

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDISHUTTLE WASHINGTON,
LLC,

Respondent.

DOCKET TC-143691

SPEEDISHUTTLE WASHINGTON, LLC
d/b/a SPEEDISHUTTLE SEATTLE'S
ANSWER TO SHUTTLE EXPRESS'
PETITION TO REHEAR APPLICATION
DOCKET TC-143691

I. PRELIMINARY STATEMENT

1 Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle (“Speedishuttle” or
“Respondent”) submits the following Answer to the Petition for Rehearing filed by Shuttle
Express, Inc. (“Shuttle Express,” or “Petitioner”) on or about May 18, 2016 in this matter.
Its Answer to the subjoined Complaint is being filed separately today.

II. CURRENT PROCEDURAL POSTURE IN CONTEXT

A. The Parties have been Down this Road, Repeatedly, Before.

2 There is considerable irony in this latest request for rehearing under 81.04.200 by Shuttle
Express. At the outset of the application case, upon receiving the original Notice for Brief
Adjudicative Hearing in the proceeding under WAC 480-30-136 and WAC 480-07-610,
Shuttle Express went to the unusual effort of attempting to strike notice of that proceeding
arguing, *inter alia*, that a full-blown hearing with full attendant discovery including i.e.
depositions should be afforded its rights as “objector” to the application. This argument, once
again, was in stark contrast to the “streamlined application process” implemented by the
Commission’s 2013 auto transportation rulemaking and which streamlining Shuttle Express

had previously supported in that rulemaking.¹ That initial challenge to the revised application process was duly rejected in Order 01 in Docket No. TC-143691, where the Administrative Law Judge noted:

We reject Shuttle Express' collateral attack on Commission rules. Shuttle Express actively participated in all stages of the rulemaking process. *The company had ample opportunity to raise the issue of inconsistency between the proposed rule and applicable statutes.* Far from challenging the use of BAPs to address objections to applications for authority, Shuttle Express proposed language that would restrict the Commission's flexibility to use processes *other* than BAPs,^{***} which the Commission ultimately rejected. We take a dim view of Shuttle Express' claim in this proceeding that WAC 480-30-136 is unlawful when Shuttle Express took the opposite position during the rulemaking process.²

3 Now, some approximately 18 months after that original procedural rejection, a successive failed attempt to reopen the hearing record in February 2015 and more than a year after the unappealed Final Order granting Speedishuttle its certificate of March 30, 2015, Shuttle Express once again seeks the full-blown hearing it was originally denied. Under the guise of "newly discovered evidence" and the startling revelation that Speedishuttle is a direct competitor in the intrastate regulated auto transportation arena, Shuttle Express wants yet another bite at the adjudicative apple. As will be discussed in this Answer, there are numerous ironies in Shuttle Express' latest posture, but no one can claim it hasn't been dogged in its overarching goal to countermand the procedural and substantive effects of the 2013 Commission rulemaking in opposing Speedishuttle's entrance into the marketplace. "Collateral Attack" and "multiple fronts" is indeed the pervasive strategy of Shuttle Express

¹ In re *Amending and Adopting Rules in WAC 480-30 Relating to Passenger Transportation Companies*, Docket TC-121328, General Order R-572 Order Adopting and Amending Rules Permanently (2013), codified at WAC 480-30 (General Order R-572) ("The 2013 Rulemaking").

² Initial Order 01, TC-143691, Denying Motion to Strike Notice of Brief Adjudicative Proceeding, (Dec. 2014), ¶9, at 4. [Emphasis added]. The issue about rule exceeding the statutory scope now is a prominent part of Shuttle Express' Petition for Rehearing, merely one example of repeat, circuitous arguments by it.

in its long-protracted opposition.³ Speedishuttle responds in yet another opportunity for the heretofore illusive administrative and judicial finality to this process by now advocating denial of Shuttle Express' Petition for Rehearing under RCW 81.04.200.⁴

III. ARGUMENT IN OPPOSITION TO PETITION FOR REHEARING

A. It is the Complainant, Shuttle Express, Whose Own Regulatory Compliance History Evidences Violation of Commission Certificate Restrictions and Orders Granting Original Authority, not Speedishuttle.

4 There is also irony in the underlying premise for Shuttle Express' approach here. As Yogi Berra would say, "It's déjà vu all over again." Unlike Speedishuttle, Shuttle Express once had an explicit, on-call service restriction in its certificate which also limited it to the use of 7-passenger vans. Thus, early on, its certificate C-975, granted in 1989, had a service restriction for "non-scheduled, reservation only van service." After issuance, it began operating that certificate, under far more restrictive entry rules, and, less than a year later, in 1990, was the subject of its own complaint proceeding brought by then competitor, Grayline of Seattle, (which Shuttle Express subsequently acquired). Nevertheless, Shuttle Express had such a restriction in its authority which was apparently conditioned on it offering only on-

³ For an example of that collateral attack argument on the new rules, *see*, "Petition to Rehear and Formal Complaint et. al" of Shuttle Express ¶30, p. 13.

⁴ For one of the most comprehensive analyses of the rehearing statute in Title 81 RCW, *see*, Order M.V.G. No. 1533, *In re Sure-Way Incineration, Inc.*, Application GA-868 (Feb. 1992), at 7-8. There the Commission found, as it should here, that the standards outlined for rehearing were not met, whether or not the requisite time period had elapsed for rehearing, including: lack of changed conditions; no injurious result affecting the Petitioner not considered or/anticipated in the former hearing; lack of proof the effect of the Order was not as contemplated by the Commission; and no demonstration of good and sufficient cause which was not considered or determined by the Commission in its Final Order. Critical to this Petitioner's evaluation is whether the Petitioner's attempt to rehear the application here contravenes current Commission rules and orders in the application docket by again seeking to convert the brief adjudication process into a reopened conventional adjudication with discovery, formal processes and increased costs for all.

call, door-to-door type service between airports and any points within the territory served, including residences, hotels and businesses.⁵

5 As noted, auto transportation companies were then operating under predecessor regulatory provisions more strictly limiting entry and importantly, limiting grants of authority only to portions of the relevant market not currently served. In its Final Order 04 in Speedishuttle's case, the Commission contrasted those revised standards as: "adopt[ing] a more objective analysis for permitting new entrants that examines many aspects of service and lists *inclusive, rather than exhaustive, factors* the Commission may consider and has previously considered, when determining whether services are the same."⁶ Additionally, in that previous 1990 complaint case record, Shuttle Express had been the subject of two Commission letters on November 15 and December 8, 1989, formally warning it against violation of its certificate restrictions and had been subject to fines issued for operating beyond the scope of its certificate in violating the restriction in February 1990 (all within less than a year of receiving its certificate). In its Order on that Complaint, the Commission found: "[i]t is appropriate to conclude that Shuttle Express willfully violated and refuses to observe Commission orders establishing and interpreting the scope of its operating authority."⁷ Here of course, in contrast, Speedishuttle has neither been admonished by the Commission to stop operating in violation of its authority nor ever been cited or penalized in any fashion for operating in contravention of Commission law and rule.

