

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDISHUTTLE WASHINGTON,  
LLC,

Respondent.

DOCKET TC-143691, TC-160516

SPEEDISHUTTLE'S RESPONSE TO  
SHUTTLE EXPRESS' MOTION TO  
STRIKE

I. PRELIMINARY STATEMENT

1 Speedishuttle Washington, LLC dba Speedishuttle Washington ("Speedishuttle" or  
"Respondent"), files the below in response to Shuttle Express Inc.'s ("Shuttle Express") June 14,  
2016 Motion to Strike Answers to Petition and Complaint of Shuttle Express.

2 On June 7, 2016, Speedishuttle filed a 28-page answer to Shuttle Express' Petition to  
Rehear Application Docket TC-143691 and, on the same date, Speedishuttle filed a separate  
approximate six-page Answer to Shuttle Express' Complaint. A week later, Shuttle Express  
filed the subject Motion to which this Response is directed seeking to strike Speedishuttle's  
Answers claiming they were not appropriately responsive or otherwise in compliance with  
Commission procedural rules in suggesting the Answer to the Petition to Rehear did not provide  
the necessary particularity in response as required by rule.

II. ARGUMENT IN OPPOSITION TO MOTION TO STRIKE

A. **Shuttle Express Created Any Interpretative Problem Here.**

3 Once again, Shuttle Express, Inc. ("Shuttle Express" or "Complainant"), has itself  
ironically precipitated a procedural issue it now claims to be so material as to ask the  
Commission to strike the lengthy Responses filed to date in this matter. In reviewing the Answer

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to the Petition for Rehearing and the more specific Response to what was perceived to be the “Complaint” section of Shuttle Express’ subjoined pleading, it is clear that the amalgamation of the Complaint and the Petition for Rehearing by Shuttle Express has actually caused whatever uncertainty or lack of clarity about which Shuttle Express now complains.

4 In filing its Response to the Petition to Rehear, the Staff also noted its disapproval of the Complaint being embedded within the Petition for Rehearing.

Staff wishes to express that it disapproves of Shuttle Express’s decision to combine and *enmesh* 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.<sup>1</sup>

On June 7, Speedishuttle similarly voiced its concern with formatting of the Complaint:

The original joinder of the Petition for Rehearing with the Complaint has unnecessarily complicated and rendered procedurally awkward, responsive pleadings and this Motion. The Respondent apologizes to the Commission for any lack of clarity in the “intertwined” nature of the contentions in this Motion as a result, but it believes the format was dictated by the joinder and interdependency of those pleadings and their allegations by the Petitioner/Complainant.<sup>2</sup>

5 Any difficulties the Complainant is now asserting are posed by the construction of the Answer to the Complaint and the Answer Opposing Rehearing were created by its own failure to separate its Petition for Rehearing from its Complaint.<sup>3</sup> While “petitions” for rehearing are processed similarly to complaints, the standards for granting petitions for rehearing are discretionary with the Commission and are difficult to achieve.<sup>4</sup> RCW 81.04.110 grants public service companies the right to file complaints against another company on their own motions and

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<sup>1</sup> “Commission Staff’s Response to Shuttle Express’s Petition for Rehearing,” fn. 4, p. 2.

<sup>2</sup> Speedishuttle’s Motion to Dismiss Complaint of Shuttle Express, Inc., June 7, 2016, fn. 1, p. 1.

<sup>3</sup> While there is apparently no express prohibition in the Commission’s procedural rules to combining a Petition with a Complaint, WAC 480-07-375(2) requires motions to be filed separately from any other pleading. Prudence would seem to dictate that rule apply analogously here.

<sup>4</sup> See, RCW 81.04.110 v RCW 81.04.200. For discussion of the standards for granting rehearing, *see again*, footnote 4, p. 2, of Speedishuttle’s Answer to the Petition for Rehearing and Order M.V.G. No. 1533, *In re Sure-Way Incineration, Inc.*, App. GA-868 (Feb. 1992).

typically triggers a formal adjudication. Orders Granting Petitions for Rehearing are understandably rare. Administrative finality is an important legal doctrine as frequent exceptions would imperil the orderly disposition of adjudicative proceedings and precipitate an endless cycle of administrative litigation encouraging proponents to perpetually retry their cases.

