

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDI SHUTTLE WASHINGTON, LLC

Respondent.

DOCKET NOS.

TC-143691

TC-160516

PETITIONER'S ANSWER IN
OPPOSITION TO
RESPONDENT'S MOTION TO
CONSOLIDATE

INTRODUCTION

- 1 Shuttle Express, Inc. ("Shuttle Express") files this answer in opposition to the Speedishuttle motion to consolidate. Although superficially the motion seems aimed at increased efficiency, that premise is unclear at best. Consolidation could instead lead to delay and obfuscation of the narrow issues the Commission has defined for these dockets. Since the goals of the new complaint of Speedishuttle¹ are imprecise and vague, there may be little obvious harm in consolidation. But if the goal or effect of consolidation is to delay this case, that would be very harmful to Shuttle Express and to the public interest as well.
- 2 As the direct testimony filed herein on December 21st makes clear, what is at stake in these dockets is the ultimate survival of share ride as a public service in King County.

¹ Formal Complaint, Speedshuttle Washington LLC d/b/a Speedishuttle Seattle v. Shuttle Express, Inc. (Dkt. TC-161257, Nov. 30, 2016)("Complaint").

Speedishuttle is losing prodigious amounts of money and will likely never be profitable in its current business model. Worse, Speedishuttle's entry into the market has put Shuttle Express into a loss situation. The current duopoly is not sustainable in the long term. Further delay in resolving these unintended consequences of the Commission's 2015 orders exacerbates the risk that both carriers will fail, leaving the public without a valuable share ride service option to and from SeaTac airport.

DISCUSSION

3 The new Complaint is enigmatic, to say the least. Most telling is that nowhere in the Complaint does Speedishuttle allege that is being—or has been—harmed in any way whatsoever by the alleged actions of Shuttle Express. Indeed, the Complaint seeks no affirmative relief for the direct benefit of Speedishuttle. Rather, it seeks a “cease and desist” order and fines and penalties. In short, it looks like an enforcement action of a type that the Commission normally brings on its own motion. Because Speedishuttle is not being harmed, there is no particular urgency in dealing with its new Complaint.

4 The alleged tie-in to the Petition and Complaint of Shuttle Express (Dockets TC-143691 and TC-160516) is similarly enigmatic. The new Complaint appears to be something of an extension or expansion of the counterclaim that Speedishuttle already asserted in Dockets TC-143691 and TC-160516. At least the counterclaim had alleged harm to Speedishuttle, unlike the new Complaint. Apparently the new Complaint is intended to provide additional support for the “unclean hands” affirmative defense² that Speedishuttle

² Shuttle Express notes that Speedishuttle has never articulated a basis for being able to assert a defense of “unclean hands” to a complaint or petition like that filed by Shuttle Express. Since this answer is to a motion that is procedural only, Shuttle Express will not delve into the substance of that alleged defense. It notes, however, that its deference at this stage should not be construed as an admission that such a defense is cognizable under Commission laws, rules or orders.

has asserted in Dockets TC-143691 and TC-160516. But according to the Motion to Consolidate that affirmative defense is no longer an issue in those dockets.³ Indeed, at the discovery conference on December 28, 2016, the Administrative Law Judge indicated the Commission intends to limit the issues in these dockets to what service Speedishuttle is actually providing and whether the service being provided is what the Commission intended.

5 While there is still some ambiguity in the scope of issues in these dockets, the Commission has made it clear that it wants to keep the issues narrow—narrower than both parties have sought. A grant of consolidation would necessarily broaden the issues, relatively late in the proceeding, beyond what the Commission has ruled as recently as December 28th.⁴ Thus, the overlap and supposed “efficiencies” would be limited to the persons who might or might not testify on the new issues raised by the new Complaint. At the complaint stage, who those persons might be is speculative, at best.

