

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application TC-143691 of

SPEEDISHUTTLE WASHINGTON, LLC,  
d/b/a SPEEDISHUTTLE SEATTLE

For a Certificate of Public Convenience and  
Necessity to Operate Motor Vehicles in  
Furnishing Passenger and Express Service as  
an Auto Transportation Company

DOCKET TC-143691

COMMISSION STAFF'S ANSWER TO  
SPEEDISHUTTLE'S PETITION FOR  
ADMINISTRATIVE REVIEW OF  
INITIAL ORDER 06

1 In Initial Order 06, ALJ Rayne Pearson ruled that the Commission will exercise its discretion under RCW 81.04.200 to rehear the brief adjudicative proceeding in this docket. As the Commission will recall, that hearing culminated in Final Order 04 (March 2015) overruling Shuttle Express's protest to Speedishuttle's certificate application.

2 Staff files this answer to make one point only: We share Speedishuttle's concern that Initial Order 06 invites a "no-holds-barred 'do over' adjudicative proceeding."<sup>1</sup> We believe the Commission did not intend this result.

3 Initial Order 06 finds that Shuttle Express "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."<sup>2</sup> In a separate paragraph, the order states:

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 minimis 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

<sup>1</sup> Speedishuttle's Petition for Administrative Review of Initial Order 06, pg. 8, ¶ 15 (Aug. 25, 2016) ("Petition for Admin. Rev.").

<sup>2</sup> Initial Order 06, p. 3, ¶ 8.

Speedishuttle proposed to offer different service than Shuttle Express currently provides.<sup>3</sup>

The phrase “alleges, *among other things*” is problematic because it makes the order’s intent ambiguous. It is unclear whether additional, unnamed “allegations” are still in play. The Commission should address this issue before holding further proceedings in this matter.

4 If the Commission fails to clarify the scope of rehearing, Staff fears that Shuttle Express will exploit the ambiguity in Initial Order 06 to justify complete relitigation of the BAP, as though the original proceedings never occurred. Staff is particularly concerned that Shuttle Express will relitigate its dispute regarding Speedishuttle’s “walk-up” kiosk at Sea-Tac Airport, even though the Commission already decided that its rules “do not prohibit Speedishuttle from offering “walk-up’ service,” and that, in any event, “once a certificate has been issued, the rules do not permit [the Commission] to attach conditions to it retroactively.”<sup>4</sup> It is unclear why Shuttle Express thinks this issue is still alive.

5 In addition to squandering everyone’s time, wholesale relitigation of the BAP would be inconsistent with the Commission’s 2013 rulemaking, which sought to promote competition by streamlining the application process.<sup>5</sup> In approving the rulemaking, the Commission expressed hope that its amendments would “provide greater clarity to existing companies, applicants and the Commission during the application process” and “*reduce* the time and resources spent during that process.”<sup>6</sup> The Commission also committed to studying, in five years’ time, whether the amendments have “reduced the cost to the companies of complying with the tariff and application regulations in this chapter and the

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<sup>3</sup> *Id.*, p. 2, ¶ 2.

<sup>4</sup> Notice of Determination not to Amend Order 04, p. 3 (Dec. 14, 2015).

<sup>5</sup> *In re Amending and Adopting Rules in WAC 480-30 Relating to Passenger Transportation Companies*, Docket TC-121328, General Order R-572, Order Amending and Adopting Rules Permanently (Aug. 21, 2013).

<sup>6</sup> *Id.*, p. 5, ¶ 13 (emphasis added).

cost to the agency of enforcing the regulations,” and whether they have “reduced the duration of time required to process tariffs and applications.”<sup>7</sup> If current trends continue in this case, the answer to these questions will decidedly be “no.”

6 In accordance with the 2013 rulemaking, and consistent with Staff’s perception of the Commission’s intent, the Commission should clarify that Shuttle Express is not entitled to across-the-board relitigation of the BAP.

7 In this regard, Staff supports Speedishuttle’s “Recommended Finding/Conclusion (4), ¶ 13,” which proposes that:

The Commission alternatively grants a brief adjudicative proceeding to address the specific factual contentions raised by Shuttle Express expressly found by the Commission to constitute “differentiation factors,” limited to:

1. Luxury vehicles.
2. Significantly increased accessibility for non-English speaking customers.
3. Individually-tailored customer service.
4. Tourism information.
5. Wi-Fi Service.

Whether the hearing is a “brief” or “regular” adjudicative proceeding is of secondary importance. The key point here is that Shuttle Express should not be given license to pursue a full-blown “re-do.” The Commission should limit the scope of rehearing consistent with Speedishuttle’s proposed finding/conclusion above.

RESPECTFULLY SUBMITTED September 6, 2016.

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<sup>7</sup> WAC 480-30-075.