

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application TC-143691

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

SPEEDISHUTTLE WASHINGTON LLC'S
RESPONSE TO SHUTTLE EXPRESS'S
OBJECTION TO AND MOTION TO
STRIKE NOTICE OF BRIEF
ADJUDICATIVE PROCEEDING

1 Applicant Speedishuttle Washington, LLC (“Speedishuttle” or “Applicant”) files the
following Response to Objector Shuttle Express, Inc.’s. (“Shuttle Express,” “Shuttle” or
“SE”) Objection to and Motion to Strike Notice of Brief Adjudicative Proceeding of
December 4, 2014.

I. CHARACTERIZATION OF RATIONALE FOR OBJECTOR’S MOTION

2 Shuttle Express has now moved to strike the Hearing Notice issued by the
Commission in the above proceeding. The Motion by an objector to the forum and
procedure deemed appropriate by the Commission for addressing objections to an auto
transportation application appears to be a matter of first impression. Applicant welcomes
the opportunity to comment in response.

3 Shuttle Express apparently anchors its opposition to the type and kind of forum
selected by the Commission to address the objections of SE and Pacific Northwest
Transportation Services, Inc. d/b/a Capital Aeroporter Airport Shuttle (“Capital Aeroporter”
or “CA”) by asserting that only a conventional hearing as opposed to a brief adjudicative
proceeding “BAP”) under RCW 34.06.482 can/could resolve its due process objections to
the application of Speedishuttle. In so doing, it cites to existing statute and rule of the

Commission in support of its theory that only a full-blown hearing could satisfy its concerns and that its reading of pre-existing legislative intent would preclude resolution of the objectors rights in a BAP.¹

4 Shuttle further defends its premise by deflecting the revised rule provisions at WAC 480-07-610 that default to a brief adjudicative proceeding unless the presiding officer finds based on facts and circumstances that a different process is required by claiming that the State Administrative Procedure Act, RCW 34.05 requires (albeit without reference to whether the rule mandates that the presiding officer make such a finding) that a “regular adjudicative procedure” be convened.

5 The balance of SE’s Motion consists of Shuttle Express’s interpretation of “hearing” “requires” and “facts and circumstances” under its selective interpretation of the APA and WAC 480-07-610. For a number of reasons, Speedishuttle disputes Shuttle Express’s selective rendition of applicable procedural statutes and rules and urges the Commission to deny its Objection/Motion to Strike.

II. ARGUMENT IN OPPOSITION TO OBJECTION TO AND MOTION TO STRIKE PROCEEDING

A. The New Auto Transporter Application Proceeding Rules Intentionally Streamline the Application Process for Efficiency and Reduction of Delays

6 One of Shuttle Express’s initial observations, that “the Commission’s auto transportation rules go further than the procedural rules,”² is hardly surprising. Many administrative agency rules “fill in the gaps” in both general agency procedural rules and legislative enabling statutes and indeed that is a hallmark function of the administrative law process. Numerous Commission industry specific rules such as WAC 480-51 for commercial ferry companies and WAC 480-70 for solid waste collection companies do

¹ Shuttle Express Objection and Motion to Strike at ¶ 2, p. 1.

² *Id.*, at ¶ 3, p. 2.

precisely that by implementing industry-specific procedural requirements for tariffs, schedules, hearing standards and procedures that are only generally outlined in the Commission's omnibus procedural rules at WAC 480-07.³ Public service companies well recognize that industry-specific provisions control over more generalized, universal procedural requirements governing all regulated companies. Thus, in this circumstance, the basic brief adjudicative proceeding procedural rule at WAC 480-07-610 is overlaid by the industry-specific auto transportation rule, as revised, in September, 2013, by WAC 480-30-136(1).

