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1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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3 )

In Re: Application )

4 TC-143691 )

)

5 SPEEDISHUTTLE WASHINGTON, ) Dockets TC-143691 and

LLC, D/B/A SPEEDISHUTTLE ) TC-160516

6 SEATTLE, )

)

7 For a Certificate of Public )

Convenience and Necessity to )

8 Operate Motor Vehicles in )

Furnishing Passenger and )

9 Express Service as an Auto )

Transportation Company )

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PREHEARING CONFERENCE, VOLUME II

12

Pages 147 - 167

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ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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15 10:03 A.M.

AUGUST 2, 2016

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1 OLYMPIA, WASHINGTON; AUGUST 2, 2016

2 10:03 A.M.

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5 JUDGE PEARSON: Let's be on the record

6 in Docket TC-143691 captioned In re: The application

7 of SpeediShuttle Washington, LLC, d/b/a SpeediShuttle

8 Seattle, for a Certificate of Public Convenience and

9 Necessity to Operate Motor Vehicles in Furnishing

10 Passenger and Express Service as an Auto

11 Transportation Company, and Docket TC-160516 captioned

12 Shuttle Express, Inc., verse SpeediShuttle Washington,

13 LLC, d/b/a SpeediShuttle Seattle.

14 Today is Tuesday, August 2nd, 2016, at

15 approximately 10:00 a.m., and we are here for a

16 prehearing conference to discuss scheduling and other

17 procedural issues in these two documents. My name is

18 Rayne Pearson, I am the administrative law judge

19 presiding over these cases.

20 Let's just start by taking short appearances.

21 I have everyone's notices of appearance on file,

22 obviously.

23 We will just start with Staff.

24 MR. BEATTIE: Representing Commission

25 Staff, Julian Beattie, with the Washington State

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1 Attorney General's Office.

2 JUDGE PEARSON: Thank you.

3 And for Shuttle Express?

4 MR. HARLOW: Thank you, Your Honor.

5 Good morning. Brooks Harlow, representing Shuttle

6 Express, the complaint and petitioner.

7 JUDGE PEARSON: Okay.

8 And for SpeediShuttle?

9 MR. WILEY: Yes. Dave Wiley, attorney

10 for the applicant and the respondent, SpeediShuttle.

11 JUDGE PEARSON: Okay. So as a

12 preliminary matter, I will just ask now whether there

13 is any party seeking intervention.

14 Okay. Hearing nothing we will move on.

15 So the notice of prehearing conference noted

16 that aside from standard procedural and scheduling

17 matters, we will address three issues today. So the

18 first is Shuttle Express's petition for rehearing.

19 Also, Shuttle Express's motion to strike, quote,

20 answers to petition and complaint, and Shuttle

21 Express's motion to consolidate these dockets, which

22 was in the original petition and complaint.

23 So I have reviewed all of the filings made by

24 the parties and I am ready to rule on each of these

25 items. I will start with Shuttle Express's petition

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1 for rehearing.

2 Shuttle Express has requested that the

3 Commission exercise its discretion to rehear certain

4 matters in Docket TC-143691 and to cancel or restrict

5 SpeediShuttle's certificate based on material

6 misrepresentations made by SpeediShuttle, errors and

7 omissions in prior proceedings, and changed conditions

8 previously not considered. SpeediShuttle filed a

9 response opposing the petition, and Staff also filed a

10 response. Staff supports Shuttle Express's petition

11 for rehearing, but recommends that the Commission

12 conduct a brief adjudicative proceeding that limits

13 the scope of the issues.

14 So I am going to grant Shuttle Express's

15 petition for rehearing without adopting Staff's

16 recommendation, because I think it is in the best

17 interest of the parties that we undertake a thorough,

18 and what I expect to be a final exploration of the

19 issues that are presented here. And I think it makes

20 the most sense to hear the petition and complaint

21 simultaneously, which brings us to Shuttle Express's

22 motion to consolidate the two dockets. And because

23 the petition and complaint share common issues of law

24 and fact, I am going to grant Shuttle Express's motion

25 and consolidate Dockets TC-143691 and TC-160516.

