

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

SHUTTLE EXPRESS, INC.	DOCKET TC-160516
Complainant,	ORDER 01
v.	ORDER DENYING MOTION TO DISMISS
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE	
Respondent.	

BACKGROUND

- 1 On May 17, 2016, Shuttle Express, Inc. filed with the Washington Utilities and Transportation Commission (Commission), a Formal Complaint Against Speedishuttle Washington, LLC (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 (Complaint). Shuttle Express alleges, among other things, that Speedishuttle is engaging in direct competition with Shuttle Express by providing service identical to the service that Shuttle Express provides.
- 2 On June 7, 2016, Speedishuttle filed a Motion to Dismiss Complaint of Shuttle Express, Inc. (Motion). In its Motion, Speedishuttle argues that Shuttle Express's Complaint fails to state a claim upon which relief can be granted because the Commission previously found that Speedishuttle's service is not the same as the service provided by Shuttle Express.¹ Speedishuttle also requests the Commission reject Shuttle Express's allegations in the Complaint that Speedishuttle is responsible for Shuttle Express's passenger or

¹ On October 10, 2014, Speedishuttle filed with the Commission an application for a certificate of public convenience and necessity to operate as an auto transportation company in Docket TC-143691. Both Shuttle Express and Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter Shuttle (Capital Aeroporter) objected to the application. On January 22, 2015, the Commission entered Order 02 in Docket TC-143691, 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 offer based on a number of factors. Shuttle Express and Capital Aeroporter filed petitions for administrative review of Order 02. On March 30, 2015, the Commission entered Order 04, the final order affirming Order 02. No party sought judicial review of Order 04.

revenue decline; that Speedishuttle’s service for non-English speaking customers may be *de minimus*; and that Speedishuttle is charging fares below cost. Speedishuttle also requests the Commission deny each of Shuttle Express’s requests for relief.

3 On June 13, 2016, the Commission issued a Notice Extending Time to Respond to Motion to Dismiss, requiring responses from the parties by June 21, 2016.

4 On June 21, 2016, Shuttle Express filed a response to Speedishuttle’s Motion (Response). In its Response, Shuttle Express argues that Speedishuttle’s Motion fails to meet the high standard for dismissing pleadings under Washington Court Rules. Even if the Complaint were defective, Shuttle Express contends that Commission Rules would allow it to correct any defects by filing revised pleadings. Shuttle Express further argues that the Commission has broad authority to grant it relief based on the claims set forth in the Complaint, including both explicit powers to address deceptive, unfair, and unlawful acts, and inherent powers to protect and promote the public interest.

5 No other party filed a response.

DISCUSSION AND DECISION

6 WAC 480-07-380(1)(a) provides that “a party may move to dismiss another party’s case on the asserted basis that the opposing party’s pleading fails to state a claim upon which the Commission may grant relief.” In deciding whether to grant or deny a motion to dismiss, the Commission considers the standards applicable to a motion made under Civil Rule (CR) 12(b)(6) and CR 12(c) of the Washington Superior Court Rules.² As Shuttle Express notes in its response, when the Commission considers a motion to dismiss, the allegations in a complaint and any reasonable inferences therein are accepted as true.³ Accordingly, as Shuttle Express further notes, granting such a motion is only appropriate if it appears, beyond a reasonable doubt, that no facts exist that would justify recovery.⁴

² CR 12(b)(6) addresses motions to dismiss, while CR 12(c) addresses motions for judgment on the pleadings. CR 12(c) applies where the moving party alleges that no genuine issue material fact is in dispute. Because Speedishuttle makes no such allegation, we base our decision only on Speedishuttle’s claim that Shuttle Express has failed to state a claim upon which relief can be granted.

³ Shuttle Express’s Response in Opposition to Motion to Dismiss, ¶6, citing *J.S. v. Village Voice Media Holdings, LLC*, 184 Wn. 2d 95, 100 (2015).

⁴ *Id.*

- 7 RCW 81.04.110 provides, in pertinent part, that “when two or more public service companies ... are engaged in competition ... either may make complaint against the other ... that the rates, charges, rules, regulations, or practices of such other ... are unreasonable, unremunerative, discriminatory, illegal, unfair, intending or tending to oppress the complainant.” The Complaint alleges, among other things, that Speedishuttle is engaging in illegal and unfair practices by providing the same service Shuttle Express provides despite representations to the contrary, and that Speedishuttle is using predatory, unremunerative pricing to provide service at less than cost.
- 8 We find that Shuttle Express’s Complaint – accepting all facts and reasonable inferences as true – makes a number of claims for which the Commission may grant relief under RCW 81.04.110. Speedishuttle’s argument that the Complaint must be dismissed because Speedishuttle’s service, “under law and rule,” is not the same as Shuttle Express’s service ignores the Commission’s express authority under RCW 81.04.110 to revisit that determination if, as Shuttle Express alleges, conditions have changed.⁵ Accordingly, we conclude that Speedishuttle’s Motion should be denied.

ORDER

THE COMMISSION ORDERS THAT Speedishuttle of Washington, LLC d/b/a Speedishuttle Seattle’s Motion to Dismiss Complaint of Shuttle Express, Inc. is DENIED.

DATED at Olympia, Washington, and effective June 28, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.

⁵ RCW 81.04.110 provides that “the Commission shall have the power ... to ... correct the abuse complained of by establishing such uniform rates, charges, rules, regulations, or practices in lieu of those complained of.”