7 That rule adoption was the result of a CR-102 proceeding that began in February, 2013 when an initial set of draft rules was circulated by the Commission and an initial workshop was held in March, 2013, following which a second set of draft rules was circulated, a second set of written comments was received and the rule adoption matter was formally heard before the Commission on Friday, July 26, 2013. One of the focal premises of the proposed rules and commenting parties was directed to the proposed rules' provision of a "streamlined application process."⁴ Indeed, one of the later comments via email and referenced in Appendix B to the CR-102 order was by Capital Aeroporter, a stakeholder and current objector, who indicated that one of its three major points "...in this Docket should be...streamline the certificate authorization process..." and later "... and make more efficient the Certificate authorization process while maintaining stability and sustainability of existing auto transportation services..."⁵

³ See for example, in WAC 480-70, where, under WAC 480-70-131 for temporary certificates for solid waste collection companies, the Commission provides for brief adjudicative proceedings.

⁴ Docket No. TC-121328, General Order R-572, *In re Amending and Adopting Rules in WAC 480-30* (Sept 2013), pp. 9, 10.

⁵ Undated email of James (Jim) Fricke, President/CEO of Capital Aeroporter, included as part of the Docket No. TC-121328 record.

8 Significantly, Shuttle Express for its part does not appear to have opposed or even formally commented on the streamlined application process nor is it noted as attending the formal July 26, 2013 rule adoption hearing or ever submitting second round written comments in response to the formal CR-102 notice on this or any other provision of the proposed rules in June and July of 2013.^{6,7}

9 Finally, Shuttle Express has recently been an Objector to an auto transportation proceeding heard under the revised provisions of WAC 480-30-136 and WAC 480-30-140. In *In re Application TC-140399 of Sani Mahama Maurou d/b/a Seatac Airport 24* whose Initial Order 01 (Sept 2014), clearly reflects the forum as a brief adjudicative proceeding and neither it nor the Orders 03 and 04 by the Commission which ultimately denied SE's request for Administrative Review include any reference to objections by Shuttle Express to a BAP as being an inappropriate procedural forum for airing or evaluating objections to an auto transportation application.

B. Shuttle Express Selectively Carves Out Administrative Procedure Act Provisions and Overlooks Interpretations that Authorize WAC 480-30-136's Processes in Context

10 Thus, Shuttle Express previously failed to formally challenge the BAP/streamlined application process at the formal rulemaking stage or even subsequently, when it participated as an objector in the first application proceeding convened entirely under the revised auto transportation rules, but now announces boldly that "...the APA plainly bars use of a BAP."⁸ The APA does no such thing. RCW 34.05.410(1)(a) clearly authorizes the use of BAPs by agency rules that adopt brief adjudicative proceedings. That statute allows the Commission to use a BAP here because that use does not violate any other provision of

⁶ See Docket No. TC-121328, General Order R-572 ¶ 14, p. 5 and ¶ 18, p. 6.

⁷ Additionally, neither Shuttle Express nor any other interested party has challenged the final rule adoption in Superior Court pursuant to RCW 34.05.570(2).

⁸ Shuttle Express Objection and Motion to Strike, ¶ 5, p. 2.

law, RCW 34.05.482(1)(a); the application notice was duly docketed and noticed to interested parties to participate, RCW 34.05.482(1)(b); the matter is entirely within one or more categories for which the agency has adopted this section, RCW 34.05.482(1)(c); and WAC 480-07-610 **and** the issues and interests involved do not warrant use of [traditional adjudicative] procedures, RCW 34.05.482(1)(d), and (*see again*, Docket No. TC-121328, General Order R-572 and the policy statement and rationale contained therein).

11 While Shuttle Express insists that RCW 34.05.422 prescribes only conventional adjudicative proceedings for auto transportation applications, its selective quotation fails to consider that a specific Commission auto transportation rule, WAC 480-30-136, has expressly adopted standards provided for in RCW 34.05.482 for those proceedings, “unless the presiding officer determines, based on the facts and circumstances presented, that a hearing or different process is required.”

