

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application TC-143691 of

SPEEDISHUTTLE WASHINGTON, LLC,  
d/b/a SPEEDISHUTTLE SEATTLE

For a Certificate of Public Convenience and  
Necessity to Operate Motor Vehicles in  
Furnishing Passenger and Express Service as  
an Auto Transportation Company

DOCKET TV-143691

COMMISSION STAFF'S MOTION TO  
STRIKE SHUTTLE EXPRESS'S  
PETITION FOR ADMINISTRATIVE  
REVIEW AND RESPONSE TO  
SHUTTLE EXPRESS'S MOTION TO  
REOPEN THE RECORD

**I. BACKGROUND**

1 Speedishuttle applied for authority to provide door-to-door shared ride shuttle  
service between the Seattle-Tacoma International Airport and points within King County.  
Two existing providers, Shuttle Express and Capital Aeroporter, filed objections to  
Speedishuttle's application. On January 22, 2015, following a brief adjudicative hearing,  
ALJ Rayne Pearson overruled both objections and referred the application to Staff.

2 On February 9, 2015, Shuttle Express moved to reopen the record.

3 On February 10, 2015, Shuttle Express petitioned for administrative review of Judge  
Pearson's initial order (Order 02).

**II. MOTION TO STRIKE PETITION FOR REVIEW**

4 Staff moves to strike Shuttle Express's petition for administrative review.

5 Staff contends the Commission cannot resolve a petition for administrative review  
while a motion to reopen the record is pending review. A petition for review requires a  
closed record. Here, Shuttle Express cannot seek to reopen the record and simultaneously  
petition for administrative review.

6

Shuttle Express relies in its petition for review on evidence it seeks to admit through its motion to reopen the record. Most prominently, it relies on the declaration of Paul Kajanoff (attached to its motion to reopen) for the proposition that market demand for door-to-door service in King County “has declined 8.9 percent in the last two years alone.” Petition for Admin. Rev. ¶ 32. Responding parties cannot answer this statement, and the Commission cannot evaluate it on review, unless the Commission first decides whether the Kajanoff declaration is part of the record. Again, the petition requires a closed record.

7

If the Commission grants Shuttle Express’s motion to reopen the record, it must “give all parties an opportunity to respond to any evidence received after the record is closed.” WAC 480-07-830. Then, “[t]he commission may enter a final order or may return the matter to the presiding officer for further consideration, including further hearing or other process when appropriate.” *Id.* Under this sequence of events, Shuttle Express’s petition for administrative review could become procedurally proper if (1) the Commission grants the company’s motion to reopen; (2) the Commission returns the matter to ALJ Pearson or another presiding officer; and (3) ALJ Pearson or another presiding officer enters a new initial order. Because the parties can only speculate whether and when these events will occur, Staff contends the proper resolution is for the Commission to strike the petition for administrative review currently pending alongside the motion to reopen the record.

8

In the event the Commission decides that the motion to reopen the record and the petition for administrative review can be heard simultaneously, Staff reserves its right to answer the petition for review in a separate pleading.

9 Staff also reserves its right to respond to the petition for administrative review filed  
by Capital Aeroporter on February 11, 2015. Nothing in this pleading should be construed as  
an objection to Capital Aeroporter's petition.

10 The Commission should strike Shuttle Express's petition for administrative review.

### 11 III. RESPONSE TO MOTION TO REOPEN THE RECORD

11 Staff opposes Shuttle Express's motion to reopen the record.

12 Although witness Paul Kajanoff's hearing impairment was regrettable, it does not  
constitute "good and sufficient cause" to reopen the record under WAC 480-07-830. The  
evidence the company now seeks to admit (historical passenger count data) was readily  
available and discoverable at the time of the hearing and could easily have been  
introduced—if not through Mr. Kajanoff then certainly through the company's other  
witness, Wesley Marks.

13 Absent from Shuttle Express's motion is any assertion that the alleged lack of  
accommodation for Mr. Kajanoff's impairment, or the company's failure to obtain legal  
counsel, in any way prevented the introduction of evidence now proffered by the company.  
There is simply no alleged or possible nexus between the conditions at the hearing and the  
company's failure to introduce the readily available passenger count data it now relies upon.

14 Shuttle Express asserts, "Mr. Kajanoff had extreme difficulty participating in the  
hearing." Mot. to Reopen ¶ 9. Although Mr. Kajanoff had difficulty hearing, he had no  
trouble speaking and writing. Questions posed to Mr. Kajanoff were written on a notepad by  
Mr. Marks. Mr. Kajanoff read the questions and then stated his response verbally.  
Sometimes, Mr. Kajanoff and Mr. Marks conferred silently before Mr. Kajanoff stated his

response. From all appearances, Mr. Kajanoff understood the questions asked of him and may even have gained an advantage through his collaboration with Mr. Marks.

15 Shuttle Express states it was not represented by counsel. Mot. to Reopen ¶ 17. The company was represented by counsel until counsel withdrew about two and a half weeks before the hearing. To the extent counsel's withdrawal prejudiced the company, that outcome appears to be a problem of the company's own making.

16 Shuttle Express also notes that the Commission failed to provide an "interpreter." Mot. to Reopen ¶ 19-20. The company never requested an interpreter. It merely requested that the Commission increase the volume of its sound system. Generally speaking, the Commission might provide an interpreter to translate a foreign language. In his request for accommodation, Mr. Kajanoff stated his primary language was English.

17 Shuttle Express requested no continuance and raised no formal objection to the alleged lack of accommodation for Mr. Kajanoff's impairment. From Staff's perspective, it is now too late to question the fundamental fairness of the proceeding.

18 The Commission should deny Shuttle Express's motion to reopen the record.

DATED this 13th day of February 2015.

Respectfully submitted,

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