6 Shuttle Express' amalgamated Petition and Complaint is more akin to a "shotgun pleading"<sup>5</sup> where it is almost impossible to discern which allegations of fact are intended to support which specific claim for relief, or additionally here, which alternative remedy advocated by Shuttle Express is to apply. This is precisely the type of interpretative confusion Staff complained of in their earlier Response, cited above. In such circumstances, had the Commission an equivalent rule to Civil Rule 12(e), the likely remedy would have been a Motion for a More Definite Statement by the Respondents. While Speedishuttle has previously unsuccessfully sought dismissal of the Complaint action as an alternative, it is again ironic that it and the Staff are responding to Motions to Strike their responsive pleadings, when the trigger to all of this uncertainty and lack of clarity was and is the initial pleading as formatted by Shuttle Express.

7 The overview statement by Shuttle Express that: "[t]o start with, it is possible the Respondent does not even deny the material allegations of the Petition and the Complaint"<sup>6</sup> is astounding. First of all, as noted, the allegations of the Petition and the Complaint are hopelessly intertwined and convoluted. If anyone was required to make a "clear and concise" statement of the allegations, it is Shuttle Express, not the Respondent parties after the fact. Moreover, to suggest any of the material allegations in the Petition and Complaint (that can be clearly

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<sup>5</sup> *Anderson v District Board of Trustees of Cent. Fl. Cmty. College*, 77 F. 3d 364, 366 (11<sup>th</sup> Cir. 1996).

<sup>6</sup> "Motion to Strike of Shuttle Express," ¶18, page 6.

ascertained) are ambiguously responded to by Speedishuttle is apocryphal. Simply reading the prayers for relief in both pleadings suggests that the Respondent believed the Complaint should be dismissed with prejudice and the Petition for Rehearing should be denied.<sup>7</sup> The antecedent discussion and analysis in both pleadings leave no doubt to any objective reader that the Respondent denies, disagrees with and contravenes all of the material assertions in the conjoined pleading.

8           Moreover, the Commission's Notice of May 18, 2016 sought only "responses" to the Petition for Rehearing. While the Complainant cites to the reference in the last sentence to filing an "answer," the combination by **Shuttle Express** of the Petition and the Complaint has complicated the more traditional rule reference calling for "Answers" to Petitions and Complaints due to the intertwined nature of the assertions in the Petition and the Complaint. Indeed, many of the allegations in the Petition for Rehearing, (*see* for instance, Paragraph 9), are not traditional notice pleading assertions, but are instead legal arguments in which the Complainant cites to transcript testimony and then attempts to characterize or place in purported context that testimony which Speedishuttle subsequently wholeheartedly disputes. While Speedishuttle might have easily responded with a standard blanket denial pleading, it should not

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<sup>7</sup> It should similarly go without saying that Speedishuttle opposes the specific Prayer for Relief included by Shuttle Express in its Motion to Strike at page 2. Clearly, the detailed Answers of Speedishuttle and Staff should not be stricken or otherwise nullified at this stage. Additionally, at this juncture, providing Shuttle Express yet another procedural avenue and opportunity for any more legal arguments, briefing or theoretical jousting would undoubtedly initiate yet another cycle of responses and escalating legal expense which is not in the public interest nor consistent with the Commission's 2013 streamlining of auto transportation application processes. Considering Shuttle Express' previous attempts, i.e., to convert the Brief Adjudicative proceeding into a conventional hearing, initiate broad discovery, reopen the hearing record before consideration of its Petition for Administrative Review, wholesale failure to appeal Order 04 and, starting last summer, behind-the-scenes' efforts to restrict Speedishuttle's extant certificate initiating the process that culminated in the December 14, 2015 Determination not to revise its certificate, there is no telling how many new procedural twists and turns might be invoked by granting Shuttle Express more opportunity for legal argument. The only procedural allowance that should be granted to Shuttle Express now is to answer the counterclaim in Speedishuttle's June 7, 2016 Complaint, albeit one that could have easily been filed by the Complainant without leave of the hearing examiner or Commission within the earlier period prescribed by rule or following the recent denial of the Motion for Dismissal.

