

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 TC-143691

COMMISSION STAFF'S RESPONSE
TO SHUTTLE EXPRESS'S PETITION
FOR REHEARING

I. INTRODUCTION

1 In response to Shuttle Express's petition for rehearing under RCW 81.04.200, Staff recommends that the Commission schedule a brief adjudicative hearing for the *strictly* limited purpose of determining whether Speedishuttle promised to provide but is presently failing to provide: (1) personal, multilingual greeters at Sea-Tac Airport; (2) in-vehicle televisions and wireless internet; and (3) guaranteed 20-minute departures.¹ For context, the Commission found in Order 04 that each of these features distinguished the service Speedishuttle intended to provide from the service already provided by Shuttle Express.² Shuttle Express now believes it can prove that Speedishuttle misled the Commission.

2 If the Commission finds on rehearing that Speedishuttle is failing to provide one or more of the above services *and* that Speedishuttle's promise to provide such service(s) was a material factor supporting Order 04's conclusion that "Speedishuttle does not propose to offer the same service Shuttle Express provides,"³ the Commission may order Speedishuttle

¹ See Shuttle Express's Petition for Rehearing, pp. 9-10, ¶ 23 (identifying points on which the Commission was allegedly "misled").

² *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle*, Docket TC-143691, Order 04, Final Order, ¶¶ 19-21 (Mar. 30, 2015).

³ Order 04, Final Order, ¶ 17 (Mar. 30, 2015).

to commence providing such service(s). (Alternatively, if Speedishuttle is unwilling or unable to commence providing such service(s), the Commission may consider initiating a separate proceeding to cancel the company's certificate for cause under WAC 480-30-171.) But if the evidence shows that Speedishuttle is reasonably providing all material services, Shuttle Express must accept that result and move on.⁴

3 Generally, Staff recommends that the Commission resolve this dispute—which Staff views as narrow and minor—in the most expeditious manner possible. Staff accordingly opposes Shuttle Express's request for "the full range of discovery."⁵ In lieu of a full-blown adjudication, with its attendant discovery and scheduling disputes, Staff recommends that the Commission hear Shuttle Express's allegations at a brief adjudicative proceeding.

II. BACKGROUND

4 In October 2014, Speedishuttle applied for a certificate of public convenience and necessity to operate "DOOR TO DOOR PASSENGER SERVICE BETWEEN Seattle International Airport and points within King County."⁶

5 Shuttle Express and Capital Aeroporter protested Speedishuttle's application. Shuttle Express alleged, "The Applicant's requested service would completely overlap the existing authority of Shuttle Express in King County, requesting identical service operating in the identical area as has been granted by [Shuttle Express's] certificate C-975."⁷

⁴ Staff reserves its right to respond under separate cover, at the appropriate time, to the complaint embedded within Shuttle Express's petition for rehearing. Staff wishes to express that it disapproves of Shuttle Express's decision to combine and *emmesh* these pleadings. In preparing this Response, Staff was confused as to which allegations and requests for relief applied to the former and which applied to the latter.

⁵ Notice of Determination Not to Amend Order 04, p. 18, ¶ 47 (Dec. 14, 2015).

⁶ Docket Notice (Oct. 21, 2014).

⁷ Shuttle Express's Objection to Permanent Auto Transportation Authority Application (Nov. 12, 2014).

6 The Commission scheduled a BAP to determine whether Shuttle Express or Capital
Aeroporter provided the same service that Speedishuttle sought to provide and, if so,
whether either incumbent provided such service to the satisfaction of the Commission.⁸

7 Administrative Law Judge Rayne Pearson conducted the BAP on January 12, 2015.
Shuttle Express, Capital Aeroporter, and Speedishuttle appeared, presented evidence, and
conducted cross-examination. Staff also appeared but made clear it was a neutral party.

8 Following the BAP, Judge Pearson entered Initial Order 02 overruling Shuttle
Express's and Capital Aeroporter's objections to Speedishuttle's application.⁹ Judge Pearson
found that neither Shuttle Express nor Capital Aeroporter provided the same service that
Speedishuttle sought to provide. Judge Pearson also found that Shuttle Express's historic use
of contract drivers as part of its "rescue service" demonstrated that "Shuttle Express does
not reasonably serve the King County market."¹⁰

9 Shuttle Express and Capital Aeroporter separately petitioned for administrative
review of Order 02. On March 30, 2015, the Commission entered final Order 04 denying
those petitions.¹¹ The Commission upheld Judge Pearson's finding that neither Shuttle
Express nor Capital Aeroporter provided the same service that Speedishuttle sought to
provide. The Commission also observed that Speedishuttle's entry into the market was
consistent with the Commission's recent efforts to promote competition:

The Commission adopted rules in 2013 governing auto transportation
services to reflect the more competitive marketplace, including both
granting existing companies greater regulatory and fare flexibility and
facilitating the ability of other providers to enter the market. . . . An entirely
different business model that appeals to and serves a certain subset of the

⁸ Order 01, Order Denying Motion to Strike Notice of Brief Adjudicative Proceeding (Dec. 22, 2014).