6 In evaluating the supposed “efficiencies” of consolidation, the Commission should consider why—if the allegations of the new Complaint seek no affirmative relief in favor of Speedishuttle and therefore only supplement an already asserted equitable defense—were the allegations not included in the original answer or counterclaim? Or why didn’t Speedishuttle seek to amend? Why can’t the supposedly new facts be offered in support

³ “The issues now remaining in [the Petition] 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. . . . 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.” Motion to Consolidate, ¶ 4. Shuttle Express does not agree the issues are quite so narrow, but these passages point up the enigmatic, almost schizophrenic, nature of the new Complaint and attempt to consolidate.

⁴ The December 28th ruling held that a number of Speedishuttle’s data requests were completely outside the scope of the issues in these dockets as ruled by the Commission repeatedly, and thus denied a motion to compel. Potentially those data requests would suddenly become material if the new Complaint is consolidated, and could be re-served. This scenario is a stark illustration of the broadening of issues that would result.

of the existing affirmative defense that was timely pleaded? The motion raises more questions than answers.

7 Finally, the timing of the new Complaint is suspect and inexplicable. The Complaint is largely a re-hash of Commission enforcement proceedings that are years—even decades—old. The “new” facts (sketchy as they are) appear to be drawn from the two exhibits, which are dated *June 10th and August 1st* of this year. Formal Complaint, Exhs. A and B. Why was any and all action delayed for 4-6 months? Perhaps it was because, consistent with the allegations in the Complaint itself, Speedishuttle cannot even allege that it is being harmed in any way? Regardless, as noted above, if the effect of this 4-6 month delay in filing and consolidation were to be a consequent delay to the hearing and conclusion in these dockets, that would be very prejudicial to Shuttle Express and harmful to the public interest.

8 It is strictly true that the Shuttle Express case is still in discovery. But that discovery has been tortuously slow, taking over four months (and still ongoing) to get complete answers to Shuttle Express’s First Data Requests. And opening testimony has been filed. The Petition and Complaint were filed over seven months ago and the hearing is now just over two months away. There will certainly be at least some disruption to the existing cases, likely additional discovery and perhaps a separate round or cycle of testimony. In the worst case scenario, it could delay the hearing in this case.

9 If the new Complaint alleged some pressing or irreparable ongoing harm, then perhaps it might merit consolidation to expedite the new case. But there is no harm and based on prior and recent rulings in the existing case it appears that all of the issues raised by the

new Complaint would be new issues.⁵ And apart from the dearth of supporting evidence, the new Complaint raises serious questions regarding standing of Speedishuttle to bring what really amounts to an enforcement action. The most efficient way to deal with the new Complaint is not to further complicate an existing case that is close to hearing, but rather to stay the new case until this one is concluded. The resolution of this case may render the new Complaint moot or of no further interest to the Complainant. If not, a motion for summary determination may well dispose of it.

CONCLUSION

10 While it may be a close question, on balance it is preferable to stay the new Complaint and not consolidate it at this late stage. To the extent that the Commission is willing to consider an “unclean hands” defense and the Respondent has actual evidence of the facts alleged in the new Complaint, there is no reason those facts could not be offered in this case in support of the defense⁶—with no need for consolidation. Based on the

⁵ One might also ask why Speedishuttle should be free to expand the issues unilaterally by filing a new Complaint at the last minute while at the same time the Commission is limiting the scope of issues on the Shuttle Express pleading file last May. Whether the Commission defines the issues broadly or narrowly, it should do so consistently and equitably.

⁶ Assuming the Respondent can convince the Commission that “unclean hands” is a cognizable defense to the type of action brought against it.

foregoing and the record in these dockets and Docket TC-161257, the Commission should deny the motion to consolidate. If the Commission is inclined to grant consolidation, it should do so only on the condition that it not affect the schedule in these dockets and be prepared to sever the cases again if the schedule becomes threatened.

Respectfully submitted this 29th day of December, 2016.

LUKAS, NACE, GUTIERREZ &
SACHS, LLP



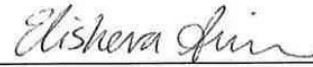
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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2016, I served a copy the foregoing document via email, with a copy via first class mail, postage prepaid, to:

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Dated at McLean, Virginia this 29th day of December, 2016.



Elisheva Simon
Legal Assistant