

BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

3)	
4	In Re: Application)	
5	TC-143691)	
6)	
7	SPEEDISHUTTLE WASHINGTON,)	Dockets TC-143691 and
8	LLC, D/B/A SPEEDISHUTTLE)	TC-160516
9	SEATTLE,)	
10)	
11	For a Certificate of Public)	
12	Convenience and Necessity to)	
13	Operate Motor Vehicles in)	
14	Furnishing Passenger and)	
15	Express Service as an Auto)	
16	Transportation Company)	

PREHEARING CONFERENCE, VOLUME II

Pages 147 - 167

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

10:03 A.M.
AUGUST 2, 2016

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

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1 OLYMPIA, WASHINGTON; AUGUST 2, 2016

2 10:03 A.M.

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4

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

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

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.

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?

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.

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

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

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.

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

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.

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.

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),

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.

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.

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

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.

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

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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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KING

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