be constrained in “answering” this type of legal argument seeking the extraordinary remedy of rehearing from offering its own developed responsive arguments based on statute, rule and case law. Indeed, far from Shuttle Express being prejudiced by arguments that constitute “clandestine” legal briefs, Speedishuttle, in a responsive pleading, should be afforded basic due process rights to comprehensively refute allegations that are far more than declarative statements and which often allude to testimonial and documentary support which the Complainant selectively and inaccurately characterizes and for which a blanket denial is inadequate or meaningless in comprehending Respondent’s comprehensive opposition.

9           There is another compelling reason the Respondent bifurcated its responses. Apart from the differing statutory and regulatory policy standards for hearing complaints and deciding Petitions to Rehear based on fully developed adjudicative records, the May 18 Notice to which Staff and Speedishuttle timely responded only referred in its title to the “Petition for Rehearing” as did its concluding bold-faced dispositive section referencing the previous docket proceeding TC-143691 and Certificate C-65854 which flowed out of that docket. It was therefore unsurprising that Speedishuttle separated both the form and substance of its responsive “answers” to the Petition and Complaint and addressed the first in a more traditional legal analysis form and the Complaint, (the new proceeding), in a more threshold notice pleading responsive Answer.<sup>8</sup>

10           Shuttle Express originally intertwined the two causes of action. It now complains both the Respondent (and Staff) violated its formatting dictates and Commission rule by not taking the bait of its unprecedented and awkward construction designed to piggyback unsupported legal

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<sup>8</sup> And despite Shuttle Express protestations about uncertainty, there can be no doubt that Speedishuttle’s entire Answer to the Petition for Rehearing is a universal denial of all the substantive (non-prefatory) allegations against it.  
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theories in the Petition for Rehearing to prop up its broad and baseless private Complaint allegations.

**B. There is a Pronounced Irony/“Glass House” Effect to Shuttle Express’ Claims in Seeking to Strike Speedishuttle’s Answers Here.**

11 In addition to the self-created joinder issue posed by the organization of its pleadings, in this renewed challenge by Shuttle Express, Shuttle Express itself has some failed technicalities of its own in Commission procedural rule compliance to explain. First, the fact that the pleading served on Respondent failed to include a certificate of service as required by WAC 480-07-150(9). While private complaints are typically served on respondents by the Commission, that is not the case with Petitions for Rehearing. Shuttle Express may have thought it had procedurally outsmarted its opposition by awkwardly joining the Petition to Rehear with the Complaint. It should have separately and appropriately served the Petition to Rehear “portion” of its omnibus pleading with an accompanying certificate of service on the applicant and its counsel in its effort to rehear application TC-143691.

12 More egregious however and so typifying the “glass house” impact of the multiple and evolving positions (and representatives) Shuttle Express has employed in this proceeding, is Shuttle Express’ previous failure to conform its Petition for Administrative Review of the Initial Order to rule in February, 2015. By failing to include recommended findings of fact and conclusions of law, Shuttle Express violated WAC 480-07-825(3). It also failed to appropriately isolate the findings and conclusions it was challenging, as required by rule and made Speedishuttle’s and Staff’s responsive answers all the more difficult.<sup>9</sup>

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<sup>9</sup> See, Speedishuttle Washington, LLC d/b/a Speedishuttle’s Answer to Shuttle Express’ Petition for Administrative Review ¶11, pp. 5,6.