⁹ Order 02, Initial Order Overruling Objections to Application for New Authority, ¶¶ 25 and 27 (Jan. 22, 2015).

¹⁰ Order 02, Initial Order, ¶ 16.

¹¹ Order 04, Final Order (Mar. 30, 2015).

market—like Speedishuttle proposes to offer—is precisely the type of service differentiation contemplated by the new rules.¹²

No party sought judicial review of Order 04.

10 On April 9, 2015, the Commission issued Certificate C-65854 granting Speedishuttle authority to operate “DOOR TO DOOR PASSENGER SERVICE BETWEEN Seattle International Airport and points within King County.”¹³ The Commission attached no restrictions to Speedishuttle’s certificate.

11 In August 2015, well after the deadline for judicial review had passed, Shuttle Express informally complained to the Commission that Speedishuttle was accepting “walk-up” customers at its airport kiosk contrary to its representation at the BAP that it would *not* accept such customers.¹⁴ This complaint prompted the Commission to issue a series of bench requests requiring Speedishuttle to disclose data concerning its acceptance of “walk-up” customers.¹⁵ Speedishuttle acknowledged that nearly a third of its airport customers obtained “walk-up” service during the Company’s first 30 days of operation.¹⁶

12 In November 2015, the Commission asked the parties to submit briefs discussing whether “Order 04 could be interpreted to grant Speedishuttle broader authority than the Company applied for and the Commission intended to provide.”¹⁷ The Commission specifically asked for guidance on whether it should limit Speedishuttle’s authority to “prearranged” service (thereby prohibiting the company’s use of an airport kiosk).¹⁸

¹² Order 04, Final Order, ¶¶ 31-32.

¹³ Certificate C-65854 (Apr. 13, 2015).

¹⁴ Shuttle Express’s informal complaint is not part of the record in this docket.

¹⁵ Order 05, Order Overruling Objection to Bench Request; Requiring Production of Information (Sept. 9, 2015).

¹⁶ Notice of Determination Not to Amend Order 04, p. 2 (Dec. 14, 2015).

¹⁷ Notice of Intent to Amend Order 04 and Notice of Opportunity to File Written Response, p. 2 (Nov. 4, 2015).

¹⁸ *Id.*

Staff recommended that the Commission take no action with respect to Speedishuttle's certificate.¹⁹ Staff opined that restriction of Speedishuttle's certificate would be inappropriate because Speedishuttle applied for, and was granted, *unrestricted* door-to-door authority. Staff acknowledged that Speedishuttle made "what the Commission might construe . . . as an affirmative pledge that the company would not accept kiosk-based passengers."²⁰ Nevertheless, Staff argued, if the Commission intended to rely on this representation to limit Speedishuttle's authority, it had a duty to articulate that limitation *expressly* in its final order. Since the final order imposed no restrictions, Staff concluded that Speedishuttle was entitled to operate to the full extent of its certificated authority. Staff also reminded the Commission that the terms "walk-up" and "prearranged" appeared nowhere in the Commission's rules. Staff wrote, "In sum, Speedishuttle's kiosk-based service is merely a type of 'door-to-door service,' as defined in WAC 480-30-036(2)."²¹

On December 14, 2015, the Commission issued its "Notice of Determination not to Amend Order 04."²² The Commission concluded that although it was "troubled" by Speedishuttle's apparent misrepresentation regarding "walk-up" customers, it found no legal basis supporting retroactive restriction of Speedishuttle's certificate:

The Commission has reviewed the parties' comments and has determined that amending Order 04 is unwarranted. We agree with Staff and Speedishuttle that our current rules make no distinction between "prearranged" and "walk-up" door-to-door service. Instead, Commission rules define "door-to-door" service and "scheduled" service only; "door-to-door" service, which Speedishuttle is authorized to provide, encompasses both "prearranged" and "walk-up" service.

We remain troubled by Speedishuttle's representation at hearing that it would not provide "walk up" service, especially as the Commission granted

¹⁹ Staff's Comment Opposing Amendment of Order 04 (Nov. 25, 2015).

²⁰ *Id.* ¶ 13.

²¹ *Id.* ¶ 10.

