

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re the Application of	DOCKET TC-143691
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE	ORDER 08
For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company	ORDER DENYING REQUESTS FOR REVIEW OF ORDER 06; DENYING LEAVE TO REPLY; GRANTING, IN PART, MOTION TO STRIKE

BACKGROUND

- 1 On October 10, 2014, Speedishuttle of Washington, LLC d/b/a Speedishuttle Seattle (Speedishuttle) filed with the Washington Utilities and Transportation Commission (Commission) an application for a certificate of public convenience and necessity to operate as an auto transportation company. Shuttle Express, Inc. (Shuttle Express) and Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter Shuttle (Capital Aeroporter) objected to the application.
- 2 On January 22, 2015, following a brief adjudicative proceeding, the Commission entered Order 02, 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 provides. Shuttle Express and Capital Aeroporter filed petitions for administrative review of Order 02, and on March 30, 2015, the Commission entered Order 04, Final Order Affirming Order 02 (Order 04). No party sought judicial review of Order 04.
- 3 On May 16, 2016, Shuttle Express filed 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 for Rehearing).
- 4 Shuttle Express alleges in its Petition for Rehearing that the facts supporting the Commission’s decision in Order 04 “have not been borne out in actuality since

[Speedishuttle] began airporter service in May of 2015,”¹ and that Speedishuttle “oversold its purported distinctions, to the point of misrepresentation of material facts, either intentionally or negligently.”² Shuttle Express specifically alleges, among other things, that Speedishuttle is offering walk-up service at the airport; has made no apparent effort to hire multilingual greeters; may be offering multilingual service only to a *de minimis* number of passengers; may not provide working TV and Wi-Fi in its vans; and has failed to implement its 20-minute departure guarantee, all of which were factors on which the Commission relied to find that Speedishuttle proposed to offer different service than Shuttle Express. 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.³

5 On June 7, 2016, Commission staff (Staff) and Speedishuttle filed answers to the Petition. In its answer, Staff supported the Petition but recommended the Commission schedule a brief adjudicative proceeding – separate from the hearing on the corresponding complaint Shuttle Express filed in Docket TC-160516 – 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.

6 In its answer, Speedishuttle requested the Commission deny the Petition for Rehearing 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.”⁴

7 On August 4, 2016, the Commission entered Order 06, Initial Order Granting Petition for Rehearing (Order 06). In that order, the Administrative Law Judge exercised the Commission’s discretion under RCW 81.04.200 to consider the Petition for Rehearing,

¹ Petition for Rehearing of Shuttle Express ¶17.

² *Id.* ¶20.

³ 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.

⁴ Speedishuttle’s Answer to Petition for Rehearing ¶16.

even though two years have not elapsed since Order 02 became effective. She granted the Petition for Rehearing, finding 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.”⁵

- 8 On August 24, 2016, Speedishuttle filed a Petition for Administrative Review of Order 06 (Petition for Review). Speedishuttle contends that allegations of fact are insufficient to justify rehearing, and that Shuttle Express has failed to produce evidence to support its Petition for Rehearing. Alternatively, Speedishuttle would support Staff’s recommendation to conduct a BAP limited to the specific, discrete allegations Shuttle Express has made.
- 9 On September 2, 2016, Shuttle Express filed its Answer in Opposition to Petition for Review and Partial Challenge of Order 06 (Shuttle Express Challenge). Shuttle Express argues that it need not provide evidence at this stage of the proceeding. A petition for rehearing, according to Shuttle Express, is a pleading that is sufficient if it alleges new facts that, if proven, would warrant a change to the Commission’s prior determination. Shuttle Express challenges the conclusion in Order 06 that RCW 81.04.200 required the company to wait two years before bringing its Petition for Rehearing. Shuttle Express claims that because Order 04 was not appealed, the plain language of the statute gives Shuttle Express the right to rehearing after six months, not two years.
- 10 On September 6, 2016, Staff filed its Answer to Speedishuttle’s Petition for Administrative Review of Order 06. Staff share’s Speedishuttle’s concern that Order 06 could be interpreted to allow a complete relitigation of the original BAP. Staff supports Speedishuttle’s proposal to limit any rehearing to the five specific factual contentions that Shuttle Express raises in its Petition for Rehearing.
- 11 On September 12, 2016, Speedishuttle filed its Reply to Shuttle Express’ Challenge to Order 06. Speedishuttle opposes that challenge on the grounds that Shuttle Express cites no authority in support of its position and the statute establishes Commission discretion to grant rehearing, not a right to rehearing. In addition, Speedishuttle filed a motion to strike Shuttle Express’ response to Speedishuttle’s Petition for Review, arguing that response far exceeds the scope of the Petition. Speedishuttle also filed a petition for leave to respond to Shuttle Express’ response, claiming the need to address unanticipated arguments.

