

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDISHUTTLE WASHINGTON, LLC,

Respondent.

DOCKET TC-160516

SPEEDISHUTTLE WASHINGTON, LLC
d/b/a SPEEDISHUTTLE SEATTLE'S
ANSWER TO SHUTTLE EXPRESS'
COMPLAINT, AFFIRMATIVE DEFENSES
AND COUNTERCLAIM

1 COMES NOW Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle
("Speedishuttle" or "Respondent"), C-65854, by and through its counsel, David W.
Wiley and Hunter M. Abell of Williams, Kastner & Gibbs, PLLC, and, for Answer to the
Complaint brought by Shuttle Express, Inc. ("Shuttle Express"), files the following
Answer pursuant to WAC 480-07-370(c):

I. FACTS RELEVANT TO COMPLAINT

- 2 The Shuttle Express Complaint was filed in conjunction with a Petition for Rehearing at
the Washington Utilities and Transportation Commission ("Commission") on or about
May 18, 2016. The Complaint incorporates allegations contained in paragraphs 2-35 of
the Petition for Rehearing to which Speedishuttle has separately responded at length in its
Answer to Petition for Rehearing, and to which it here incorporates by reference, if
necessary, for response. The balance of Shuttle Express' pleading appears to relate to the
Complaint.
- 3 In response to paragraph 36, the prefatory statement by Shuttle Express does not contain
factual allegations, and therefore does not require a response.
- 4 In response to paragraph 37, Speedishuttle denies the incorporated recitation of material
background facts in this matter.

- 5 In answer to paragraph 38, Speedishuttle admits that Speedishuttle and Shuttle Express are engaged in regulated competition in provision of passenger auto transportation service between SeaTac Airport and points in King County, WA. Speedishuttle denies that it obtained regulatory authority by “inducing” the Commission to find service would not be the same service as that already offered by Shuttle Express. Speedishuttle denies in their entirety the remaining characterizations/allegations in paragraph 38.
- 6 In answer to paragraph 39, Speedishuttle admits that it is operating in regulated competition with Shuttle Express. Speedishuttle is without knowledge as to whether a “substantial portion” of its passengers are being offered and/or provided the same services that Shuttle Express offers and/or provides. Speedishuttle lacks information to admit or deny the alleged ridership impact on Shuttle Express. Speedishuttle lacks information to admit or deny whether or not any alleged impact is in the public interest, but believes that this Commission strongly encouraged competition in this marketplace in its 2013 rulemaking, and that goal is fully consistent with Speedishuttle operations and the public interest for this industry.
- 7 In answer to paragraph 40, the assertion by Shuttle Express regarding its knowledge, or lack thereof, regarding the extent of service does not contain factual allegations, and therefore does not require a response. Speedishuttle admits that it provides service to passengers who speak or write only Chinese, Japanese, or Korean but has not quantified what portion of its customer base that constitutes nor would that necessarily be susceptible to quantification. Speedishuttle denies in entirety the rest of the allegations in paragraph 40.
- 8 In answer to paragraph 41, Speedishuttle admits that it provides regulated services at fares in compliance with all Commission orders, instructions, and applicable regulations. Speedishuttle denies in entirety the rest of the allegations in paragraph 41.

II. APPLICABLE LAW AND REGULATIONS

9 In answer to paragraph 42, Speedishuttle asserts that the provisions therein are merely recitation of rules and statutes and that those rules and statutes speak for themselves and require no response.

10 In answer to paragraph 43, Speedishuttle asserts that the provisions therein are merely recitation of rules and statutes impacting auto transportation services and that those rules speak for themselves and require no response.

III. REQUEST FOR RELIEF

11 In answer to paragraph 44, this paragraph does not contain factual allegations, and therefore does not require a response. To the extent, if any, this paragraph is construed to contain allegations requiring a response, Speedishuttle denies in entirety the allegations in paragraph 44.

12 In answer to paragraph 45, Speedishuttle asks that the Commission bifurcate consideration of the Petition and the Complaint as the factual issues underlying both matters are materially different, as are the legal authorities and analyses applicable thereto. A Petition for Rehearing is subject to the complete discretion of the Commission and may be resolved by denial. Moreover, the parties in the brief adjudicative record sought to be reopened by Shuttle Express and the Complaint are not identical.

13 In answer to paragraph 46, Speedishuttle asks that should the Complaint withstand dismissal at this juncture, the Commission establish a case schedule, if any, in accordance with standard Commission guidelines and regulations.

14 In answer to paragraph 47, Speedishuttle asks that the Commission deny the requested overbroad and intrusive “full range of discovery” relief as the allegations complained of, pursuant to Title 81 RCW, by Shuttle Express, do not warrant discovery to achieve resolution. To the extent, if at all, discovery is permitted in this matter, it should be strictly limited in the interests of economy, efficiency and fairness by the Commission

and consistent with General Order R-572's and 2013's streamlining of auto transportation proceedings.

