

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDISHUTTLE WASHINGTON,  
LLC,

Respondent.

DOCKET NOS.

TC-143691 & TC-160516

SPEEDISHUTTLE'S MOTION TO STRIKE  
ANSWER TO PETITION FOR  
ADMINISTRATIVE REVIEW OF  
SHUTTLE EXPRESS, INC.

**I. INTRODUCTION**

1 Speedishuttle Washington, LLC (“Speedishuttle” or “Respondent”) hereby moves the Commission for an Order striking the Answer of Petitioner Complainant Shuttle Express, Inc. (“Petitioner” or “Shuttle Express”) due to a recurring pattern of submission of outside the record documents which improperly invite the Commission to consider hearsay, unauthenticated documents out of context and without foundation. Shuttle Express’ alternatively failed to formally seek to reopen the record of the completed application case by its Answer and attached exhibits and proffered outside the record documents through argument in the conjoined Complaint case without appropriate process.<sup>1</sup>

**II. BACKGROUND TO MOTION**

2 In this renewed, no-holds-barred effort to terminate the operations of Speedishuttle pursuant to its previously-issued certificate C-65854, Shuttle Express has, on at least two separate occasions,<sup>2</sup> submitted documents and attachments to advance its argument without appropriate foundation and attestation and in transparent attempt to bolster its position, by

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<sup>1</sup> Ironically, seemingly a “sharp practice” which Speedishuttle is expressly accused of in the subject Answer to Petition for Administrative Review, ¶34, p. 18. And, in the same sentence as well: “possibly flat-out lies to obtain a grant of authority.”

<sup>2</sup> The previous occasion being the attachments to the original Petition for Rehearing and Complaint of Shuttle Express (“Shuttle Express Petition”) filed on May 17, 2016.

inserting “exhibits” which are nothing more than evidentiary arguments for that position.

The documents were provided as exhibits A and B to the Shuttle Express’ Petition, as well as exhibits A and B to Answer of Shuttle Express in Opposition to Petition for Review and Partial Challenge of Order 06 of September 1, 2016 (“Shuttle Express’ Answer”).

3 These litigation tactics are prejudicial and contrary to Commission rule and court practice.

4 Additionally, portions of the Answer feature a memorandum to a third-party and recent discovery requests in response which are not appropriate references and include out-of-context characterizations of that correspondence and objections dealing with data requests which are expressly not a part of the record.<sup>3</sup> Apparently however, the Petitioner/Complainant now feels they can be injected in argument simply by attachment, again, with no context, with no offer of proof, with no foundational declaration or concern for the Commission’s procedural rules or the Rules of Evidence.

5 These materials are intended to shortcut and bias the orderly presentation of evidence. They are inappropriate. Indeed, the data requests now appended as Exhibit B to Shuttle Express’ Answer are without declaration or without any requisite motion to reopen.

6 Moreover, the entirety of the Petitioner’s new attack on Speedishuttle with regard to “deceptive and sharp practices” again appears to relate to the offering of walkup services by Speedishuttle which Speedishuttle also addresses by separate Reply. This is the subject of both attachments to Shuttle Express’ Petition, and Exhibit A to Shuttle Express’ Answer.

7 But the issue of whether there were legal restrictions on Speedishuttle’s certificate was thoroughly vetted and resolved through answers to bench requests and the Commission’s

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<sup>3</sup> i.e., ¶20, p. 8 of the Answer to Shuttle Express in Opposition to Review Petition. This may also be an untimely retroactive admission that its original May 17 shotgun allegations by which it, in part, sought to rehear the application lacked support. “Dropping in” extraneous, out-of-context, hearsay documents in violation of procedural rules does not in any way cure or rehabilitate the pervasive deficiencies of its original, conjoined pleading.

considered determination in December 2015, less than six months before Shuttle Express launched its latest procedural barrage in May of this year.

### III. STATEMENT OF ISSUES

8 Whether the Commission should strike the Exhibits and discussion of data requests and memorandum attached by Shuttle Express to its Answer and other pleadings where they are without context or foundation, relate to an already litigated issue, and/or without a motion to reopen the record?

### IV. EVIDENCE RELIED UPON

9 The pleadings of record in this proceeding, cited case law and WAC 480-07-400 et seq.

### V. ARGUMENT

#### A. The Commission Should Not Allow Shuttle Express to Improperly Introduce Its Data Requests and its Characterization of Speedishuttle's Initial Responses and Objections into the Record

10 Shuttle Express' continues to demonstrate a willingness to resort to extraordinary means to achieve the ultimate result of Speedishuttle's market exit it seeks. In ¶20, p.8 of its Answer, Shuttle Express expends nearly half a page detailing its view, without context, testimony, or evidence, of a current discovery dispute between the parties and again in ¶¶40 and 41, on p.16 of its Answer. As noted, it also attaches the referenced original data requests as Exhibit B to its motion.

11 That is in apparent direct contravention of WAC 480-07-405(2)(c):

Except when appropriate for other purposes, *parties must not file data requests or responses to data requests with the commission, or provide them to any person who is presiding or advising the presiding officer.* Responses that are later offered in evidence must be distributed as required for other proposed exhibits.

(Emphasis added).