⁵ Order 06 ¶ 8.

- 12 On September 15, 2016, Shuttle Express filed its Answer to Speedishuttle's Motion to Strike, opposing that motion. On September 16, 2016, Shuttle Express filed its Answer to Speedishuttle's Petition for Leave to Reply, opposing that petition.

DISCUSSION AND DECISION

- 13 At the outset we observe that both Speedishuttle and Shuttle Express attempt to litigate the merits of the Petition for Rehearing in the guise of Speedishuttle's Petition for Review and Shuttle Express' Challenge.⁶ We will not address the substance of the Petition for Rehearing at this stage of the proceeding. Accordingly, we deny Speedishuttle's petition for leave to reply, which is devoted almost entirely to such arguments.
- 14 Nor will we address the discovery dispute Shuttle Express describes in the body of its response and exhibits. Those issues are not germane to the Petition for Review, and we leave resolution of that dispute, at least in the first instance, to the presiding Administrative Law Judge. We therefore grant, in part, Speedishuttle's motion to strike as it relates to those portions of Shuttle Express' response. We otherwise deny that motion. Shuttle Express takes no more liberties with the issues in its answer than Speedishuttle takes in its Petition for Review, and the Commission will assess the weight to give the information in both pleadings.
- 15 With respect to the issues that are properly before us, we deny both Speedishuttle's Petition for Review and Shuttle Express' Challenge. We conclude that the language of RCW 81.04.200 supports the determinations in Order 06.⁷

⁶ We also note that the increasingly caustic rhetoric and inflammatory accusations both of these parties use is neither persuasive nor welcomed.

⁷ Speedishuttle questions the Commission's consolidation of the Petition for Rehearing in this docket and Shuttle Express' complaint in Docket TC-160516. *See* Petition for Review ¶ 7, n.3. Speedishuttle, however, incorrectly refers to Order 06 as the source of that determination. Order 06 merely states that the Commission will schedule hearings in the two dockets concurrently. Order 07, Prehearing Conference Order and Order of Consolidation (Order 07) is the order that consolidated the dockets. No party objected or otherwise sought review of Order 07 within 10 days after the Commission entered it, and thus the issue of consolidation is not before us.

Speedishuttle Petition for Review

16 RCW 81.04.200 provides, in relevant part, that a public service company seeking rehearing of a Commission order must set forth in its

petition the *grounds and reasons* for such rehearing, which grounds and reasons may comprise and consist of changed conditions since the issuance of such order, or by showing a result injuriously affecting the petitioners which was not considered or anticipated at the former hearing, or that the effect of such order has been such as was not contemplated by the commission or petitioner, or for any good or sufficient cause which for any reason was not considered and determined in such former hearing. (Emphasis added.)

The statute thus requires a petitioner to provide sufficient information in the petition to describe and explain the circumstances that justify the Commission rehearing a prior order.

17 Speedishuttle contends that Shuttle Express must “advance more than mere argument and allegations to invoke that extraordinary remedy in its filing.”⁸ Accordingly to Speedishuttle, Shuttle Express “fails to present any sufficient evidence or basis for this Commission to exercise its discretion to reopen these proceedings.”⁹ We disagree.

