

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDI SHUTTLE WASHINGTON, LLC

Respondent.

DOCKET NOS.

TC-143691

TC-160516

**MOTION TO STRIKE “ANSWERS” TO PETITION AND COMPLAINT
OF SHUTTLE EXPRESS, INC.**

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June 14, 2016

MOTION

1 Shuttle Express, Inc. (“Shuttle Express” or “Petitioner”) hereby moves for an order striking the
“answers”¹ of Respondent SpeediShuttle Washington LLC (“SpeediShuttle” or “Respondent”)
and Staff. The “answers” are not proper answers under the Commission’s rules. They are more
in the nature of post-hearing briefs. But there has been no hearing. Indeed, there has not been
any evidence presented yet. Nor has there been discovery, cross examination, or a notice or
order scheduling briefing.

RELIEF REQUESTED

2 Because the Respondent’s answers are premature briefs rather than true and proper answers, they
should both be stricken and Respondent should be ordered to timely refile a proper answer.
3 Staff should be given leave to refile if it wishes, or to reserve its legal and policy briefing for a
more appropriate phase later in the proceeding.
4 Shuttle Express should be permitted to file a reply to the Respondent’s counterclaim, once that
answer and counterclaim has been properly refiled.
5 In the alternative, if the answers are not stricken, Shuttle Express should be permitted to file
responsive briefs, on 20 days notice.

¹ Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle’s Answer To Shuttle Express’ Petition To Rehear Application Docket TC-143691; Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle’s Answer To Shuttle Express’ Complaint, Affirmative Defenses And Counterclaim; and Commission Staff’s Response To Shuttle Express’s Petition For Rehearing

APPLICABLE RULES

6 This motion is based on WAC Chapter 480-07, primarily WAC 480-07-370, WAC 480-07-870,
and WAC 480-07-395, and their underlying statutes.

STATEMENT OF FACTS AND EVIDENCE RELIED UPON

7 The evidence supporting this motion is the record and pleadings filed in this case, in particular
the purported “answers” filed by Respondent and Staff on June 7, 2016.²

8 The ALJ’s May 18, 2016 Notice called for an “answer” to the Petition,³ not just once, but twice.
The Notice did not request nor authorize the filing of legal briefs.

9 It is plain from a cursory review of the three answers⁴ that they have the form and content of
legal briefs. They fail to address the Petition and Complaint point-by-point nor do they
“specifically” admit or deny each paragraph. In fact, a word search of the answers reveals that
two of them do not once even contain the word “paragraph.” Only the Respondent’s “answer” to
the Complaint mentions “paragraphs” specifically, and it starts at Paragraph 36, ignoring
Paragraphs 1-35 entirely. Both answers to the Petition instead take the form of legal briefs, with
general, non-specific background and legal and policy arguments.

STATEMENT OF ISSUES

10 Should the Commission allow purported “answers” which are really premature legal briefs and
which fail to respond to the factual allegations of the Petition and Complaint as required by

² “The parties may respond to the Petition by filing a written answer with the Commission no later than June 7, 2016.”

³ Petition Of Shuttle Express, Inc. For Rehearing Of Matters In Re Docket No. TC-143691 And Formal Complaint Against Speedishuttle Washington, LLC (May 16, 2016)(herein, “Petition” or “Complaint”).

⁴ To Staff’s credit, they did not denominate their response as an “answer.” Staff may have interpreted the Notice in good faith as calling for a form of brief, rather than a pleading.

WAC 480-07-370(c)(i) by “specifically” admitting and denying “all material allegations”? Or should it strike them and require proper answers to be re-filed?

ARGUMENT

- 11 A proper answer would admit or deny each paragraph of the Petition and Complaint, paragraph-by-paragraph, as is required by the Commission’s rule on pleadings and the Superior Court Civil Rules on which they are modeled. The Commission’s rule on the nature of a response to both a petition and a complaint is WAC 480-07-370(c)(i), which provides that, “A response to a formal complaint or petition is an answer. Answers must admit or deny specifically, and in detail, all material allegations of the formal complaint or petition.....” *See also*, RCW 81.04.200, WAC 480-07-370(1)(b)(i), and WAC 480-07-870 (proper form of pleading to seek a rehearing of a final order is a “petition”).
- 12 SpeediShuttle is **required** to file an “answer” to the Complaint: “A named respondent must file an answer to a complaint brought by any party other than the commission.” WAC 480-07-370(c)(ii). It does not appear that Staff was required to file an answer, but was invited to do so in the ALJ’s Notice. SpeediShuttle also elected to file a response to the Petition and, in so doing, was therefore bound to file an answer that that complied with the Commission’s rule governing answers.
- 13 The Commission’s rules on pleadings essentially track the requirements applicable to pleadings under the Civil Rules of Procedure applicable in Superior Court. *See, e.g.*, WAC 480-07-395(1)(c)(ii) (pleadings must be “in a form similar to complaints in civil actions before the superior courts of this state”). Thus, an “answer” to a Petition and Complaint should not be a legal brief. Rather, it should be a “short and plain” averment of its defenses and it should “admit or deny” the allegations it answers. *See, e.g.*, Civil Rule 8(b).