⁵ Order M.V.C. No. 1809, *In re San Juan Airlines, Inc. d/b/a Shuttle Express of Seattle*, Hearing D-2566, (Apr.1989).

⁶ ***[footnote omitted, emphasis added], Order 04, *In re Application of Speedishuttle Washington d/b/a Speedishuttle Seattle*, TC-143691 (Mar. 2015) ¶32, at 10.

⁷ *In re Evergreen Trails, Inc. d/b/a Grayline of Seattle, (Shuttle Express), Respondent*, Order M.V.C. No. 1893, Docket TC-900407, (Nov. 1990), at 7.

6 Once again, that was not the case with Shuttle Express in 1990. By upholding Grayline's Complaint, the 1990 Order concluded:

[o]f great concern to this Commission is the ongoing propensity of Shuttle Express to act in accordance with its own definition of regulatory requirements regardless of the clear directives of this Commission and the requirements of laws and regulations...The evidence overwhelmingly indicates an unwillingness or inability of Shuttle Express to comply with even this limited level of restriction on its operating authority. This is not the type of 'candid and forthcoming' dealing with this Commission that was contemplated in Order M.V.C. No. 1809, and it will not be tolerated in the future.⁸

7 Remarkably, the complaints against Shuttle Express violating its authority did not end there, despite that unequivocal admonition. The Complainant, Grayline, in 1992, successfully sought reopening of the prior complaint proceeding in which it had prevailed to again present evidence of continuing violations of the restriction in Shuttle Express' then permit which the Commission noted it had only "reluctantly" imposed in the above Order.⁹

8 And no, the 1992 case was not the last of Petitioner/Complainant's problems operating contrary to its certificate, (nor apparently the first time it purchased entities that had previously complained against its practices). In 1993, Shuttle Express was found yet again by an Order of this Commission to have operated in violation of its certificate and to have offered rebates to its rates. In the 1993 Order, it was also required to finally apply to lift the restriction in its operating authority rather than continue to operate as if the restriction did not exist. The Commission there also noted, (by now), a developed pattern of trustworthiness, candor and veracity issues in Shuttle Express. The 1993 Complaint Order, concluded:

⁸ Order M.V.C. No. 1893, *Ibid*, at 7, 8.

⁹ In this later complaint case, Order M.V.C. No. 1947, *In re Application D-75275 of San Juan Airlines, Inc. d/b/a Shuttle Express* and Docket No. TC-900407 *Evergreen Trails v. San Juan Airlines, Inc.* (Feb. 1992), the Commission found that allegations of unauthorized airporter operations in violation of a previous Commission order provided a sufficient basis for rehearing. Here, of course, there is no such allegation against Speedishuttle and Speedishuttle is not accused of violating its operating authority by anyone. Rather, Shuttle Express is seeking a rehearing of the criteria upon which the original application was granted without any recognized justification for that "do over."

[T]he Commission reaffirms its order and the penalty imposed. The issue comes down to one of credibility; the Commission adopted the findings of the administrative law judge who was present to hear the witnesses and view their presentation of the evidence, and who did not find the witness testimony credible.¹⁰

9 Shuttle Express would undoubtedly seek to apply its own tortuous experience with certificate restrictions in attacking Speedishuttle here. However, the record testimony and the actions of the challenged certificate holder, Speedishuttle, as well as the lack of permit restriction in its Order 04, (in contrast to Shuttle Express' original order granting certificate), wholly contravene Shuttle Express' rewriting of past regulatory history.

10 Not only was Shuttle Express first warned as far back as 1990 about operating in accordance with its own set of regulatory definitions, some 24 years later, its owner was still boldly accusing this Commission of not knowing how to regulate auto transportation services which the Commission concluded was actually inapposite: “[t]he problem is Shuttle Express’ refusal to be regulated like every other public service company and to comply with the law in its entirety, not just the provisions the Company chooses to follow.”¹¹

11 This selective “pick and choose” approach to regulatory compliance by Petitioner unfortunately continues. It now complains against this certificate holder for violating a non-existent restriction in its certificate while being subject to penalty assessments and testimonial inconsistencies in a staff complaint proceeding against its own operations during the Speedishuttle application test period. Shuttle Express has unclean hands in attacking purported operations contrary to alleged and non-existent permit restrictions. On yet another

¹⁰ Order TC-910789, *In re Everett Airporter Services Enterprises, Inc. v. San Juan Airlines, Inc. d/b/a Shuttle Express*, Docket TC-910789, (Mar. 1993) at 4.

¹¹ Order 04, *In re WUTC v. Shuttle Express, Inc.*, Docket TC-120323, (Mar. 2014), ¶33, at 13.
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basis, Shuttle Express' attempts to resort to the regulatory process here should, and must be forcefully rebuffed.

B. "Final" Order 04 Previously Resolved the Matters Raised Again by Petitioner.

- 12 As noted in Section II above, this is also not the first occasion on which Shuttle Express has attempted to revisit the original BAP record through either reopening prior to the Final Order being entered, or now seeking rehearing more than a year after that Final Order was issued. On February 9 and 10, 2015, Shuttle Express filed both a Petition for Administrative Review of Initial Order 02 Rejecting Objections and Granting Application **and** a Motion to Reopen the Hearing Record. In support of the latter, it claimed a failure to accommodate a temporary hearing loss of one of its key management representatives at the brief adjudicative proceeding and its failure to have counsel at the hearing both merited reopening to allow it to "introduce new evidence" of market decline which is also a primary basis on which its latest petition for rehearing depends. In Final Order 04, the Commission denied the Motion to Reopen, finding, "Shuttle Express received the accommodation requested, declined to request a continuance, and fully participated in the hearing."¹² The Commission also there found Shuttle Express' purported "new evidence" of business decline lacking in probative value, even if the record were to be reopened, saying it "lacked factual explanation."¹³
- 13 In this latest reopening/rehearing gambit, Shuttle Express once again purports to rely on unsubstantiated factual evidence, here alleging that "hard data" and "data from Shuttle Express' own records," plus "data obtained from the Port via a request for public records regarding trips reported by Speedishuttle"¹⁴ purportedly show that Shuttle Express lost more

¹² Order 04, ¶¶15-16 at 5.

¹³ Order 04, Fn. 7 at 5.