18 RCW 81.04.200 requires only that a petition state the “grounds and reasons” for rehearing. We do not construe that term necessarily to require the production of evidence to support the petition, particularly where, as here, the petitioner has limited access to such evidence. Evidence will enhance a petition’s persuasiveness, but allegations can satisfy the statutory requirement if they provide sufficient detail to demonstrate changed conditions since the Commission entered the order or unanticipated results arising from that order.

19 Shuttle Express has provided such detailed allegations. We found in Order 04 that Speedishuttle proposed to provide a different service than Shuttle Express based on the totality of features in Speedishuttle’s multilingual business model, which

⁸ Petition for Review ¶ 6.

⁹ Petition for Review ¶ 7.

uniquely targets a specific subset of consumers seeking door-to-door service to and from the airport: those who are tourists, tech-savvy, or non-English speaking. Speedishuttle's business model thus includes luxury vehicles, significantly increased accessibility for non-English speaking customers, individually tailored customer service, tourism information, and Wi-Fi service. Such service is substantially different from the existing service [Shuttle Express] offer[s].¹⁰

Shuttle Express alleges in its Petition for Rehearing that Speedishuttle "has, in practice, not provided a different service targeted to 'a specific subset of customers' who were unserved. Instead it has targeted the general travelling public that would have been served by Shuttle Express and provided a service that is substantially the same as that offered by Shuttle Express."¹¹

20 Shuttle Express knows only what it can observe of the market and Speedishuttle's operations, including but not limited to a significant reduction in trips Shuttle Express makes to and from the airport and Speedishuttle's deployment of a walk-up kiosk, both contrary to representations Speedishuttle made at the evidentiary hearing. Based on these and other observations, Shuttle Express alleges that Speedishuttle is not targeting the customers the Commission authorized that company to serve and is providing the same service Shuttle Express has the exclusive right to provide, resulting in injury to Shuttle Express. These allegations provide sufficient "grounds and reasons" to exercise discretion to grant the Petition for Rehearing.

21 Speedishuttle disputes the allegations and contends that they represent nothing more than a rehash of issues the Commission considered and resolved in Order 04. Speedishuttle claims, "That Speedishuttle would compete with Shuttle Express was never in doubt, and this premise and allegation cannot serve as a basis of any justification of retrial of this application by the Commission."¹² We construe the Petition for Rehearing and Order 04 differently.

22 Order 04 addressed whether Speedishuttle proposed to offer a distinct service, but the Commission has yet to consider whether Speedishuttle is adhering to the business model it represented to the Commission. The evidence before the Commission in the BAP

¹⁰ Order 04 ¶ 21.

¹¹ Petition for Rehearing ¶ 20.

¹² Petition for Review ¶ 17.

concerned what Speedishuttle said it would do if granted a certificate. Shuttle Express now asks the Commission to consider what Speedishuttle is actually doing, which allegedly differs from its representations. Shuttle Express' allegations describe precisely the type of "changed conditions" the statute provides the Commission with discretion to consider.

23 Nor are we as sanguine as Speedishuttle about the development of competition in the wake of Order 04. The Commission expressly did not address whether Shuttle Express was providing service to the Commission's satisfaction.¹³ Speedishuttle, therefore, may provide only the auto transportation service that the Commission found was different than Shuttle Express' service. While some competition at the margins of the respective customer groups may be inevitable, the Commission did not contemplate that Speedishuttle would offer to serve any and all customers seeking door-to-door service to or from the airport. Shuttle Express' allegations that Speedishuttle is engaging in such conduct, therefore, represent "a result injuriously affecting [Shuttle Express] which was not considered or anticipated at the former hearing" and an effect of Order 04 that "has been such as was not contemplated by the commission" within the meaning of the statute.¹⁴

24 We nevertheless share the concerns Speedishuttle and Staff express about the scope of rehearing. We will not allow Shuttle Express to relitigate the BAP. The Commission will not alter its conclusion that the business model Speedishuttle described in its application and during the evidentiary hearings represents a different service than the service Shuttle Express provides. Nor will we permit a collateral attack on our rules that do not distinguish between "prearranged" and "walk up" door-to-door service.¹⁵ At the same time, however, the Commission based its conclusions in Order 04 on the totality of the circumstances, and Speedishuttle's and Staff's proposal to limit rehearing to an examination of the individual components of the business model is at odds with that approach.

