

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| In re the Application of | DOCKET TC-143691 |
| SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE | ORDER 06 |
| For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company | ORDER GRANTING PETITION FOR REHEARING |

BACKGROUND

- 1 On May 16, 2016, Shuttle Express, Inc. (Shuttle Express) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Rehearing of Matters in Docket TC-143691 and to Cancel or Restrict Certificate No. C-65854 Based on Misrepresentations by Applicant, Errors and Omissions in Prior Proceedings, and Changed Conditions not Previously Considered (Petition).¹
- 2 Shuttle Express alleges in its Petition that the facts supporting the Commission’s decision in Final Order 04 in this docket (Order 04), “have not been borne out in actuality since [Speedishuttle] began airporter service in May of 2015,”² and that Speedishuttle

¹ On October 10, 2014, Speedishuttle of Washington, LLC d/b/a Speedishuttle Seattle (Speedishuttle) filed with the Commission an application for a certificate of public convenience and necessity to operate as an auto transportation company in Docket TC-143691. Both Shuttle Express and Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter Shuttle (Capital Aeroporter) objected to the application. On January 22, 2015, the Commission entered Order 02 in Docket TC-143691, Initial Order Overruling Objections to New Authority (Order 02). Order 02 found that Speedishuttle did not propose to offer the same service that either Shuttle Express or Capital Aeroporter offer based on a number of factors, including Speedishuttle’s proposed use of multi-lingual personal greeters, in-vehicle television and Wi-Fi, and a guaranteed 20-minute departure window. Shuttle Express and Capital Aeroporter filed petitions for administrative review of Order 02. On March 30, 2015, the Commission entered Order 04, the final order affirming Order 02. No party sought judicial review of Order 04.

² Petition of Shuttle Express at ¶17.

“oversold its purported distinctions, to the point of misrepresentation of material facts, either intentionally or negligently.”³ Shuttle Express specifically alleges, among other things, that Speedishuttle has made no apparent effort to hire multilingual greeters; that multilingual service may be offered only to a *de minimus* number of passengers; that it is not known whether Speedishuttle provides working TV and Wi-Fi in its vans; and that Speedishuttle has failed to implement its 20-minute departure guarantee. These factors were the basis for the Commission’s finding that Speedishuttle proposed to offer different service than Shuttle Express currently provides. Shuttle Express contends that Speedishuttle is instead engaging in direct competition with Shuttle Express by providing service identical to the service that Shuttle Express provides.⁴

3 On June 7, 2016, Commission staff (Staff) and Speedishuttle filed answers to the Petition. In its answer, Staff supports the Petition but recommends the Commission schedule a brief adjudicative proceeding – separate from the hearing on the Complaint – strictly for the limited purpose of determining whether Speedishuttle promised, but is presently failing to provide: (1) personal, multilingual greeters at SeaTac Airport; (2) in-vehicle televisions and wireless internet; and (3) guaranteed 20-minute departures.

4 In its answer, Speedishuttle requests the Commission deny the Petition because it is “riddled with hearsay, unsubstantiated allegations, and after-the-fact conjecture and suppositions that are not in 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.”⁵

5 No other party filed a response.

³ *Id.* at ¶20.

⁴ Also on May 16, 2016, Shuttle Express filed with the Commission a Formal Complaint against Speedishuttle for its Rules, Regulations, or Practices in Competition with Complainant that are Unreasonable, Insufficient, Unremunerative, Discriminatory, Illegal, Unfair, or Tending to Oppress the Complainant in Docket TC-160516. Order 02 set a hearing for February 1, 2017, at 9:00 a.m.

⁵ Speedishuttle’s Answer to Petition at ¶16.

DISCUSSION AND DECISION

- 6 RCW 81.04.200 provides that any public service company affected by any order of the Commission, if aggrieved, may petition the Commission for rehearing two years after the effective date of the order. The statute further provides that the Commission may, at its discretion, permit the filing of a petition for rehearing at any time. Petitions for rehearing must set forth the grounds and reasons for rehearing, which may include: changed conditions since the order was issued; demonstrable injury to the complaining party that was not previously considered or anticipated; a showing that the effect of the order was not contemplated by the Commission or the petitioner; or any good or sufficient cause that was not considered or determined in the previous hearing.
- 7 Because the Petition was filed less than two years from the effective date of Order 04, Shuttle Express does not have a statutory right to rehearing; instead, the Commission has discretion to grant or deny the Petition. To make that determination, we consider whether the facts alleged in the Petition, if proven, demonstrate that Shuttle Express is aggrieved by Order 04, based on one or more of the statutory criteria set out above.
- 8 We find that Shuttle Express's Petition alleges facts that, if true and known to the Commission at the time of the previous hearing, may have impacted the Commission's ultimate decision. Accordingly, we conclude that Shuttle Express's Petition for Rehearing should be granted. In its Petition, Shuttle Express alleges that conditions have changed since the Commission issued Order 04; that the effect of Order 04 has caused it to suffer financially; and that the effect of Order 04, due to the alleged changed conditions, was not contemplated by the Commission. Speedishuttle's argument that Shuttle Express's allegations are "unsubstantiated" and "riddled with hearsay", does not alone disprove them. The most appropriate way to resolve the issues presented in the Petition is to allow the parties to engage in discovery and present witnesses and evidence at hearing.
- 9 We also decline to adopt Staff's recommendation to limit the scope of the issues and conduct a brief adjudicative proceeding because imposing such a limitation would only hinder the Commission's ability to make a fully-informed decision. Moreover, conducting two separate proceedings to address the same factual allegations is not an efficient use of Commission time or resources. The Petition will be heard concurrently with the Complaint filed in Docket TC-160516, subject to the same procedural schedule.

FINDINGS AND CONCLUSIONS

- 10 (1) The Commission is an agency of the state of Washington vested by statute with the authority to regulate the rates, rules, regulations, and practices of auto transportation companies.
- 11 (2) On May 16, 2016, Shuttle Express filed a Petition for Rehearing of matters in this docket, alleging that the facts supporting the Commission's decision in Final Order 04 in this docket have changed; that Speedishuttle is engaging in direct competition with Shuttle Express by providing service identical to the service that Shuttle Express provides; and that Shuttle Express is aggrieved by the effect of Order 04.
- 12 (3) RCW 81.04.200 provides that the Commission may, at its discretion, permit the filing of a petition for rehearing at any time.
- 13 (4) Shuttle Express's Petition alleges facts that, if true and if known to the Commission at the time of hearing, may have impacted the Commission's ultimate decision. Accordingly, the Petition should be granted.

THE COMMISSION ORDERS THAT:

- 14 (1) Shuttle Express, Inc.'s Petition for Rehearing is GRANTED.
- 15 (2) The Commission may hold hearings at such times and places as may be required.

DATED at Olympia, Washington, and effective August 4, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a *Petition for Administrative Review*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a *Petition for review* within (10) days after service of the petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

You must serve on each party of record one copy of any Petition or Answer filed with the commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and **two (2)** copies of your Petition or Answer by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
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