¹⁴ Petition and Complaint of Shuttle Express ¶25 at 11.
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trips than Speedishuttle gained and that the total reduction in outbound trips in a seven-month period almost matched those Shuttle Express had experienced in two recent years which are all attributable to Speedishuttle according to it.¹⁵

14 To begin with, this kind of unsubstantiated, unauthenticated hearsay testimony argument by counsel is objectionable on its face and does not in any way serve as a basis of “new evidence” to support a Petition. Putting aside those threshold procedural objections however, Shuttle Express has still not provided in its unsworn, hearsay argument *any* probative value to those purported statistics. In other words, if accepted on their face, there are a myriad of questions that could be raised about these data such as, did those trips include “scheduled” as well as “door-to-door services?” Speedishuttle does not provide scheduled service, and thus any diminution in that statistical category of auto transportation customer is not attributable in any way to Respondent. Secondly, and even more fundamentally, what other forces are at large in impacting and allegedly reducing regulated auto transportation usage in that interval? The 2013 rulemaking touched upon some of these nonregulated competitive forces. What about other new, nonregulated airport services for one? Purported declines in customer counts in isolated time periods tell us absolutely nothing about the causes or whether the public is being adequately served by ground transportation options at the airport at present.

15 Speedishuttle, in here opposing this latest effort by its opponent to reopen/revisit and retry the facts and law in its original application by responding to certain qualitative “same service” arguments raised by the Petition, is not in any way intimating changed conditions exist potentially harming Shuttle Express that were not considered by the Commission in

¹⁵ Recall that in its first attempt to introduce additional evidence after the closing of the application record in February, 2015, Shuttle Express had tried to introduce an exhibit documenting a 9 percent decline in business in the last two years which it could not then blame on Speedishuttle, since Speedishuttle had not then commenced operations. *See*, Order 04, ¶4 at 2.

Final Order 04. In so responding, Speedishuttle additionally does not in any way concede that there is *any* new evidence buttressing this Petition to Rehear or meriting revisitation of Shuttle Express' failed arguments and previous challenges.¹⁶

16 Respondent particularly does not wish to give more credence or assign material reply space to the “new evidence” arguments Shuttle Express offers up as the crux of its new evidence on the personal greeter, multilingual reservations, and technology differentiation factors previously addressed in the Initial and Final Orders in the application.¹⁷ The Petitioner's arguments are again riddled with hearsay, unsubstantiated allegations and after-the-fact conjecture and suppositions that are not in any way sufficient to support a petition for rehearing nor do they even deny, much less disprove, that Speedishuttle has utilized technology and a multilingual business model in offering and operating its regulated services. Speedishuttle also disagrees with any attenuated inference in ¶23(a) of the Petition, and alternatively, Staff's framing of the new issue in its Response to Shuttle Express' Petition for Rehearing, that it “promised to provide multilingual greeters at Sea-Tac Airport” for prearranged customers. What it actually said, instead, was: “[w]e'll do our best to hire multilingual receptive teams so we can communicate with some of the people that are from different countries.”¹⁸

17 At most, the discussion in the Petition on “new evidence” relates to bootstrapped allegations in Shuttle Express' subjoined Complaint. Nevertheless, Speedishuttle will briefly respond

¹⁶ For a review of the “same service” arguments by Respondent and to avoid needless duplication of replies such as those relevant to multilingual greeters raised here by Shuttle Express in renewed argument, Speedishuttle expressly incorporates its “Argument in Response to Service Differentiation Factors et. al” at ¶¶12-18, pp. 6-10 of its “Answer to Shuttle Express' Petition for Administrative Review,” February 23, 2015.

¹⁷ In essence, the Commission found that the business model of Speedishuttle was different than incumbent providers. Order 04 defined that “business model” as including: “luxury vehicles, significantly increased accessibility for non-English speaking customers, individually tailored service, tourism, and Wi-Fi service. Such service is substantially different from the existing service the objecting carriers offer.” Order 04, ¶21, at 7. It is the aggregate business model description, not one indispensable part, which comprises this overall differentiation.

¹⁸ Testimony of Cecil Morton, January 12, 2015. TR 24:8-10.

here, by footnote, to ¶23(c) of the Petition in arguments on TV and Wi-Fi service which it finds entirely quizzical,¹⁹ and, the alleged “service guarantee” attack in ¶23(d) of the Petition.

18 The Petitioner attempts a new “red herring focus” on the 20-minute exit departure “guarantee” in ¶23(d) of its Petition which it previously apparently argued on Petition for Administrative Review was an inconsequential feature. Here, it seemingly reverses itself, claiming it is so material as to assist in overturning the Commission’s prior ruling and allow rehearing. Yet Order 04 gives no cover to Shuttle Express for this revised argument. The Commission mentions the issue once, and then only in passing summation of *Shuttle Express’* argument on Petition for Review.²⁰ The Commission, in Order 04, cites instead, in addition to luxury vehicles, the multilingual service offered by Speedishuttle as one material differentiating factor which services it later qualifies “as very useful, *if not critical*, for non-English speaking and foreign travelers.”²¹ In short, the Commission, in its own pronouncements in Order 04, never references, relies upon or incorporates by reference in describing Speedishuttle’s proposed service, any “departure guarantee.” The Commission in Order 04, also importantly rejected the recurring piecemeal analysis of “same service”

¹⁹ Shuttle Express apparently presupposes in its “new evidence” argument that the Wi-Fi and TV enhancements which Speedishuttle offered in its Hawaii service were installed well before Speedishuttle formally entered the Washington market, i.e. as Shuttle Express says: “...by the time of the hearing in the Application Case.” (Petition ¶23(c), at 10). Why would that be logical? Shuttle Express’ argument then goes on to say: “[a]lso Shuttle Express now has Wi-Fi capability in all of its vans.” **If so, that is classic post-application service improvement evidence that this Commission has rightfully and long established as a separate basis for finding a need for new service under the “DiTommaso rule,”** Order M.V.G. No. 726, *In re Application GA-449 of Anthony J. DiTommaso d/b/a DiTommaso Bros. Garbage Service* (Feb. 1975). The concluding observations in ¶23(c) of page 10 of the Petition appear to simply argue circuitously that Wi-Fi and “SpeediTV” are not differentiation factors under WAC 480-30-140(2) of any consequence and are thus not material indicia for “same service.” As Speedishuttle, the administrative law judge and the Commission have all previously acknowledged, factors offered such as enhanced technology services are but one of numerous factors in the objective determination of whether a proposed service is the “same service” under the revised rule, and Petitioner’s new post-Order pronouncements on these subjects are not useful, persuasive nor relevant to advancing its legal position at this advanced stage of the proceeding.

²⁰ Order 04, ¶19, at 6.