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1 So with respect to Shuttle Express's motion to

2 strike both Staff's answer to the petition and

3 SpeediShuttle's answers to the complaint and the

4 petition, I have had an opportunity to review both

5 Staff's and SpeediShuttle's answer to the motion. I

6 am going to deny it.

7 With respect to Staff's answer, I agree with

8 Staff that the response was appropriate, in light of

9 what Shuttle Express's petition proposed, and that

10 weighing in on the Commission's decision to rehear the

11 petition was exactly what was called for when the

12 Commission provided Staff with an opportunity to

13 respond.

14 And with respect to SpeediShuttle's answer, I

15 think it is clear from reading the answer which

16 allegations SpeediShuttle admits and which it denies.

17 I don't think it is necessary to allow Shuttle Express

18 the opportunity to respond because there will be

19 plenty of opportunities for Shuttle Express to address

20 the issues raised in the answer, in the prefiled

21 testimony, hearing, and posthearing briefing stages of

22 this proceeding.

23 So I am assuming, and it sounds like the

24 parties have agreed, that the discovery rules should

25 be made available in this case; is that correct?

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1 MR. HARLOW: That's certainly our

2 position, Your Honor, for the petitioner.

3 JUDGE PEARSON: Mr. Wiley?

4 MR. WILEY: Excuse me. Which question

5 specifically do you want me to respond to right now?

6 JUDGE PEARSON: I only had one question,

7 and that is, do the parties want the discovery rules

8 to be available?

9 MR. WILEY: Well, Your Honor, I think

10 the scope of the discovery rules are going to be the

11 rub. I also think that there is -- as you know, under

12 the rules there is a possibility of an interlocutory

13 appeal on the consolidation ruling that you have just

14 made. I would think that we would want to await the

15 outcome of that to determine whether the scope is

16 appropriate.

17 We certainly oppose, as you can well

18 anticipate, the consolidation of the proceedings, as

19 we so argued. I believe under the rule, specifically

20 480-07-320, ultimately the Commission itself will

21 resolve that, if we in fact take interlocutory appeal

22 of your ruling on the consolidation matter.

23 I don't think discovery -- discovery will be

24 affected by whether there is or is not consolidation.

25 JUDGE PEARSON: Okay.

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1 MR. HARLOW: If I may, Your Honor?

2 JUDGE PEARSON: Sure.

3 MR. HARLOW: Since we are getting into

4 it, the rule on discovery, WAC 480-07-400, this is

5 (2)(b). No. 2 starts out "When discovery available,"

6 and (b) says, "If the commission finds that an

7 adjudicative proceeding meets one of the following

8 criteria, the methods of discovery described in

9 subsections (1)(c)(iii) through (vi) of this section

10 and in WAC 480-07-410 and 480-07-415 will be available

11 to the parties."

12 Now, we had -- okay. I've got to go down now

13 to 3 under that because it says "the following

14 criteria." No. 3 says, "Any complaint proceeding

15 involving claims of discriminatory or anticompetitive

16 conduct, unjust or unreasonable rates, violations of

17 provisions in Titles 80 and 81 RCW." I think all of

18 those elements are in our complaint, with the

19 exception of Title 80. Title 81 is covered in great

20 degree.

21 So with all due respect to Mr. Wiley -- and we

22 did have some discussions and would be willing perhaps

23 to limit the overall number of requests, perhaps the

24 number of depositions or the time for depositions.

25 But the rule, I think, is, A, quite clear, that

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1 discovery is available, it's mandatory in this kind of

2 a complaint; and secondly, the scope should not be

3 limited in terms of the type of discovery, whether

4 depositions are allowed or not. The rule says all

5 types of discovery, essentially, including

6 depositions, which is the reference to WAC 480-07-410,

7 depositions.

8 So there really shouldn't be any dispute on

9 the scope. If you are ready to make a ruling this

10 morning, I think we could save some time and be able

11 to map out our schedule better, knowing there will be

12 discovery.