13 This type of procedural omission by Shuttle Express in failing to highlight and identify its specific challenges to the hearing examiner's original findings and conclusions should not be ratified by entertaining its "moving target" or "revolving door" procedural theories here to continue to attack the rationale and substantive bases (such as service differentiation factors) identified by the Commission in final unappealed Order 04. In short, its own prior procedural rule compliance omissions objected to at the time by Speedishuttle should not be allowed to "aid and abet" Shuttle Express' expansionist, retrospective arguments now upon which it seeks to rehear the original case.

**C. The Commission's "Liberal Construction" Rule Suggests Shuttle Express' Latest Procedural Ploy is a Costly Distraction.**<sup>10</sup>

14 Even if the Commission were somehow to find Speedishuttle's considered Response to the Petition for Rehearing technically in violation of the formatting requirements for Answers under WAC 480-07-370(c)(i), this should not resolve the issue. Speedishuttle prominently acknowledged in its Answer to the Petition for Administrative Review about a year and a half ago that seeking to strike or otherwise contest the legitimacy of the formatting of Shuttle Express' procedurally deficient Petition for Administrative Review would likely be unsuccessful:

[B]ecause the applicant and its counsel believe the Commission with its 'liberal construction' premise codified in WAC 480-07-395(4), will disregard such omissions with respect to the procedural rules it will nevertheless submit this Answer.<sup>11</sup>

15 Weighing potential "prejudices" caused by allegations of rule compliance deficiencies is surely a slippery slope for Shuttle Express. It is an evaluation that Shuttle Express should

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<sup>10</sup> "The Commission interprets pleadings liberally with a view to effecting justice between the parties." Order M.V. No. 146114, *In re International Port Services, Inc. d/b/a Northwest Mail Delivery Services*, App. P-75781 (Feb. 1993).

<sup>11</sup> Speedishuttle's Answer to Shuttle Express' Petition for Administrative Review, ¶11 at 6.  
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assiduously avoid much as it would be expected to deflect focus on its historic operational non-compliance with substantive Commission regulations, like WAC 480-30-213.

16 Shuttle Express' current Motion typifies its "Trojan horse" administrative compliance philosophy. Moreover, despite Shuttle Express' reliance on a narrow procedural rule provision on formatting of answers, there is also no substantive Commission roadmap precluding Speedishuttle from thoroughly and exhaustively arguing its specific opposition to the barrage of legal arguments raised by Shuttle Express in its Petition for Rehearing. Its Motion serves as yet another smokescreen to deflect telling analysis and characterizations of both its underlying motives to squelch any viable auto transportation alternative at Sea-Tac Airport and to distract all parties from its historic conduct against which the amalgamated Complaint and Petition to Rehear must be considered.


### III. CONCLUSION/PRAAYER FOR RELIEF

17 Vacating Speedishuttle's detailed analytical response from the record to date on the latest Shuttle Express orchestrations to extinguish its operations would be contrary to the public interest and would violate longstanding procedural rule and substantial compliance policies of the Commission. It would hardly "effect justice" between the parties. For all of the above reasons, Shuttle Express' Motion to Strike should be denied.



DATED this 1 day of August, 2016.

RESPECTFULLY SUBMITTED,

By   
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## CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2016 I caused to be served the original and three (3) copies of the foregoing documents to the following address via first class mail:

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 the web portal to:

[records@utc.wa.gov](mailto:records@utc.wa.gov)

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

<p>Julian Beattie Assistant Attorney General 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: <a href="mailto:jbeattie@utc.wa.gov">jbeattie@utc.wa.gov</a></p>	<p>Brooks Harlow Lukas, Nace, Gutierrez &amp; Sachs, LLP 8300 Greensboro Dr. Suite 1200 McLean, VA 22102gk (703) 584-8680 Email: <a href="mailto:bharlow@fcclaw.com">bharlow@fcclaw.com</a></p>
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Dated at Seattle, Washington this 1<sup>st</sup> day of August, 2016.

  
Maggi Gruber

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