²¹ *Ibid*, ¶24, at 8. [Emphasis added].

factors put forth by Shuttle Express in its latest Petition, reminding parties that in the 2013 rulemaking, it adopted:

[a] more objective analysis for permitting new entrants that examines many aspects of service and lists inclusive, rather than exhaustive, factors the Commission may consider, and has previously considered, when determining whether services are the same.²²

C. The Rule Provisions Shuttle Express Raises for the First Time in Argument Supporting its Newly-Discovered Evidence Theory a/k/a “Recycled/Reformulated Legal Attack on Speedishuttle’s Certificate” are Inapplicable, Untimely, and Ultimately Unsuccessful.

19 Petitioner next either confuses or intentionally obfuscates the established distinctions between a “routed” service and door-to-door service in its new, commingled analysis of Commission rules in an attempt to suggest Speedishuttle’s differentiation of “same service” under rule at hearing was erroneous and/or false. At ¶ 28 of the Petition, Shuttle Express reverts again to relitigating the closed record and arguments raised in response to the Commission’s prior putative announcement of intent to modify Order 04 which it ultimately declined on December 14, 2015. For the first time however, Shuttle Express now divines support for its previous argument to cancel, or alternatively, radically restrict Speedishuttle’s existing certificate, by citing to other auto transportation rule definitions, time schedule and tariff provisions.

20 Petitioner appears to make much of the “by reservation only service” definition of WAC 480-30-036 and develops references in its argument based on that concept in citation to three other rule provisions. By Shuttle Express’ own literal quotation language though, that definition refers to an auto transportation company “with routes” in other words, a scheduled service provider. While no one is disputing that a door-to-door company can provide service

²² Id., ¶32, at 10, citing General Order R-572 at ¶¶33-35 on the Commission’s “flexibility and discretion” when determining whether proposed service is the same as existing service.
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“by reservation only,” that restriction was not expressly requested, intended nor imposed on Speedishuttle and the Commission has already ruled that Speedishuttle’s “door-to-door service “does not” prohibit Speedishuttle from offering ‘walk up’ service...”²³ Indeed, as noted by the Commission staff in their November submission: “...existing airport carriers already provide kiosk-based services under authority no broader than the authority granted to Speedishuttle in Order 04. If the Commission chooses to restrict Speedishuttle’s authority, it should ensure that a similar restriction applies to Speedishuttle’s competitors. All would agree that this industry must be regulated in an even-handed manner.”²⁴

21 While Shuttle Express undoubtedly wishes Speedishuttle had proffered a “reservation only” express restriction in its certificate, it never did, and unwaveringly wishing it were so does not make it a reality.²⁵ Aside from the single, much-cited, isolated and debated statement near the end of the Applicant’s January 12, 2015 testimony encompassing Sea-Tac Airport concession agreements and reservation only service, there was never any reference, much less affirmative or formal action taken by the Applicant consistent with any limitation on “door-to-door service.” And, as indicated, the Commission, Applicant and all representatives are quite familiar with the restrictive amendment process by which an applicant, after docketing, formally restricts its application in writing subject to Commission approval.²⁶ As suggested above, Petitioner’s argument also completely ignores the existence of the noun

²³ Notice of Determination Not to Amend Order 04, *id.*, at 4.

²⁴ Commission Staff’s Comments Opposing Amendment of Order 04, November 25, 2015 at 5. All except Shuttle Express of course, whose effective quarter-century exclusive license to operate has clearly been shaken by the 2013 Rulemaking and Speedishuttle’s advent.

²⁵ While Shuttle Express cites to WAC 480-30-356 for renewed support for its attempt to restrict Speedishuttle to reservation only service, it also fails to address the separation of those services “scheduled, door to door, by reservation only” in WAC 480-50-356(2), and the preposition “or” in the subpart of the rule on which it also now relies, WAC 480-30-356(d)(ii): “...a company offering ‘door to door’ service or ‘by reservation only’ service...” [Emphasis added].

²⁶ Indeed, precisely what Speedishuttle did previously in its record when it moved to exclude “scheduled service” from its applied for “door-to-door” service on December 3, 2014, in correspondence to the Commission.

“routes” in the “by reservation only” service definition on which it now purportedly relies at WAC 480-30-036.

- 22 As the Commission is well aware, “routed”/scheduled airporter service and door-to-door airporter service are very distinctly different offerings. Both WAC 480-30-140(2)(g) and numerous Commission Orders make such material definitional distinctions.²⁷ The Commission has also previously found under the new rules regime that scheduled, nonstop service is not the same as door-to-door or multiple stop service, citing a series of Commission decisions even before implementation of the new rules.²⁸
- 23 In short, the Commission has always distinguished routed, scheduled service from door-to-door service and the Petitioner’s transparent attempt to engraft the definition of “reservation only service” in with routed service, in the context of the definitional rule, has no bearing on “door-to-door” service. Speedishuttle has never limited its service, by tariff or time schedule, pursuant to WAC 480-30-281 or WAC 480-30-356, to “reservation only” service. Here again, Shuttle Express attempts to relitigate and reargue the basic premise outlined in its earlier November 25, 2015 response which was thoroughly vetted by the Commission in its December 14, 2015, “Notice of Determination not to Amend Order 04:”

We agree with Staff and Speedishuttle that our current rules make no distinction between ‘prearranged’ and ‘walk-up’ door-to-door service. Instead, Commission

²⁷ Including General Order R-572: “Door-to-door service is a premium service, providing customers with a more direct and more convenient service with the expectation that it will cost more to use. Scheduled service is intended to provide service at a lower cost but with some trade-off in convenience...While every route serves a ‘territory’ in the sense that consumers who ride along the company’s route are drawn from the population that lives within a reasonable distance of that route, door-to-door service may naturally serve a greater territory more flexibly.” General Order R-572, “the 2013 Rulemaking,” ¶36 at 13.

²⁸ Order 04, ¶10, Denying Shuttle Express, Inc.’s Requests for Review of Order 03, Temporary Reversal of Authority and Stay of Action, *In re Application of Sani Mahama Maurou d/b/a SeaTac Airport 24*, Docket TC-140399 (Oct. 2014), at 3. This case also appears to be yet another illustration of the Petitioner going back to the proverbial administrative appeal well, here, two weeks *after* the Final Order it failed to appeal, and, seeking from the caption, ‘temporary reversal of authority’ [an unrecognized procedural remedy] and “stay of action.” Shuttle Express has a history of refusing to accept finality in the administrative appeal process while also not availing itself of judicial appeal options under RCW 34.05.570(3) [agency orders] or RCW 34.05.570(2) [appeal of agency rules].

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.²⁹

24 This finding should have conclusively resolved the rule-interpretive basis for Shuttle Express’ latest challenge. Yet it resurfaces here in a slightly refashioned but similarly redundant “pick and choose” interpretive reformation of the new rules.

