

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDISHUTTLE WASHINGTON, LLC,

Respondent.

DOCKET NOS. TC-143691 AND TC-160516

SPEEDISHUTTLE WASHINGTON, LLC,

Petitioner and Complainant,

v.

SHUTTLE EXPRESS, INC.,

Respondent.

DOCKET NO. TC-161257

SPEEDISHUTTLE WASHINGTON, LLC'S
MOTION TO CONSOLIDATE DOCKET
NOS. TC-143691 AND TC-160516 WITH
DOCKET NO. TC-161257

I. PRELIMINARY STATEMENT

1 Pursuant to WAC 480-07-320, Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle ("Speedishuttle") hereby moves to consolidate existing Docket Nos. TC-143691 and TC-160516 with Docket No. TC-161257.

II. RELIEF REQUESTED

2 By this Motion, Speedishuttle seeks to consolidate the proceeding on its recently filed Formal Complaint against Shuttle Express, Inc. ("Shuttle Express"), Docket No. TC-161257, with the previously consolidated proceedings involving Speedishuttle's auto transportation application (Docket No. TC-143691) and Shuttle Express' formal complaint against Speedishuttle (Docket No. TC-160516). Speedishuttle moves pursuant to WAC 480-07-320, authorizing the

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Washington Utilities and Transportation Commission (“Commission”) with the authority to consolidate two or more proceedings in which the facts or principles of law are related.

III. STATEMENT OF FACTS

- 3 On May 16, 2016, Shuttle Express filed with the Commission 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”). In that same document Shuttle Express also filed a Formal Complaint against Speedishuttle.
- 4 Shuttle Express makes a number of allegations in its Petition for Rehearing, including that its declining revenues since the Commission entered Order 04 in Docket No. TC-143691 are the result of direct competition by Speedishuttle, that Speedishuttle made misrepresentations regarding its intentions with respect to offering walk-up service, and that Speedishuttle is not providing the service features it represented to the Commission it would offer and which ultimately formed the basis of the “business model” described in Order 04. However, after considerable motion practice and briefing by both sides, the issues now remaining in that proceeding can be distilled into the single issue of whether Speedishuttle is exceeding its operating certificate pursuant to the business model the Commission found was not the “same service” as Shuttle Express. *See* ¶24-25, Order 08, Docket No. TC-143691. The sole issue in Shuttle Express’ Formal Complaint is now limited to the allegation of whether Speedishuttle engages in predatory pricing by assessing fares below cost.

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5 Speedishuttle’s Answer to Shuttle Express’ Petition to Rehear Application (“Answer”) was served June 7, 2016. In its Answer, Speedishuttle asserted multiple affirmative defenses to Shuttle Express’ Petition for Rehearing and Formal Complaint, including that Shuttle Express has unclean hands through its history of violations of its operating authority and various relevant provisions of the Washington Administrative Code.

6 On December 1, 2016, Speedishuttle filed its Formal Complaint against Shuttle Express, alleging that Shuttle Express continued to operate its “rescue service” by providing ride sharing services through vehicles operated by independent contractors in violation of WAC 480-30-213 outside the period of time during which it has been granted exemptions by the WUTC, and that Shuttle Express had paid illegal commissions in violation of RCW 81.28.080.

IV. AUTHORITY AND ARGUMENT

7 WAC 480-07-320 is the Commission’s rule for consolidation of proceedings. Pursuant to that regulation, two or more proceedings may be consolidated if the facts or principles of law are related.

8 While not specifically addressed in WAC 480-07-320, the typical objective of consolidation is to increase efficiency through avoidance of duplication of processes. Here, the economic benefits to the Commission through consolidation of proceedings are considerable, as the parties involved are identical, the issues of fact and law contain significant overlap, the discovery to be conducted addresses similar facts, and a number of the witnesses to be presented at hearing will be the same.