²² Notice of Determination not to Amend Order 04 (Dec. 14, 2015).

the Application based in part on that testimony. The Commission cannot make fully-informed decisions without parties' complete candor to the tribunal. The Company's subsequent explanation of its testimony as "made in passing" serves to heighten, rather than relieve, our concerns. Indeed, it serves as a warning to the Commission to make certain that, in the future, proper conditions are placed on companies to ensure they adhere to their representations.

That said, we recognize that the rules do not prohibit Speedishuttle from offering "walk-up" service, and, once a certificate has been issued, the rules do not permit us to attach conditions to it retroactively. Should the Commission decide to further define "door-to-door" service to distinguish between "prearranged" and "walk-up" service, it will do so in a forum separate from this proceeding.²³

Shuttle Express sought no administrative or judicial relief from this determination.

15

Earlier this month, more than a year after the Commission entered its final Order 04, Shuttle Express filed its petition for rehearing.²⁴ In its petition, Shuttle Express asks the Commission to hear new evidence concerning Speedishuttle's operations and then, based on that evidence, cancel or restrict Speedishuttle's certificate.²⁵ It specifically alleges that Speedishuttle made the following misrepresentations:

- a. **The "personal greeter" service distinction does not exist** and is not provided unless an air passenger arriving at the airport has made a reservation for door-to-door service prior to arriving, as Respondent has admitted. Moreover, Respondent has made no apparent effort to hire multilingual greeters.
- b. Multilingual reservations can only be made by booking a reservation in advance on the website. Given the essential nature of this service to the Commission's grant of authority and the misrepresentations by the Respondent that are now evident, discovery is warranted on the issue of whether multilingual service is truly offered to any more than a *de minimus* [sic] number of Respondent's passengers. **Shuttle Express can find no evidence that personnel staffing Respondent's kiosk at the airport or drivers are any more capable of serving walk-up passengers than are the Shuttle Express personnel.** On information and belief, Respondent has made no material effort to provide multilingual service other than to

²³ Notice of Determination not to Amend Order 04, p. 3 (emphasis added).

²⁴ Shuttle Express's Petition for Rehearing (May 16, 2016).

²⁵ *Id.* ¶ 49.

passengers with advance reservations. Therefore this supposedly essential service distinction could have provided no support in the Application Case for a grant of authority to carry passengers who have not made an advance reservation.

c. **It is not presently known if Respondent provides working TV and Wi-Fi in all its vans**, which it had started to install by the time of the hearing in the Application Case. Again, this issue merits discovery. Also, Shuttle Express now has Wi-Fi capability in all of its vans. However, because the overall number of door-to-door airporter passengers has continued to decline at a steady pace, new evidence will show that that this ancillary feature of the core transportation service the Commission regulates has not in any way served or attracted a material number of new airline passengers to auto transportation service. Furthermore, the demonstrable shift in passengers from Shuttle Express to Speedishuttle shows that at best the features have attracted existing passengers who would have been satisfactorily served by Shuttle Express.

d. **Respondent has failed to implement its supposed “guarantee” to depart the airport within 20 minutes from when the passenger checks in with bags in hand.** Despite numerous tariff filings since the final order in the Application Case, Speedishuttle’s tariff does not even mention departure timelines in its tariff, let alone guarantee them. Even its website fails to mention airport wait time in Seattle. The “guarantee” is non-existent, or at most illusory. On information and belief, the actual average wait time for door-to-door guests to leave the airport is not materially more favorable for Respondent as compared to Shuttle Express.²⁶

For the reasons discussed below, Staff recommends that the Commission schedule a BAP to hear evidence solely on issues a., c., and d.

III. ARGUMENT

16

Shuttle Express requests a new hearing to prove that Speedishuttle obtained its certificate by false pretenses. In particular, Shuttle Express intends to prove that, at the January 12, 2015, brief adjudicative proceeding in this docket, Speedishuttle promised to provide but is currently failing to provide: (1) personal, multilingual greeters at Sea-Tac Airport; (2) in-vehicle televisions and wireless internet; and (3) guaranteed 20-minute

²⁶ Shuttle Express’s Petition for Rehearing, ¶ 23 (May 16, 2016) (emphasis added).

departures.²⁷ Shuttle Express further alleges that Speedishuttle is failing to provide multilingual “staffing” at its airport kiosk.²⁸

17 Staff recommends that the Commission schedule a BAP for the strictly limited purpose of determining whether Speedishuttle currently provides personal, multilingual greeters at Sea-Tac Airport, in-vehicle televisions and wireless internet, guaranteed 20-minute departures (points a., c., and d., above). If the evidence shows that Speedishuttle provides the above services (for example, if Speedishuttle demonstrates that it equips its vehicles with television and wireless internet), the matter will summarily conclude.