25 The traditional rationale for the Commission to refuse reopenings in its proceedings is convincingly presented here. As the Commission indicated in an earlier case:

Hearings are held, after at least 20 days’ notice, so that every party can present all the information in his or her possession that is relevant to the subject of the hearing. If the Commission granted requests for rehearing, reopening, and reconsideration without good reasons, then parties coming to hearings would not tell the full story, but wait until seeing the result of the hearing and ask for reopening to tell more. That procedure would be very wasteful of money and the time of the parties, their lawyers, the judges and the staff required to set hearings and prepare the orders.³⁰

26 While the Petitioner struggles mightily for “newly discovered evidence” (which in truth is also purported statistical data of passenger declines, simply rehashing or varying the same previously-considered arguments) which it argues justifies reopening the hearing, we are needlessly revisiting yet again previous review of whether certificate C-65854 should be revised on this omnibus record and in which Shuttle Express’ latest iteration improperly commingles definitional standards and contexts.³¹

²⁹ “Notice of Determination Not to Amend Order 04,” *In re: Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle*, Docket TC-143691 at 3.

³⁰ Order M. V. No. 128561 (December 14, 2015), *In re Application P-66910 of Frank E. Nonnemacher d/b/a Nonnemacher Farms (Oct. 1983)*, at 2.

³¹ For example, Order 04, on the pivotal issue of whether Shuttle Express reasonably served the entire market, noted that Shuttle Express had incorrectly relied on a regulation, WAC 480-30-216, in argument about service pertinent to established routes and fixed time schedules and had not shown that its door-to-door service successfully served the marketplace. Order 04, fn. 9 at 7. Again, on petition for rehearing, Shuttle Express makes comparable arguments relying on scheduled service tariffs and timetable rules to cancel or restrict Speedishuttle’s certificate. The arguments are slightly modulated, but the deficiency in logic remains.

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27 The Commission has thoroughly weighed and reweighed the evidence and arguments and has made its certificate determination.³² Now, owing apparently to the cumulative competitive impact which Shuttle Express claims as inimical to its and allegedly the public's interest, Shuttle Express would have us apparently jettison the goal and intent of the Commission's rules implemented in 2013, which relaxed entry in the auto transportation field, on the reargued basis of a single statement in hearing which is consonant neither with the Commission's definition and rules nor any actions taken by the Applicant before, during, or after the hearing to restrict its application or proposed certificate.

D. The Proffered Statistics Supposedly Supporting the New Claim of Error in the Final Order's "Same Service" Finding and Simultaneously Qualifying as "Newly Discovered Evidence," are of No Probative Value or Relevance to the Rehearing Petition.

28 There are of course a myriad of explanations for the recent alleged 5% or so decline in recorded entrance fees from auto transportation companies and airporter customer counts at Sea-Tac Airport Shuttle Express cites on Petition. That list of potential factors prominently includes the recent advent of transportation network providers picking up passengers at the airport ("Uber" and "Lyft" et. al), trends even noted by Shuttle Express of on-site and offsite parking discounts (Sea-Tac's own parking garage had a significant discount promotion through May 31 of this year), fuel price declines, the disruption of ingress and egress corridors due to airline terminal construction, Sound Transit's network expansion and finally perceived deterioration in service levels by the long-incumbent provider, (Shuttle Express), well before the grant of Speedishuttle's certificate addressed in the "reserve service"

³² In a process so thorough and so solicitous of the due process objections of Petitioner over the extended pre- and post-Order challenges, that the 2013 rulemaking's express goal for new procedures of "stream[lining] and effic[iency]" and "reduc[ing] the time and resources spent during the process" General Order R-572, Docket TC-121328 (Aug 2013) at ¶13, is severely tested. The instant Petition and Complaint of course, only add to those expenses and protraction.

Complaint case. Most of these factors were hardly overlooked by the Commission when it considered and approved liberalized entry standards in 2013 when it also simultaneously granted rate flexibility to existing providers. As the Commission then succinctly summarized its goals:

...[t]he Commission initiated this rulemaking to consider changes to the rules that would give companies flexibility in setting rates *and promote competition in the auto transportation industry*. The Commission has worked extensively with stakeholders over the last several years to review regulations in the auto transportation industry, *and has determined that auto transportation companies operate within a competitive market for passenger service in the state*. Many alternatives to auto transportation company service exist, including taxis, limousines, public transit, rail, or intrastate airline service. Individuals may drive to SeaTac International Airport and park at the Port of Seattle or in one of the many private lots. They also may obtain rides from family or friends. The Commission must review current rules and processes to ensure that they recognize current competitive conditions. *It must also ensure that its processes are streamlined and efficient.*³³

29 While remaining relatively quiet in the rulemaking proceeding, (Shuttle Express, unlike its peers, apparently did not appear at the formal rule adoption hearing on July 26, 2013 and even failed to submit written comments to the CR-102 notice),³⁴ the Petitioner now attempts to roar back with a vengeance on the increased competition goal, both in the instant Petition for Rehearing and its Complaint. In essence, Shuttle Express now argues, that by seeking to differentiate itself by its application presentation in addressing new WAC 480-30-140(2) standards and in not seeking a restricted permit, Speedishuttle “false[ly] and misleadingly” hid the fact from this Commission that it would be competing with Shuttle Express.³⁵

30 Putting aside the umbrage Speedishuttle and its representatives understandably take to the repeated references to “induce[ment]” and use of “false, misleading and inaccurate

³³ Docket TC-121328 General Order R-572 *Order Amending and Docketing Rules Relating to Passenger Transportation Companies* (Aug. 2013) [Emphasis added], ¶25, at 9.

³⁴ See, General Order R-572 at ¶14, p. 5, only participating at the CR-101 proposal and workshop stages.

³⁵ Shuttle Express Petition and Complaint, at ¶33.

testimony,”³⁶ no one, apparently except Petitioner, failed to comprehend that Speedishuttle was proposing to compete with Shuttle Express in regulated door-to-door auto transportation service between SeaTac International Airport and points in King County. Until an experienced competitor-challenger emerged to operate in the regulated auto transportation marketplace, ostensibly, Shuttle Express never foresaw vigorous competition nor grasped (or accepted) the impact of the regulatory changes implemented by the 2013 rules.³⁷

31 Ironically, without those changes to the rules and the revisions to demonstration of the standards by which new auto transportation applications are judged, Speedishuttle would likely never have attempted to enter this marketplace. In short, it was the 2013 rule changes’ explicit encouragement of enhanced competition for auto transportation providers and Speedishuttle’s goal to expand the unique form of service in Hawaii and transplant that here that led to this application.

32 Nevertheless, Shuttle Express would have the Commission turn a blind eye to and roll back all these significant regulatory updates and reopen the record of a case it failed to judicially appeal under the Administrative Procedure Act, wastefully relitigating all of the previous brief adjudicative proceeding’s factual and legal issues in recognition that Speedishuttle has become a formidable competitor. While it spends many pages and alternate contentions striving to establish the type of “newly discovered evidence” or other stringent standards as outlined in CR 59 to convince the Commission to exercise its discretion to rehear the case, the one immutable fact it apparently cannot accept is that the Commission has consciously adopted a policy almost three years ago to foster competition in this field.