C. The Presiding Officer has Presumably Already Decided that a Brief Adjudicative Proceeding is Appropriate⁹

12 Shuttle Express’s final attempt to overturn the Commission’s interpretation of WAC 480-30-136 in setting this matter for a brief adjudicative proceeding tries to suggest the above-quoted exception in WAC 480-30-136(1), is applicable here. SE’s arguments in this regard are similarly unconvincing. First, it fails to establish, as demonstrated, that the APA, in the context of the Commission’s September, 2013 rule adoption, bars the use of a BAP. Secondly, the fact that, as SE notes, the applicant is an experienced, Hawaii-based airport shuttle service company seeking to provide competing services in many areas presently operated by the objector, which in turn alleges that its operating economies would be impacted, is hardly an unconventional claim of a new entry applicant opponent. None of the

⁹ As reflected in ¶ 4, p. 1 of the Adjudication Notice Shuttle Express here Objects to and Moves to Strike.

factors raised, in passing, by Shuttle singularly, or in the aggregate, establish that a conventional hearing is either required by or consistent with the public interest.

13 Indeed, the familiar sounding objections summarized by Shuttle Express in its Motion go right to the heart of the rule revisions implemented by this Commission in the fall of last year. The cited general Order, R-572, in adopting the revised rules, featured a consistent call both to streamline and “reduce the time and resources spent during the [application] process”¹⁰ and to generally “promote competition in the auto transportation industry.”¹¹

14 Granting Shuttle Express’s Objection and Motion to Strike would contravene those stated objectives. Additionally, the objector here, in a final aside, reveals it seeks to protract and convert the brief adjudicative proceeding process not only by converting it into a conventional, more prolonged application proceeding, but also impliedly advocates that procedures such as a prehearing conference, “discovery and a protective order” should be forthcoming.¹²

15 While claiming its Motion’s goal is more consistent with the due process rights of the objector, Shuttle Express fails to recognize the procedural landscape has shifted and that WAC 480-30-140 has in effect materially changed the respective proof burdens rendering any review of a new application a fundamental determination of whether an applicant is offering the “same service” as that provided by the existing certificate holder. Shuttle Express’s solution to review of these focal issues is to revert to the traditional hearing process the Commission consciously reformed as it weighed and ultimately adopted significant changes to its auto transportation regulations in 2013.

¹⁰ General Order R-572 (Sept 2013), p. 5.

¹¹ *Id.*, p. 3.

¹² Albeit, without acknowledging that discovery in Title 81 RCW matters is typically available only in rate cases. *See, i.e.*, WAC 480-07-400(2)(b)(i).

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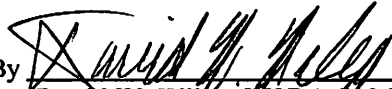
Shuttle Express's Motion ignores those developments including the revised regulatory competitive landscape in this industry and seeks to bring all of this application's participants back to square one in a costly and wasteful regression. Smoothly adapting to changed and streamlined procedures is not easy for any party, including applicants for auto transportation certificates, practitioners or tribunals. However, the Commission has now implemented new rules governing such proceedings and successfully completed its first case under these changed requirements.

17

Shuttle Express's Motion seeks to return to superseded application case protocols, is contrary to rule, overlooks the APA's authorization of special industry procedural rules and ultimately is inconsistent with the public interest. Applicant Speedishuttle therefore asks that the Commission deny the Objection and Motion to Strike of Shuttle Express, Inc.

DATED this 11th day of December, 2014.

RESPECTFULLY SUBMITTED,

By 
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CERTIFICATE OF SERVICE

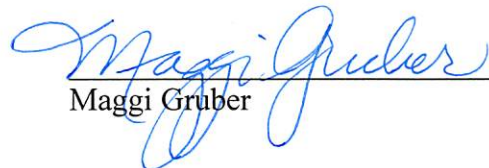
I hereby certify that on December 11, 2014, I caused to be served the original and one (2) copies of the foregoing document to the following address via first class mail, postage prepaid to:

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 certify I have also provided to the Washington Utilities and Transportation Commission’s Secretary an official electronic file containing the foregoing document via email to: records@utc.wa.gov

and an electronic copy via email and first class mail, postage prepaid, to:

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