- 14 The Commission’s rule on answers closely follows the court civil rule. An answer should, “admit or deny specifically, and in detail, all material allegations” of the Petition and Complaint. WAC 480-07-370(c)(i) (emphasis added). Despite these clear requirements, except for the answer to the complaint filed by Respondent, all three answers were completely devoid of any specific reference to even a single allegation of the Petition. Indeed, in a word search of the answer to the Petition reveals that the word “admit” *never* appears and the word “deny” appears only once—and it is not in reference to any allegation in the Petition.
- 15 Rather than “specifically” “admitting or denying” the facts, Respondent’s “answer” to the Petition instead meanders through literally decades of history of regulation of auto transportation and cites numerous unrelated Commission orders. It almost completely ignores the “material allegations” of the Petition, leaving the reader to wonder if Respondent denies *any* of the facts alleged in the Petition.
- 16 The Respondent’s Answer to Complaint is, *in part*, a good illustration of what a proper answer should consist of.⁵ It references each of paragraphs 36-51 of the Petition and Complaint, by admitting or denying the allegations of the specifically-referenced paragraph. That Answer must still be stricken, however, as it only provides a blanket response to paragraphs 2-35 of the Petition and Complaint by reference to the Answer to Petition of Respondent. As noted above, the answer to the Petition is wholly defective and does not comply with the Commission’s pleading rules. This fundamental defect thus infects the Answer to the Complaint and requires it to be stricken and replaced as well.

⁵ Shuttle Express can only speculate why Respondent made a partial effort to file a proper answer to the Complaint, but made no effort to answer the Petition. Perhaps Respondent did not recognize that the rule and particulars pertaining to answers apply equally to a response to a petition as to a complaint. WAC 480-07-370(c)(i). But the Commission’s pleading rule could not be clearer. *Id.*

17 Staff, while not required to answer, was invited to do so. Shuttle Express welcomes their participation and appreciates their understanding of the need for rehearing of the issues, even though they argue for a narrower examination than advocated by Shuttle Express. But nevertheless, their brief is premature and should be stricken or reserved for re-filing at a more appropriate time in this proceeding. If Staff wishes to file a true answer at this time, they should be permitted to do so at the same time as Respondent re-files.

18 Requiring proper answers is not mere procedural make-work. To start with, it is possible the Respondent does not even deny the material allegations of the Petition and Complaint. If so, the schedule and procedures established in the case could be much simpler and more expedited. The Commission and all parties need to know which facts are in dispute and which are not.

19 Moreover, the failure to admit facts in the Petition and Complaint that are not in dispute means that the parties may spend time on discovery, presentation of evidence, and cross-examination that is unnecessary. The rules of pleading of this Commission were established for important reasons. In the court rules from which they were drawn, they go back many decades. They require “short and plain” statements because that is what creates the most efficient and fair process.

20 Allowing the Respondent to file a brief at this stage, rather than an answer, is not only inefficient, it is unfair to Shuttle Express. It short-circuits a long-established process and allows the defending party to make its legal arguments first, and before the party with the burden of proof has been able to even present its case. The purported answers argue for an outcome before it is even known whether there are any disputed facts in the Petition. This attempted approach is highly prejudicial to a petitioner, which is why the Commission’s procedural rules do not allow for it.

CONCLUSION

21 Based on the foregoing and the record to date, the “answers” filed on June 7, 2016, should be stricken and proper answers should be re-filed. The Commission’s rules do not allow for briefs at this early stage of a proceeding before discovery, hearing, testimony, and cross-examination. Short, plain, and specific admissions and denials are what are required and should be ordered.

Respectfully submitted this 14th day of June, 2016.

LUKAS, NACE, GUTIERREZ & SACHS, LLP



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CERTIFICATE OF SERVICE

I hereby certify that on June 14th, 2016, I caused to be served the original and three (3) copies of the foregoing documents to the following address via Fed Ex:

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	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
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Dated at McLean, Virginia this 14th day of June, 2016.



Elishera Simon
Legal Assistant