³⁶ Petition, *Ibid*, at 4, 9.

³⁷ Or perhaps, rather, it sought only the benefit and advantage of the rate flexibility ushered in by the rule, and wanted to maintain the prior regulatory standards for entry under RCW 81.68. For Shuttle Express, the “regulatory bargain” is a one-way street: loosened controls on rate regulation but traditional “PC & N” entry standards, notwithstanding. Economic regulation simply does not work this way.

33 To use a nautical metaphor, “that ship has sailed.” Despite all the smoke, protestations, accusations and characterization of the evidence at hearing working against it, and the revised regulatory standards correctly applied by the administrative law judge and the Commission in Order 04, what Shuttle Express here attempts at its core is a retroactive, collateral attack on the 2013 rule changes and a “Trojan Horse” offensive move to circumvent its failure to challenge Order 04 in Court and to reverse the Commission’s December 14, 2015 determination almost six months ago, to cancel, restrict or otherwise diminish Speedishuttle’s extant certificate.³⁸

E. Shuttle Express’, Not Speedishuttle’s, Credibility is at Issue on Both the “Same Service” Comparisons and the Previous Conclusion That it did Not Reasonably Serve the Market.

34 Shuttle Express’ overarching claims of malfeasance by Applicant and accusations of “misrepresentations and falsehoods” belie both its representations in this application record and its own chequered regulatory compliance history. One of the primary bases for the Petition for Reopening is allegations and characterizations of Applicant (in both the title to the Petition and liberally peppered throughout this Petition), that: “Speedishuttle’s artful and successful effort ... have not been borne out in actuality.”³⁹ Respondent is also accused of allegedly overselling its purported service distinctions, “to the point of misrepresentation of material facts, either intentionally or negligently.”⁴⁰

³⁸ In the individual or the aggregate, Petitioner’s disputes with the “same service” rule interpretation and its unsupported allegations of changed or “newly-discovered evidence” can be characterized as disputes with the findings and conclusions of Order 04 which granted Speedishuttle its certificate. However, “the mere fact that a party disagrees with a final order does not constitute a basis for rehearing.” Order M.V. No. 149393 *In re David Campbell d/b/a/ Father and Fast Careful Sons*, Hearing H-5038 (May 1998), citing *Sharad M. Bhatnager v. U.S. West Communications*, Docket No. UT-900603 (July 1991).

³⁹ Petition, at 6.

⁴⁰ *Id.* at 8.

35 Shuttle Express' accusations of "false and misleading representations,"⁴¹ do not pass without comment by Respondent or receive any form of tacit acceptance here. Indeed, for this objector/Petitioner to even alternatively attack the veracity and truthfulness of Speedishuttle on this premise is "audacious," to say the least. Order 04 noted prominent inconsistencies in the application record regarding the objector's testimony in this regard. Remember that in addition to explaining at length why Speedishuttle's service was not the "same service" as directed by WAC 480-30-140(2), the Commission based its approval of the application in March 2015 on an additional finding that Shuttle Express had failed to "reasonably serve the entire market."⁴²

36 Importantly, it reached that conclusion based on two findings related to Shuttle Express' own testimony which it found both incredible and inconsistent. First: that for a decade at least, Shuttle Express relied on a contracted "rescue service" in direct violation of Commission regulations to serve and supplement a material part of its customer base. While Shuttle Express' President in the application record testified it had never turned away door-to-door business for lack of equipment availability, the Commission found that in direct conflict with a recent declaration filed by the company's owner under oath in November 2013.⁴³ By its own admission then, Shuttle Express could not reasonably serve the market, including a period of time during the applicable test period in 2013/2014 for competing applications. Second: As the Commission noted in Shuttle Express' presentation at the Brief Adjudicative Proceeding, Mr. Kajanoff had testified about "luxury vehicles" [such as those provided by Speedishuttle and Shuttle Express' unauthorized rescue service] which Kajanoff had stated

⁴¹ *Id.* at 14.

⁴² Order 04 ¶21 at 7.

⁴³ Order 04 ¶22 at 7.

was in the “public interest” and that therefore Shuttle Express could not here claim that its service reasonably served the entire market.⁴⁴ [Emphasis added]. Shuttle Express’ recent regulatory posture is hardly above reproach, then, having been fined \$60,000 and found to have previously violated a consent order with the Commission staff.⁴⁵

37 Neither is its current President’s testimony in this record beyond numerous instances of credibility challenge.⁴⁶ The Commission has again repeatedly observed lapses in Shuttle Express’ “veracity and trustworthiness” going back to the start of its operations.⁴⁷ While Speedishuttle has heretofore refrained from attaching “false and misleading” descriptors to Shuttle Express’ testimony as Shuttle Express does here, it suggests conversely, that a full review of the hearing record and others in which Shuttle Express was a respondent since 1989, presumptively find Shuttle Express with decidedly “unclean hands” in making any such sweeping, unwarranted and pejorative characterizations of Speedishuttle.

38 Again, as to the critical “same service” finding, the Commission has noted that in offering luxury vehicles, Speedishuttle provided a “different service” than Shuttle Express and that the latter’s reliance upon luxury vehicles in its 10-year plus illegal “rescue service” operation meant that Shuttle Express “could not have it both ways.”⁴⁸

39 As demonstrated, arguing out of both sides of its mouth is the hallmark of Shuttle Express’ quarter century-plus regulatory compliance history. Shuttle Express presses unabatedly for monopoly entry control standards while advocating for loosened rate regulation. It asserts

⁴⁴ Order 04 ¶23 at 8.

⁴⁵ Order 04, *In re WUTC v. Shuttle Express*, Docket TC-120323, (Mar. 2014).

⁴⁶ See, ¶¶6-10, particularly i.e., *Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle’s Answer to Shuttle Express’ Petition for Administrative Review* (Feb. 2016), pp. 3-5, and the Testimony of Paul Kajanoff, TR. 103-106.

⁴⁷ See, i.e. concurring and dissenting opinion of Sharon L. Nelson in Order M.V.C. No. 1893 (Nov 1990); Order TC-910789, *In re Everett Airporter Services Enterprises, Inc. v. San Juan Airlines, Inc. d/b/a Shuttle Express* (Mar. 1993).

⁴⁸ See again, Order 04 ¶23, at 8.

“the Commission doesn’t know how to regulate it” and that either industry rules don’t apply to it or simply cannot be comprehended.⁴⁹ It advocates for streamlining applications for auto transportation proceedings, then seeks to thwart efficiencies and prolong, protract and re-review at every juncture of those proceedings in every attempted encroachment by applicants on its self-described “qualified exclusivity”⁵⁰ as an incumbent operator, on and on.