12 Rather than seek to introduce evidence through appropriate channels, Shuttle Express simply here attaches its data requests and proceeds to make its unilateral characterizations of Speedishuttle's responses part of the record without any foundation or context. Again, that is improper.<sup>4</sup>

13 These rules are in place for a reason. Speedishuttle is entitled to object to discovery under the applicable rules, especially where it believes that the requests seek information for collateral and improper purposes.<sup>5</sup> Shuttle Express should not be permitted to propound overbroad requests and then imply that the very fact Speedishuttle takes issue with some serves as evidence supporting rehearing. But Shuttle Express does not seek to play by the rules. It always seems to prefer to seek forgiveness rather than permission. The Commission should, at minimum, strike the exhibits to the Answer and all discussion of the data requests from Shuttle Express' Answer.

**B. Shuttle Express Cannot Present Documents Related To and Predating the Commission's December 2015 Decision Without Declaration, Without Foundation or Authentication, and/or Without Reopening the Record.**

14 Shuttle Express has attached documents outside the record related to the "walk-up service" issue, apparently from the April – May 2015 timeframe.<sup>6</sup> These solely concern the "walk-up service" issue which was addressed and resolved in the Notice of Determination not to Amend Order 04 (Dec. 14, 2015). In discussing these documents, Shuttle Express rhetorically asks how their content can be reconciled with Speedishuttle's representations at the BAP. Shuttle Express ignores, or fails to mention that this exact issue was the subject of

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<sup>4</sup> Use of responses to data requests, record requisitions or bench requests. The commission will not consider or treat as evidence any response to a data request, record requisition, or bench request unless and until it is entered into the record. WAC 480-07-405(9).

<sup>5</sup> See e.g., WAC 480-07-400(3).

<sup>6</sup> See, Exhibits A and B to Shuttle Express' Petition and Ex. A to Shuttle Express' Answer.

a thorough inquiry, and ultimately unchallenged determination in December 2015. This decision again also came long after the outside-the-record documents which Shuttle Express summarily attaches to support its latest bid for rehearing. The information is improperly presented and closed.

- 15 Even if that issue were not previously resolved, a motion is still required before any new evidence is received by the Commission in a contested proceeding.

In contested proceedings, the commission *may reopen the record* to allow receipt of evidence *that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause*. The commission will give all parties an opportunity to respond to any evidence received after the record is closed.

WAC 480-07-830 (emphasis added).

- 16 Shuttle Express did not file a motion to reopen the record. The unsworn evidence should be disregarded. The Commission has previously made it clear that such types of evidence are inappropriate and should not be considered:

Commission prior orders make clear that the Commission will consider new evidence after a record is closed only when the late submission was proposed and approved before the record was closed, or in conjunction with a motion to reopen stating reasons and subject to answer by other parties. See, *WUTC v. Washington Natural Gas Co.*, Docket No. UG-940814, Seventh Supplemental Order (May, 1995).<sup>7</sup>

- 17 Flaunting the procedural rules, Shuttle Express now attempts to bolster its rehearing Petition and Answer by attaching documents without reopening the record relating to the already litigated “walk-up” issue. Nowhere in the record is there any authorization by the Commission to present further evidence once the record was closed by the final order.

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<sup>7</sup> *WUTC v. Olympic Pipe Line Company*, 2002 Wash. UTC LEXIS 56 (Mar. 2002). The *WUTC v. WNG* case cited in the *Olympic Pipeline Order*, not only reminded parties that it was inappropriate to cite facts that are not in the record, it also noted it could also not allow parties to recite such asserted “facts” for consideration stating that the Commission cannot lawfully consider evidence outside the record. Interestingly, it also there noted “it is rarely appropriate and rarely helpful to include ad hominem arguments in pleadings,” fn. 2, Seventh Supplemental Order Rejecting Tariff Filing; Order on Reconsideration (May 1995).

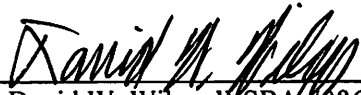
18 Rather than attempt to introduce its so-called evidence through appropriate channels, Shuttle Express interjects them now as somehow representative of or evidencing Speedishuttle's allegedly nefarious motives in support of Shuttle Express' overall narrative. Again, this is improper. The exhibits attached to Shuttle Express' pleadings should be struck, as should the discussion of pending discovery from Shuttle Express' briefing.

## VI. CONCLUSION

19 Because Shuttle Express sought to: (1) improperly introduce and characterize evidence of discovery without justification, and (2) insert evidence into a closed record without approval, the Commission should strike all exhibits filed in support of Shuttle Express' Answer and correspondingly strike any discussion in the Answer of the incipient discovery dispute between the parties.

DATED this 12 day of September, 2016.

RESPECTFULLY SUBMITTED,

By   
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2016, I caused to be served the original and three (3) copies of the foregoing documents to the following address via Fed Ex:

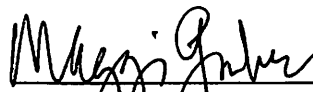
Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
Attn.: Records Center  
P.O. Box 47250  
1300 S. Evergreen Park Dr. SW  
Olympia, WA 98504-7250

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 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:

Julian Beattie 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>	Greg Kopta Director/Administrative Law Division 1300 S. Evergreen Park Drive SW P.O. Box 47250 Olympia, WA 98504-7250 (360)-664-1355 <a href="mailto:gkopta@utc.wa.gov">gkopta@utc.wa.gov</a>
Brooks Harlow Lukas, Nace, Gutierrez & Sachs, LLP 8300 Greensboro Dr. Suite 1200 McLean, VA 22102 (703) 584-8680 Email: <a href="mailto:bharlow@fcclaw.com">bharlow@fcclaw.com</a>	

Dated at Seattle, Washington this 17<sup>th</sup> day of September, 2016.

  
Maggi Gruber  
Legal Assistant