conclude otherwise based on the record in this docket.

11 Finally, SeaTac Shuttle completely miscomprehends the "to the satisfaction of the commission" test by attempting to apply it to Shuttle Express's operations. The applicant only needs to show another carrier—usually if not always a protestant—is not serving satisfactorily. The issue only arises when an applicant seeks authority in a territory already served and the incumbent carrier protests. Here there is no overlap of authority, as the sole protestant admits. In fact, SeaTac Shuttle objected that its operation was not

---

[5] Protestant attempts to dismiss the testimony of Ms. Mattson, because she did not testify from the perspective of a passenger. But independent witnesses are allowed establish public need, either if they "actually require the service," OR "are knowledgeable about the need for service." WAC 480-30-136(3)(ii). Ms. Mattson was very knowledgeable about airport ground transportation and gave many reasons that she support the instant application based on public need. *See* Tr. at 39-45.

at all at issue in this proceeding. Tr. at 167. "Satisfaction" is not an issue in this case, as the Initial Order correctly determined.

II. CONCLUSION

12 The Petition for Administrative Review should be denied and the initial order should be affirmed.

13 Respectfully submitted this 22 day of March, 2011.

LUKAS, NACE, GUTIERREZ & SACHS, LLP

Brooks E. Harlow
WSB No. 11843

Attorney for SHUTTLE EXPRESS, INC.

Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Dr., Ste 1200
McLean, VA 22102

CERTIFICATE OF SERVICE
Docket No. Docket No. TC-091931

I hereby certify that a true and correct copy of the foregoing was forwarded via electronic mail and first class mail, postage fully prepaid, in a sealed envelope, to the following:

John Solin
Mike Lauver
SeaTac Shuttle, LLC
d/b/a Whidbey Seatac Shuttle
P.O. Box 2895
Oak Harbor, WA 98277
E-mail: mike@seatacshuttle.com
john@seatacshuttle.com

John Rowley
General Manager
Shuttle Express, Inc.
800 SW 16th Street
Renton, WA 98055
jrowley@shuttleexpress.net

Dated at Seattle, Washington, this 22 day of March, 2011.

/s/________________________________
David Crawford