13 MR. WILEY: No one is disputing that in

14 complaint proceedings, Your Honor, that discovery is

15 available. My issue is a consolidation of the

16 proceedings with a petition for rehearing, and whether

17 there will be an interlocutory appeal, which I will

18 strongly recommend on your ruling on consolidation.

19 And I believe WAC 480-07-320 on consolidation

20 leaves -- again, leaves that ultimate ruling to the

21 Commission. There is case law supporting that view

22 that I can cite you to.

23 That will, of course -- then the scope of

24 discovery will be clarified, if we know -- if a

25 petition to rehear is going to be combined with the

0156

1 complaint, and if the proceedings are going forward

2 together, or if there is a reversal of your ruling,

3 for instance, on granting the petition for rehearing.

4 I do think -- we are not disputing that in a

5 complaint proceeding discovery is available. What we

6 are raising is the intertwining of the proceedings and

7 the nature of the questions in discovery that would

8 ensue based on that.

9 JUDGE PEARSON: I understand the

10 distinction.

11 I am going to go ahead and make the discovery

12 rules available. I think that when you set the

13 schedule for discovery, most likely that will

14 accommodate any time period during which you could

15 request review of my decision to consolidate, or you

16 could keep that in mind. And in the event that that

17 is reversed, then the discovery schedule would apply

18 only to the complaint and not the petition for

19 rehearing. I don't see a problem with moving forward

20 with discovery.

21 MR. HARLOW: Well, that's great. And we

22 could make a finer point, but I think we can probably

23 address it in response to the interlocutory appeal, so

24 I'll save it.

25 JUDGE PEARSON: Okay.

0157

1 Does Staff have anything?

2 MR. BEATTIE: I want to clarify two

3 points, Judge Pearson. First, just to be clear, are

4 you exercising your discretion to rehear --

5 JUDGE PEARSON: Correct.

6 MR. BEATTIE: -- and not entertaining

7 any petition as a matter of right?

8 JUDGE PEARSON: That's correct.

9 MR. BEATTIE: Okay.

10 Secondly, Staff had hoped to avoid

11 participating in the complaint proceeding, but now we

12 are being brought into it by means of the petition for

13 rehearing, which we did respond to. I just want to

14 clarify on the record that Staff is now a party in the

15 complaint proceeding as well, or I guess in the

16 consolidated dockets.

17 JUDGE PEARSON: That's correct.

18 MR. BEATTIE: I don't believe we need to

19 file a motion for intervention.

20 JUDGE PEARSON: No.

21 MR. BEATTIE: Okay.

22 JUDGE PEARSON: You do not.

23 I will say it is at your discretion how much

24 you want to participate in the petition versus -- the

25 petition and the complaint are so intertwined at this

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1 point.

2 MR. BEATTIE: Right.

3 JUDGE PEARSON: Staff can decide at what

4 point they want to file prehearing testimony, if they

5 want to, or posthearing briefs, and how much they want

6 to participate, and what portions of the hearing they

7 want to participate in. I will leave that up to

8 Staff.

9 MR. BEATTIE: Okay. That clarification

10 is very much appreciated. Thank you.

11 JUDGE PEARSON: Okay.

12 So do the parties consent to electronic

13 service if the Commission decides to serve documents

14 in that manner?

15 MR. HARLOW: Yes, Your Honor.

16 MR. WILEY: Yes. Absolutely.

17 MR. BEATTIE: Yes, for Staff.

18 JUDGE PEARSON: So that brings us to the

19 schedule. We can take a recess at this point and the

20 parties can discuss the schedule.

21 I do have -- do you have a computer with you?

22 MR. BEATTIE: Mr. Young has a computer.

23 JUDGE PEARSON: Okay. So you can see my

24 calendar and the hearing room calendar as you are

25 discussing.

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1 MR. BEATTIE: Yes, Judge.

2 JUDGE PEARSON: Okay.

3 So is there anything else before we take a

4 recess?