- 15 In answer to paragraph 48, Speedishuttle asks that the Commission deny this unwarranted and overreaching attempt by Shuttle Express to cancel Speedishuttle's property right and validly-issued Certificate No. C-65854.
- 16 In answer to paragraph 49, Speedishuttle asks that the Commission further deny the unwarranted attempt by Shuttle Express, in contravention of previous rulings and longstanding Commission policy, to restrict or otherwise diminish Speedishuttle's property right and validly-issued Certificate No. C-65854. Moreover, bare allegations of discriminatory conduct and unjust or unreasonable rates, et. al, without support should not trigger extensive, expensive discovery mechanisms without showing of just cause by a Complainant, particularly when those allegations devolve from a brief adjudicative hearing process designed to be efficient and expeditious.
- 17 In answer to paragraph 50, Speedishuttle asks that the Commission deny the unsupported alternative request by Shuttle Express that Speedishuttle stop providing services in accordance with Commission rules and regulations, and deny the burdensome, excessive and unnecessary discovery demands proposed by Shuttle Express, including reformation of current rates and charges approved by the Commission and rate flexibility for the same pursuant to WAC 480-30-420.
- 18 In answer to paragraph 51, Speedishuttle asks that the Commission deny the extraordinary and unsupported request by Shuttle Express that the docket be "kept open" and monthly progress reports be provided for an unspecified time period. While Speedishuttle believes that Complainant Shuttle Express itself may have been subject to such remedial measures in the past to monitor its own regulatory compliance, this was ostensibly a result of a Commission show cause and complaint action against it as a

respondent and not an available remedial measure afforded to one public service company to facilitate allegations against another in effectuating RCW 81.04.110.

19 In answer to paragraph 52, this paragraph lacks factual allegations, and therefore does not require a response.

IV. RESPONDENT'S AFFIRMATIVE DEFENSES

20 In addition to the admissions and denials recited above, Speedishuttle asserts the following affirmative defenses in this matter:

- a. Res Judicata;
- b. Collateral Estoppel;
- c. Unclean Hands;
- d. Waiver;
- e. Laches;
- f. Estoppel; and
- g. Administrative Finality.

V. RESPONDENT'S COUNTERCLAIMS

21 In addition to the affirmative defenses cited above, Speedishuttle asserts the following counterclaim in the alternative, if the Commission proceeds with any hearing on the Complainant's allegations:

Counterclaim #1: Statutory and/or Regulatory Violations

- a. Respondent Shuttle Express's activities are governed by RCW 81.28 *et seq*, RCW 81.68 *et seq*, and WAC 480-30 *et seq*.
- b. Based on information and belief, Shuttle Express has impermissibly engaged in a concerted process of blending its door-to-door and scheduled service operations while maintaining the front of separation of those distinct regulated services in tariff and time schedules and in holding out to perform regulated service.

- c. This commingling of regulatory services and fees potentially allows Shuttle Express to underpay annual regulatory fees under WAC 480-30-076 to the Commission, i.e., including mis-characterizing “charter” revenue, and to the Port of Seattle for access fees charged by the Port which differentiate remittance levels between “scheduled” and “door-to-door” service as defined by the Commission.
- d. Such practices further distort the competitive playing field, artificially reduce Shuttle Express’ costs of service, dilute industry regulatory fee payments, and oppress Speedishuttle, stifling competition in establishing unfair practices in contravention of Commission law and rule.
- e. As a direct and proximate result of these practices in violation of RCW 81.28 *et seq*, RCW 81.68 *et seq*, and WAC 480-30 *et seq*, Speedishuttle has been harmed in a fashion which should result in restriction of Shuttle Express’ operations and audit of its annual reported revenue calculations and regulatory fee payments under WAC 480-30-076.

22 Speedishuttle reserves the right to assert any additional defenses, affirmative defenses or counterclaims that arise pending further discovery, if any, and nothing in this Answer should be construed as a waiver of such additional defenses.

VI. RESPONDENT’S REQUEST FOR RELIEF

23 Speedishuttle requests that the Complaint be dismissed with prejudice, or in the alternative, that it be granted hearing on its Counterclaim should Shuttle Express be authorized to proceed with its Complaint.

24 Speedishuttle asks the Commission for any further relief that it deems just and equitable.

DATED this 7th day of June, 2016.

RESPECTFULLY SUBMITTED,

By 

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2016, I caused to be served the original and three (3) copies of the foregoing documents to the following address via FedEx:

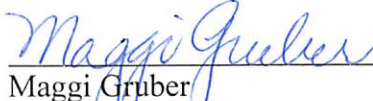
Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
Attn.: Records Center
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

I further certify that I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via web portal to: records@utc.wa.gov

and served a copy via email and first class mail, postage prepaid, to:

Julian Beattie Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128 (360) 664-1192 Email: jbeattie@utc.wa.gov	Bruce Winchell Mills, Meyer, Swartling 1000 Second Avenue Seattle, WA 98104-1064 (206) 382-1000 bwinchell@millsmeyers.com
Brooks Harlow Lukas, Nace, Gutierrez & Sachs, LLP 8300 Greensboro Dr. Suite 1200 McLean, VA 22102 (703) 584-8680 Email: bharlow@fcclaw.com	John Fricke Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter Airport Shuttle PO Box 2163 Olympia, WA 98507-2163 (360) 292-7680 johnf@capair.com

Dated at Seattle, Washington this 7th day of June, 2016.


Maggi Gruber
Legal Assistant