9 Before addressing the above, it is also important to note that the proceedings consolidated in Docket Nos. TC-143691 and TC-160516 remain in the discovery phase. Speedishuttle would acknowledge that some opportunities for increased efficiency would be lost had the hearing already been commenced or was near, but because the consolidated proceedings on Shuttle Express' Petition for Rehearing and Formal Complaint have not yet advanced beyond discovery, there remains numerous logistical opportunities for enhanced efficiency through consolidation.¹

10 Regarding the overlapping issues of fact and law, many of the facts at issue in Speedishuttle's Formal Complaint against Shuttle Express overlap with defenses asserted in response to Shuttle Express' consolidated Petition for Rehearing and Formal Complaint. For example, Speedishuttle asserts that Shuttle Express provides unauthorized commissions both as a defense to Shuttle Express' predatory pricing complaint and as a basis of Speedishuttle's complaint against Shuttle Express. Shuttle Express' alleged unlawful provision of its "rescue service" provides similar overlapping issues of fact and law in that Speedishuttle asserts that use of independent contractors could explain declining revenue and ridership for Shuttle Express (an issue raised by Shuttle Express in its petition for rehearing) while simultaneously forming one basis of

¹ Speedishuttle notes the time for answering the Complaint without objection has now been extended at the Respondent's request to December 30, 2016. Despite this extension, it nevertheless submits this Motion now in order to mitigate any argument that the prior rehearing Petition and Complaint, which were consolidated in Order 07, have now entered "the hearing phase." (See, in contrast, In re: Order M.V.G. No. 1329, *In re Application GA-864, et al of Northwest Unitech, Inc.*, et al (Apr. 1988).) Indeed, Shuttle Express' opening testimony in that original proceeding is not even due until next week and the hearing in this matter is currently set for February 28, 2017. Speedishuttle believes the basis for consolidation: the commonality of issues, witnesses, and most importantly, resource and time-saving for all parties, including staff, significantly outweigh any potential argument occasioned by the consolidation of the Complaint against it by Shuttle Express which ultimately seeks Speedishuttle's exit from the market. Finally, in order to accommodate the interval for ruling on this Motion, Speedishuttle has no objection to and/or supports briefly suspending the pending schedule in this matter with an attendant automatic extension of due dates for the period of time required for the Commission to issue its Order similar to the schedule suspension in June, when it held Shuttle Express' Motion to Strike in abeyance pending the decision on Speedishuttle's Motion to Dismiss. (Notice of June 15, 2016).

Speedishuttle's complaint against Shuttle Express. Consequently, the critical aspects of WAC 480-07-320 are established in this circumstance.

11 Also enhancing the efficiency of these proceedings through consolidation, as noted, is that a number of the witnesses will be the same with respect to the issues in which there is factual overlap between the cases. While that is a somewhat obvious point, should these proceedings remain separate, it would necessitate the calling of these witnesses to testify to the same subject matters on multiple occasions. This would not only require additional time and resources of the Commission, but would also require additional time and expense from the witnesses, which duplication is unnecessary and significantly more costly to the parties.


V. CONCLUSION AND REQUEST FOR RELIEF

12 Consolidation of the proceeding filed in Docket No. TC-161257 with the previously consolidated proceedings in Docket Nos. TC-143691 and TC-160516 will enhance efficiency and economy to both the Commission and the parties which was ostensibly the original basis upon which the initial petition for rehearing and complaint were consolidated in Order 07.² Because the facts and issues of law here significantly overlap, as addressed above, it is fully within the authority of the Commission to order consolidation. Accordingly, Speedishuttle respectfully requests that the Commission do so.

² See Order 07, ¶11.

DATED this 16th day of December, 2016.

RESPECTFULLY SUBMITTED,

By 
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Attorneys for Speedishuttle Washington, LLC
CERTIFICATE OF SERVICE


I hereby certify that on December 16, 2016, I caused to be served the original and three (3) copies of the foregoing documents and attachments to the following address via first class mail:

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 documents and attachments via the WUTC web portal; and served a copy via email and first class mail, postage prepaid, to:

Julian Beattie Assistant Attorney General 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: jbeattie@utc.wa.gov	Greg Kopta Director/Administrative Law Judge 1300 S. Evergreen Park Drive SW P.O. Box 47250 Olympia, WA 98504-7250 (360)-664-1355 gkopta@utc.wa.gov
Brooks Harlow Lukas, Nace, Gutierrez & Sachs, LLP 8300 Greensboro Dr. Suite 1200 McLean, VA 22102 (703) 584-8680 Email: bharlow@fcclaw.com	Rayne Pearson Administrative Law Judge 1300 S. Evergreen Park Drive SW P.O. Box 47250 Olympia, WA 98504-7250 360-664-1136 rpearson@utc.wa.gov

Dated at Seattle, Washington this 16th day of December 2016.


Maggi Gruber
Legal Assistant

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