25 By way of guidance for the parties, the sole issue the Commission will consider on rehearing is whether Speedishuttle is limiting the service it provides to the service and customer types described in the business model on which the Commission based its grant

¹³ Order 04 ¶ 17.

¹⁴ RCW 81.04.200.

¹⁵ WAC 480-30-36.

of authority. The Commission will not conduct a separate BAP on rehearing but will address this issue as part of the full adjudication in the consolidated dockets. To the extent that the allegations in the Petition for Rehearing in Docket TC-143691 overlap with the allegations in Shuttle Express' complaint in Docket TC-160516, the issue will be similarly limited.

- 26 Shuttle Express correctly observes that the Commission's ultimate responsibility is to ensure compliance with RCW 81.68.040 and other applicable laws. Consistent with the legislature's directive, we did not and cannot authorize Speedishuttle to depart from its business model and offer the same service Shuttle Express provides. If the evidence demonstrates that Speedishuttle is doing so or is otherwise violating its regulatory obligations, we will take appropriate enforcement action.

Shuttle Express Challenge

- 27 Shuttle Express has a different objection to Order 06. Shuttle Express does not contest the ultimate determination in that order but contends that the Administrative Law Judge erred by relying on Commission discretion, rather than a statutory right, to grant the Petition for Rehearing. According to Shuttle Express, RCW 81.04.200 authorizes a public service company to file a petition for rehearing after only six months if the order was not subject to judicial review. No party appealed Order 04, and Shuttle Express filed its Petition for Rehearing more than one year (but less than two years) after Order 04 became effective. Shuttle Express thus contends that "the rehearing should not be a matter of discretion, because the six month provision applies in this case, not the two year period."¹⁶ We disagree.
- 28 Shuttle Express has no right to rehearing. The statute only authorizes a public service company to *petition* for rehearing. "Upon the filing of such petition, such proceedings shall be had thereon as are provided for hearings upon complaint."¹⁷ The Commission has discretion to initiate an adjudication in response to a complaint,¹⁸ and thus RCW 81.04.200 provides the Commission with the same discretion to grant or deny a petition for rehearing.

¹⁶ Shuttle Express Challenge ¶ 44.

¹⁷ RCW 81.04.200.

¹⁸ RCW 34.05.419; WAC 480-07-305(5).

29 The question, then, is whether Shuttle Express had the right to *petition* for rehearing after six months, rather than two years, from the date Order 04 became effective. We need not resolve this question because we uphold the exercise of Commission discretion in Order 06 to grant the Petition for Rehearing. In the absence of a dispute, we will not issue an advisory opinion. We note, however, that because the statute provides the Commission with discretion both to grant rehearing and to permit the filing of a petition for rehearing at any time, the distinction between filing a petition within six months or two years will rarely, if ever, be the only basis for a Commission decision denying rehearing.

THE COMMISSION ORDERS THAT:

- 30 (1) The Commission DENIES the Petition of Speedishuttle of Washington, LLC
d/b/a Speedishuttle Seattle for Administrative Review of Order 06.
- 31 (2) The Commission DENIES the Partial Challenge of Shuttle Express, Inc., to Order
06.
- 32 (3) The Commission DENIES the Petition of Speedishuttle of Washington, LLC
d/b/a Speedishuttle Seattle for Leave to File Reply to Shuttle Express' Answer to
Speedishuttle's Petition for Administrative Review.
- 33 (4) The Commission GRANTS, in part, the Motion of Speedishuttle of Washington,
LLC d/b/a Speedishuttle Seattle to Strike Answer to Petition for Administrative
Review of Shuttle Express, Inc., as described in the body of this Order. The
Commission otherwise DENIES that Motion.

DATED at Olympia, Washington, and effective September 27, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.