18 On the other hand, if the evidence shows that Speedishuttle does not provide one of the above services, and, further, the Commission finds that Speedishuttle’s promise to provide such service(s) was a material factor supporting Order 04’s conclusion that “Speedishuttle does not propose to offer the same service Shuttle Express provides,”²⁹ the Commission may order Speedishuttle to commence providing such service(s).

19 The Commission should entertain Shuttle Express’s request to *cancel* Speedishuttle’s certificate only if Speedishuttle is unable to provide, or unreasonably refuses to provide, some material, omitted service.

A. A BAP is Sufficient to Resolve Shuttle Express’s Narrow Allegations

20 Staff’s efficient, straightforward recommendation is superior to the unnecessarily drawn-out process advocated by Shuttle Express. Shuttle Express requests a prehearing conference to establish a “reasonable, but expedited case schedule”³⁰ and “the full range of

²⁷ Shuttle Express’s Petition for Rehearing, ¶ 23 (May 16, 2016).

²⁸ *Id.*

²⁹ Order 04, Final Order, ¶ 17 (Mar. 30, 2015).

³⁰ Shuttle Express’s Petition for Rehearing, p. 18, ¶ 46.

discovery.”³¹ It also requests that the Commission consider its petition for rehearing and the formal complaint enmeshed therein in the “same proceeding.”³² Staff cannot conceive of why Shuttle Express’s narrow allegations warrant a full-blown case schedule, which brings with it the specter of scheduling conflicts and discovery disputes. A BAP is sufficient.

B. Assuming the Commission Schedules a BAP, there should be no Discussion of Speedishuttle’s Authority to Accept “Walk-Up” Customers

21 Assuming the Commission follows Staff’s recommendation and schedules a BAP, Staff advises the Commission to *strictly* enforce the hearing’s limited scope. Chief among the list of irrelevant issues will be Shuttle Express’s ongoing complaint regarding Speedishuttle’s acceptance of “walk-up” customers at its airport kiosk. As demonstrated by the case history recounted above, the Commission fully resolved this issue last December when it issued its Notice of Determination not to Amend Order 04. The Commission ruled, “[W]e recognize that the rules do not prohibit Speedishuttle from offering ‘walk-up’ service, and, once a certificate has been issued, the rules do not permit us to attach conditions to it retroactively.”³³ This ruling is now the law of the case—it cannot be revisited.

C. The Commission should also Decline to Hear Testimony Regarding Multilingual “Staffing” at Speedishuttle’s Airport Kiosk

22 Another issue that is outside the scope of the would-be BAP is whether Speedishuttle is keeping its promise to provide multilingual reservation “staffing” at its airport kiosk (point b., above).³⁴ This issue is immaterial because, on Staff’s reading of the record, Speedishuttle never made such a promise. According to Order 04, Speedishuttle proposed to

³¹ Shuttle Express’s Petition for Rehearing, p. 18, ¶ 47.

³² *Id.*, p. 18, ¶ 45.

³³ Notice of Determination not to Amend Order 04, p. 3 (Dec. 14, 2015).

³⁴ Shuttle Express’s Petition for Rehearing, ¶ 23 (May 16, 2016).

provide “a multilingual website” and “multilingual personal greeters.”³⁵ But nothing in the record shows that Speedishuttle also promised to provide multilingual kiosk staffing. Obviously, Speedishuttle cannot be held to a promise it never made.

IV. CONCLUSION

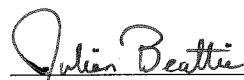
23 Ultimately, this case is very simple. If Speedishuttle misled the Commission by making false material promises, the Commission should hold Speedishuttle to its word. But if Speedishuttle has kept its word, then Shuttle Express must drop the issue and move on.

24 Because the issue is narrow and minor, Staff recommends that the Commission schedule a BAP.³⁶ At the BAP, Staff would play a neutral role (as it did at the original BAP in this docket), participating primarily to ensure the adequacy of the record and to help the Commission enforce limitations on the scope of the hearing.

DATED this 7th day of June 2016.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General



JULIAN H. BEATTIE
Assistant Attorney General
Counsel for Commission Staff

³⁵ Order 04, Final Order, ¶ 19 (Mar. 30, 2015).

³⁶ From Staff’s perspective, the issue of whether Speedishuttle obtained its certificate by false pretenses will not simply “go away” if the Commission denies rehearing. If the Commission denies rehearing, Shuttle Express will likely raise the issue again, in some form, as part of its formal complaint against Speedishuttle. In Staff’s opinion, it would be better for the Commission to resolve the issue straightaway, at a BAP.