

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In re the Application 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 <i>(Consolidated)</i>  ORDER 10
SHUTTLE EXPRESS, INC.,  Complainant,  v.  SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE,  Respondent.	DOCKET TC-160516 <i>(Consolidated)</i>  ORDER 03   ORDER DENYING REQUEST TO DEPOSE CECIL MORTON

**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 in Docket TC-143691 (Application Docket). 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.

4 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 (Complaint Docket).

5 On August 2, 2016, the Commission convened a prehearing conference before Administrative Law Judge Rayne Pearson to determine the scope of the issues to be presented in these dockets and to adopt a procedural schedule. On August 4, 2016, the Commission entered Order 06, Initial Order Granting Petition for Rehearing, and Order 07/02, Prehearing Order and Order of Consolidation.<sup>1</sup>

6 On December 1, 2016, Shuttle Express filed a Notice of Deposition of Cecil Morton. Because Speedishuttle did not identify Mr. Morton as a witness in these proceedings, we construe Shuttle Express's Notice of Deposition as a request to depose Cecil Morton (Request for Deposition).<sup>2</sup>

7 On December 12, 2016, Speedishuttle filed a Request for a Deposition Conference to Facilitate Deposition Process and Scheduling. In its Request, Speedishuttle notes that it has not identified Mr. Morton as a witness in this proceeding, and, in any event, he is a resident of Hawaii and unavailable for deposition in the state of Washington.

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<sup>1</sup> On August 24, 2016, Speedishuttle filed a Petition for Administrative Review of Order 06. On September 27, 2016, the Commission entered Order 08, Order Denying Requests for Review of Order 06; Denying Leave to Reply; Granting, in Part, Motion to Strike. On October 4, 2016, Speedishuttle filed a Petition for Reconsideration of Order 08. On November 10, 2016, the Commission entered Order 09, Order Denying Reconsideration and Request for Stay.

<sup>2</sup> The Commission liberally construes filings to effect just results. WAC 480-07-395(4).

Speedishuttle requests a deposition conference with the Administrative Law Judge and requests that the Request for Deposition be denied.

8 On December 13, 2016, Shuttle Express filed a letter responding to multiple discovery issues, including Speedishuttle’s Request for a Deposition Conference.<sup>3</sup> Shuttle Express argues that it should be allowed to depose Mr. Morton because he was a key witness in the Application Docket. Shuttle Express further argues that “an un-assailed precedent in Superior Court for decades is that officers and managing agents can be compelled to attend trial and depositions in Washington merely by notice.”<sup>4</sup>

9 On December 14, 2016, Speedishuttle filed a Discovery Response Update apprising the Commission of the status of several ongoing discovery disputes. Speedishuttle again addressed Shuttle Express’s Request for Deposition, noting that, under Commission rules, Shuttle Express does not have a right to the deposition sought. Rather, the deposition is permissible at the presiding officer’s discretion.

#### DISCUSSION AND DECISION

10 As a preliminary matter, we address Shuttle Express’s claim that it has a right to depose Mr. Morton. First, Shuttle Express contends that Washington superior court precedent allows parties to compel the attendance of officers and managing agents at depositions, and argues that “the Commission’s rule on depositions incorporates CR 30, which in turn implicitly ties into CR 43.”<sup>5</sup> Although WAC 480-07-410(3) references CR 30 of the Washington superior court civil rules “as a guide when conducting depositions,” it neither expressly nor implicitly incorporates that rule – or any other – as Shuttle Express suggests. Moreover, as Shuttle Express is aware, the Commission is neither bound by superior court civil rules nor case law related to their application in the context of superior court proceedings.

11 Shuttle Express next argues that Mr. Morton’s status as a lead witness in the 2015 hearing in the Application Docket should require his participation in these proceedings.

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<sup>3</sup> We also construe Speedishuttle’s December 12, 2016, Request for a Deposition Conference as an objection to Shuttle Express’s request to depose Mr. Morton, and Shuttle Express’s December 13, 2016, letter as a response to that objection.

<sup>4</sup> Shuttle Express Response Letter, p. 2.

<sup>5</sup> *Id.*

We disagree. WAC 480-07-410(1) provides that “a party may depose any person identified by another party as a potential witness.” Speedishuttle has identified Jack Roemer, CFO of Speedishuttle Washington, as its sole witness because he is “the management person most familiar with the company’s operations in Seattle since service began in May 2015.”<sup>6</sup>

12 Although the Commission granted Shuttle Express’s petition to rehear the Application Docket, we did so on a very limited basis. In Order 08 we held that, “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 of authority.”<sup>7</sup> We expressly held that “we will not allow Shuttle Express to re-litigate the BAP.”<sup>8</sup>

13 Accordingly, Shuttle Express does not have an automatic right to cross-examine or depose any and all prior witnesses; rather, approval for the deposition sought requires a finding that Mr. Morton appears to possess information significant to Shuttle Express’s case.<sup>9</sup> We make no such finding. It is not apparent that Mr. Morton, from his position overseeing the company’s operations in Hawaii, possesses any information about the company’s operations in Seattle that Mr. Roemer does not also possess. Accordingly, we deny Shuttle Express’s Request for Deposition.

**THE COMMISSION ORDERS THAT:** The Commission DENIES Shuttle Express, Inc.’s request for deposition of Cecil Morton.

DATED at Olympia, Washington, and effective December 15, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
Administrative Law Judge

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<sup>6</sup> Speedishuttle Request for Deposition Conference, p. 2.

<sup>7</sup> Order 08 ¶ 25.

<sup>8</sup> *Id.* at ¶ 24.

<sup>9</sup> *See* WAC 480-07-410(1).

**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*.**