5 MR. WILEY: Yes, one point of

6 clarification. Is the proceeding that you are

7 envisioning in the consolidated proceeding a brief

8 adjudicative proceeding for auto transportation

9 company applicants or is it a conventional hearing?

10 JUDGE PEARSON: It's a conventional

11 hearing. I will give it one day, I will tell you that

12 right now, so keep that in mind.

13 MR. HARLOW: We will move as fast as we

14 can.

15 JUDGE PEARSON: So we will be in recess.

16 Mr. Beattie or Mr. Young, if you would just

17 come get me in my office when you are ready.

18 MR. BEATTIE: Absolutely.

19 JUDGE PEARSON: Thank you.

20 (A brief recess.)

21 JUDGE PEARSON: We will be back on the

22 record following a recess.

23 During the break, did the parties agree on a

24 procedural schedule?

25 MR. HARLOW: Thank you, Mr. Beattie.

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1 We, I think, recognize there is a lot of

2 uncertainty potentially in how the schedule plays out.

3 I am going to let Mr. Wiley address that because it

4 relates to his contemplated motions.

5 We have agreed that we can schedule the

6 one-day hearing for February the 1st, if that works

7 for the Commission. That is a compromise between the

8 parties. One side wanting it sooner; the other side

9 wanting later.

10 I think, as the petitioner, that will probably

11 work, despite contemplated motions. If it doesn't, we

12 will just have to move it. I think it's good to have

13 an end post in the ground here, at this point.

14 Something to work toward.

15 The second thing we agreed to, assuming the

16 Commission feels it can enter one, is a protective

17 order. I believe under RCW 34.05.446, which says very

18 simply, "The presiding officer may issue subpoenas and

19 may enter protective orders" -- I don't think it

20 matters that this is a transportation matter. I think

21 the fact that this is now an adjudicative proceeding

22 and that's where the RCW I just read falls --

23 JUDGE PEARSON: Can you read it to me

24 again because it was kind of mumbled?

25 MR. HARLOW: Okay. RCW 34.05.446(1),

0161

1 "The presiding officer may issue subpoenas and may

2 enter protective orders." The Commission's rule

3 tracks that very closely, and that would be WAC

4 480-07-420.

5 I don't think it matters that there is no --

6 there is no confidentiality provision in Title 81,

7 like there is in Title 80. I think the APA provisions

8 in the Commission's rules on protective orders trump

9 that and allow you to enter a protective order. Both

10 the petitioner and respondent would like one.

11 JUDGE PEARSON: Okay.

12 MR. HARLOW: And then we wanted to -- do

13 you want to ask about the last question or do you want

14 me to? The testimony.

15 MR. BEATTIE: I'm sorry, I wasn't sure

16 what the last question was. I think Mr. Harlow is

17 referring to whether you envision there will be

18 prefiled testimony and that the hearing that is

19 contemplated to be one day will be a cross-examination

20 hearing or --

21 JUDGE PEARSON: That's correct.

22 MR. BEATTIE: Okay. Thank you.

23 MR. HARLOW: That's all I have at this

24 time, Your Honor.

25 JUDGE PEARSON: Okay.

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1 Mr. Wiley, did you have something?

2 MR. WILEY: Yes, Your Honor. We

3 weren't -- you know, we were prepared to offer

4 argument on the motion to consolidate pursuant to the

5 notice of prehearing conference that you sent out

6 about a month ago. You obviously felt that you had

7 sufficient, shall we say, rationale provided in the

8 submissions. We clearly did not -- while we oppose

9 the intertwining of the proceedings, and we are very

10 clear on that in our submissions, we clearly do oppose

11 the consolidation of the proceeding. We believe that

12 that is something that is appropriately submitted to

13 the Commission by motion by the moving party. We will

14 take an interlocutory appeal of that ruling because it

15 certainly affects also the outcome of the ruling on

16 the petition to rehear, which we believe should be the

17 subject of an appeal by the respondent party.