40 In short, Shuttle Express, over the 25-plus years of its operations, has sought to use its position as a defacto gatekeeper/regulator of the industry, challenging entry, purchasing incumbent operators who complain against it and rigorously opposing various Staff enforcement actions against it for practices it often acknowledges as being unlawful, but occurring because of commercial necessity. While as recently as the overlapping application test year, it admitted to being unable to fully serve the market, here it claims it is entitled to all of it, (or possibly only the smallest, restricted market “carve out”). Finally, it seeks to again use the Commission’s 2013 rule changes as a sword and a shield. In its Petition, it makes the now familiar claims that the “same service rules” were erroneously interpreted and applied by the administrative law judge in Order 02 and by the Commission in Order 04. It then claims once again that Speedishuttle insufficiently differentiated its service under those very rules and asserts that the P, C&N (RCW 81.68.040) statute is silent about “accoutrements to service,” omitting any analysis of case law doctrines of service to the

⁴⁹ One such instance of purported failure to understand Commission rules was starkly rejected by the Commission as a basis for defense by Shuttle Express of its rescue service and decade-long plus violation of WAC 480-30-213. In its Final Order there, the Commission found: “[t]he Company alone was playing a[ny] game of administrative ‘Russian Roulette,’ and Shuttle Express used its own Derringer.” Order 04, *In re Washington Utilities and Transportation Commission v. Shuttle Express, Inc.*, Docket TC-120323 (Mar. 2014), ¶36, at 13, 14.

⁵⁰ Petition ¶29, p. 12.

satisfaction of the Commission thereunder.⁵¹ In this classic, recurring collateral attack on those new rules, Shuttle Express argues alternatively that they were misapplied by the Commission and that they also exceed the permissible scope of the statute. And all this by a primary stakeholder who never challenged the content of the final rules before adoption in 2013. Shuttle Express takes the concept of “having it both ways” in a regulated environment to a whole, new level.

F. The Repeat Alternative “Hail Mary” to Dilute and Diminish Speedishuttle’s Certificate Should Again be Rejected.

41 Speedishuttle thoroughly addressed the rather desperate previous attempts by Shuttle Express to restrict its certificate, both in its Answer to the Petition for Administrative Review of Order 02 Overruling Objections to New Authority and in its Opposition to Attempt to Amend Order 04 of November 25, 2015. Those arguments are expressly incorporated by reference here. This latest alternative restrictive amendment salvo should be flatly rejected, not only because this effort has been twice rebuffed by the Commission, but more importantly, because it is contrary to longstanding Commission policy and the public interest. As Speedishuttle noted in its original Answer to the Petition for Administrative Review well over a year ago, historic Commission policy disfavors restrictions/limitations of certificates.⁵²

42 Additionally, proposing certificate restrictions 16 or more months after a record closes based on proffered hearsay arguments statistics and assertions from the Objector here would completely contravene the articulated policy goals of the Commission in the 2013

⁵¹ Petition ¶30, p. 13. Albeit, the original auto transportation statute in 1921 and the P, C & N standard predate television technology, let alone differentiating factors like Wi-Fi/internet and luxury Mercedes equipment. Another apparent challenge to the Commission’s announced goal of “modernizing” the auto transportation rules in 2013?

⁵² See, Order M.V. No. 147067, *In re Barry Swanson Trucking, Inc.*, Application E-76555 (Oct. 1993). (“Restrictive language in a permit will not be imposed absent a strong showing for the need for the restriction.”); (“Restrictions in permits are disfavored.”), Order M.V. No 135702, *In re Cartin Delivery Service, Inc.*, Application E-19099 (Apr. 1987). **Ironically, Shuttle Express’ actions on observing historic permit restrictions in its own certificate suggest they are not only “disfavored,” but are simply ignored/flouted by it.**

Rulemaking and upend that outcome in restraining, not fostering, competition in the regulated auto transportation marketplace, reversing the Commission's prior mindset and thorough rulemaking proceeding in relaxing entry controls and rate regulations.

G. Finally, The Petition for Rehearing Should be Barred by the Doctrines of Res Judicata and Collateral Estoppel under Washington Appellate Court Precedents.

43 Putting aside Commission rules, case law and statutory provisions militating in favor of denial of the Petition to Reopen, Shuttle Express' Petition should also be denied on the broader bases of res judicata and collateral estoppel. Collateral estoppel, also known as issue preclusion, has four elements that the party asserting must establish: "(1) the issue decided in the prior adjudication must be identical with the one presented in the second; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea of collateral estoppel is asserted must have been a party or in privity with a party to the prior litigation; and (4) application of the doctrine must not work an injustice."⁵³ "The policy behind collateral estoppel is to prevent relitigation of an issue after the party against whom the doctrine is applied has had a full and fair opportunity to litigate his or her case."⁵⁴

44 Here, collateral estoppel wholly applies to the Petition. The issues presented in the Petition and Complaint are precisely the same (albeit somewhat repackaged) issues addressed in the proceeding prior to Order 04 on March 30, 2015. This specifically includes the "same service" arguments raised by the Complainant in the previous hearing, and re-raised in this Petition. Moreover, the prior proceedings led to a "final judgment on the merits," resulting in issuance of C-65854. Additionally, the parties to both proceedings are the same, to the extent that application of the doctrine does not work an injustice against Shuttle Express. Indeed, if

⁵³ *State v. Williams*, 132 Wn.2d 248, 254 (1997) (quoting *Beagles v. Seattle-First National Bank*, 25 Wn. App. 925, 929 (1980)); *See also Dot Foods, Inc. v. Dept. of Revenue*, 185 Wn.2d 239, 254 (2016).

⁵⁴ *State v. Harrison*, 148 Wn.2d 550, 561 (2003) (internal quotations omitted).

anything, application of the doctrine is merited, given the failure by Shuttle Express to seek judicial review of the challenged order, and the resultant waste of time and resources for the Commission to repeatedly reexamine the conclusively-resolved issue of purportedly “same service.” Finally, the “newly discovered evidence” identified by the Complainant amounts to little more than a recycling of the previous legal arguments to relitigate the case, which does not change the analysis for collateral estoppel purposes.

45 Similarly, *res judicata* also prevents relitigation of this matter. *Res judicata*, also known as claim preclusion, applies when there is: “identity of (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made.”⁵⁵ The policy underlying *res judicata* is “that every party should be afforded one, *but not more than one*, fair adjudication of his or her claim.”⁵⁶

46 Here again, the Complainant/Petitioner has had adjudication of its claims more than once. It is not afforded endless bites at the administrative apple to achieve the resolution it desires, particularly when it failed to challenge the underlying decision in Superior Court.⁵⁷ As the same subject matter, cause of action, and two principal parties are all present here, *res judicata* should also preclude favorable action on the Petition or Complaint by Shuttle Express.