18 So noting that, that is clearly what has

19 clouded the ability to move forward on a lot of the

20 more housekeeping matters in this proceeding.

21 I also want to take a look at 34.05.570 to

22 determine or at least advise my client as to whether

23 decisions on a petition to rehear and to consolidate

24 are an appealable order that might be entertained in

25 superior court.

0163

1 I raise those now, not to be at all

2 argumentative, but to place it on the record that we

3 reserve the right to make those arguments, either

4 before the full Commission and potentially superior

5 court.

6 I also wanted some clarity from you. In

7 looking at WAC 480-07-320, if we are running an

8 appeal, an interlocutory appeal to the Commission,

9 will that be based upon your oral ruling from the

10 bench or are you intending to issue a written --

11 JUDGE PEARSON: I will issue a written

12 order.

13 MR. WILEY: Okay. And that would then

14 trigger the ten-day, it appears, appeal period.

15 My other concern procedurally is that the

16 decision on the petition to rehear would appear to me

17 to be an initial order that would be subject to a

18 20-day response period.

19 Again, these are issues that have never arisen

20 before.

21 JUDGE PEARSON: Right.

22 MR. WILEY: In 37 years I have never had

23 a petition to rehear granted, so I apologize for not

24 being nimble on knowing the answers to these legal

25 issues, but -- but they are troubling to me in terms

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1 of being able to commit to deadlines or to -- to

2 advise as to what our course of action is going to be.

3 JUDGE PEARSON: Okay. So I will just

4 say that those things will be addressed.

5 MR. WILEY: In the order?

6 JUDGE PEARSON: In my order, yes.

7 MR. WILEY: That will be helpful, Your

8 Honor.

9 JUDGE PEARSON: Okay.

10 MR. WILEY: Based on what you have just

11 said, I will await a written order before calendaring

12 any of the interlocutory appeal or judicial appeal

13 issues.

14 JUDGE PEARSON: Okay.

15 MR. WILEY: Thank you.

16 JUDGE PEARSON: Anything else?

17 MR. HARLOW: Not from petitioner, Your

18 Honor.

19 JUDGE PEARSON: Okay.

20 Mr. Beattie?

21 MR. BEATTIE: Nothing from Staff.

22 Thank you.

23 JUDGE PEARSON: Okay.

24 I will go ahead and schedule the hearing for

25 Wednesday, February 1st.

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1 Given that you will only have one day, do you

2 want a 9:30 start time or do you want an earlier start

3 time?

4 MR. WILEY: Earlier from me, from the

5 respondent's standpoint.

6 JUDGE PEARSON: Okay.

7 MR. HARLOW: How early are you thinking?

8 JUDGE PEARSON: 8:30 is the earliest I

9 am willing to do.

10 MR. HARLOW: 8:30 would be fine.

11 MR. WILEY: I will compromise on 9:00,

12 Your Honor. If we run a little past 4:30, I hope you

13 will be --

14 JUDGE PEARSON: I'm okay going until

15 6:00, honestly.

16 MR. WILEY: Okay. Thank you.

17 MR. HARLOW: So we're starting at 9:00

18 and going until 6:00 potentially?

19 JUDGE PEARSON: Potentially, yes.

20 MR. HARLOW: Okay.

21 JUDGE PEARSON: And I will give 90

22 minutes for lunch because you can't do anything in an

23 hour around here.

24 MR. HARLOW: It sounds very civilized.

25 JUDGE PEARSON: Okay. So I will

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1 schedule that with a 9:00 a.m. start time. That will

2 be reflected in the order.

3 So if there is nothing further, then thank you

4 all for coming here today. We are adjourned.

5 MR. BEATTIE: Thank you.

6 (Proceedings adjourned 11:25 a.m.)

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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6 I, Sherrilyn Smith, a Certified

7 Shorthand Reporter in and for the State of Washington,

8 do hereby certify that the foregoing transcript is

9 true and accurate to the best of my knowledge, skill

10 and ability.

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17 SHERRILYN SMITH

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