47 Finally, the Washington Civil Rules for Superior Court suggest why relitigation of this matter should be precluded. Civil Rule 59 applies to grounds for a new trial or reconsideration.⁵⁸

⁵⁵ *Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94, 108 (2013) (quoting *Mellor v. Chamberlin*, 100 Wn.2d 643, 645-46 (1983)).

⁵⁶ *In re Personal Restraint of Gronquist*, 138 Wn.2d 388, 400 (1999) [Emphasis added], (citing *Lejeune v. Clallam County*, 64 Wn. App. 257, *review denied*, 119 Wn.2d 1005 (1992)).

⁵⁷ Nor should the financially draining “drip, drip, drip” impact of multiple litigation challenges on the same issues and arguments be facilitated.

⁵⁸ To which the Commission has repeatedly looked by analogy, *see i.e.*, Order M.V. No. 140273, *In re Application P-72389 of Kolean and Stewart d/b/a/ Olympic Transport* (Sept. 1989).

Grounds for such a motion include factors such as irregularity in the underlying proceedings, misconduct in the underlying proceedings, accident or surprise, or that substantial justice has not been done. *See*, CR 59(a)(1)-(9). Crucially, CR 59 also permits a motion for a new trial or reconsideration if there is “[n]ewly discovered evidence, material for the party making the application, *which the party could not with reasonable diligence have discovered and produced at the trial.*” [Emphasis added]. Here, of course, the Complainant’s “newly discovered evidence” consists principally of critique of the scope of utilization of multilingual staff by Speedishuttle,⁵⁹ some type of unspecified failure of Wi-Fi technology and televisions,⁶⁰ an asserted decline in the total number of trips provided from the airport by the Complainant,⁶¹ and the purported failure to implement a guarantee to depart the airport within 20 minutes.⁶² These items, however, are hardly “newly-discovered evidence” at all, but are instead hearsay-based suppositions, bare assertions, and items previously critiqued, evaluated and addressed in both the Initial and Final Orders in this proceeding.⁶³ The *collateral estoppel* and the *res judicata* doctrines each implicate an obvious outcome in denial of Shuttle Express’ latest Petition.

IV. CONCLUSION

48 As is evident, Respondent maintains that due process and particularly RCW 81.04.110, 81.04.200 and RCW 34.05.570, ultimately provide no daylight to Shuttle Express in continuing to utilize the forums and resources of the agency in revisiting the now 17-month-

⁵⁹ Petition and Complaint of Shuttle Express, at 9.

⁶⁰ *Id.*, at 10.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Shuttle Express, as noted, has certainly not marshalled “newly discovered evidence” or demonstrated “evidence otherwise unavailable” at the close of Speedishuttle’s hearing file. It has now admittedly shifted attorney representatives one more time, but substitution (or rather reappearance) of prior counsel, is not a predicate for rehearing. At best, all it has offered up are qualitative critiques of the Commission’s past views of the evidence of record and “warmed over” arguments (i.e. on the definitional rules for tariff and time schedules) and other statistical “trial balloon” references to the Commission’s rulings which it continues to tirelessly dispute.

old brief adjudicative hearing record, evidence and legal arguments of the parties in 2015. While Shuttle Express may well be seeking to exhaust all imaginable administrative remedies, avenues and resources of the parties in its recurring multi-front litigation strategy, it cannot explain its failure to avail itself of previous judicial appeal mechanisms earlier on, including significantly, its failure to challenge and, (moreover, ostensibly to support) the enactment of the 2013 auto transportation rules revision which it has unquestionably collaterally attacked throughout these proceedings. As argued above, there are transparent motives here, decidedly unclean hands, unsubstantiated hearsay, bald allegations, speculation and moving target strategies at play which are legally insufficient bases for either reopening the hearing record or prosecuting a private party complaint against Respondent.

49 As a result, an impartial and astute observer might well recommend deployment of the Petitioner's obvious substantial resources, instead, in the marketplace to contend with Speedishuttle's sanctioned emergence and other competitive forces unleashed which the 2013 rulemaking would seemingly implicate. Nevertheless, Speedishuttle is unintimidated by refashioned, groundless and legally-deficient allegations in continuing to exercise its own due process rights, now, in support of a fully-ripened property right⁶⁴ as long as the Commission entertains Shuttle Express repeatedly availing itself of its various administrative processes, despite Speedishuttle's implicit understanding and faith in the ultimate finality and certitude of administrative decision-making.

50 Finally, the survey of this Petitioner/Complainant's own regulatory compliance history over more than a quarter century leads even an impartial spectator to a number of conclusions. One of those is that this is a classic "frequent flyer" in access to and use of the regulatory

⁶⁴ *Lee & Estes v. Public Service Commission*, 52 Wn.2d 701 328 P. 2d 700 (1958).
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE
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process, either voluntarily or involuntarily. Secondly, Shuttle Express is a sophisticated, clearly well-financed, formidable presence in the King, Snohomish, Pierce County, et al corridor in regulated airporter service and brooks no competitive opposition, wielding the substantial array of due process, regulatory tools at its disposal against any prospective market entrant. Third, and more troubling to the industry, prospective providers and obviously to regulators, is its documented penchant for credibility lapses, continual operations in violations of authority and the noted assertions that either regulatory requirements are too difficult to comply with or that the Commission somehow does not understand how to regulate it in misapplying rules to its singular disadvantage, all while seeking to maintain its quasi-monopoly right to provide regulated airporter service in its given territory.

51 No one, least of all Speedishuttle, doubts Shuttle Express' extensive track record of experience in bringing its forces to bear in application, complaint, rehearing, reopening and various other administrative and judicial processes, mechanisms and forums. While that pronounced pattern of adversarial experience may be the norm for this Petitioner/Complainant, it is not standard for almost any other regulated Title 81 RCW certificate holder in recent memory.


52 Finally, in reviewing and carefully evaluating Shuttle Express' latest procedural and substantive challenges to Speedishuttle, Speedishuttle strongly urges the Commission to carefully weigh Shuttle Express' assertions and allegations against the backdrop of not only this application record and importantly, the 2013 rulemaking, but also the context, pattern and operating history of the Petitioner/Complainant in bringing the charges here in

consideration of the broader public interests and policies which the Commission considers in reviewing actions under RCW 81.04.200 and RCW 81.04.110.

53 Based on that careful review and the Petition for Rehearing and Answer of Speedishuttle, it again urges the Commission to deny the Petition for Rehearing of Shuttle Express, Inc.

DATED this 7th day of June, 2016.

RESPECTFULLY SUBMITTED,

By 

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Attorney for Speedishuttle Washington, LLC

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


Maggi Gruber
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