

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

TC-161257

PETITION FOR QUALIFIED  
LIMITED REVIEW OF ORDER  
12/05/02

1 Pursuant to WAC 480-07-825, Petitioner/Complainant Shuttle Express hereby petitions for a qualified limited review<sup>1</sup> of Order 12/05/02 granting the motion to consolidate of Speedishuttle of Washington, LLC. This petition is limited to the portion of the order that effectively delays the current hearing date of February 28, 2017 to as late as this May 15th, which would be one whole year after this case was filed by Shuttle Express alleging significant and ongoing harm to it and the public interest.

2 The continuance ordered last week is not consistent with the Commission's determination in Order 08 to protect "Shuttle Express' interest in a prompt resolution of its petition and complaint." See Order 08, ¶ 19. There, Speedishuttle had affirmatively requested a stay. In contrast, in the motion to consolidate and answers thereto no party had even asked for a delay of the hearing. Speedishuttle did not raise the issue at all in its Motion.<sup>2</sup> Staff

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<sup>1</sup> Shuttle Express does not seek to overturn the consolidation, unless the Commission concludes that the current hearing schedule is inherently incompatible with consolidation.

<sup>2</sup> Motion to Consolidate, Speedshuttle Washington LLC d/b/a Speedishuttle Seattle v. Shuttle Express, Inc. (Dkt. TC-161257, Dec. 16, 2016)("Motion").

only suggested that *if* consolidation were granted the parties could take up scheduling issues “at an appropriate time” in a prehearing conference.<sup>3</sup> And Shuttle Express opposed consolidation, but strongly urged that if it were granted it should be conditioned on no delay, due to the irreparable harm to it and the public that delay will cause.<sup>4</sup>

3 Speedishuttle has used multiple procedural initiatives to delay or avoid altogether an evidentiary hearing in this case, to an extraordinary extent.<sup>5</sup> Speedishuttle knows that discovery and a hearing will reveal that it “has not determined how to implement [its service] plan consistent with its regulatory obligations....” *See* Order 08, ¶ 16.<sup>6</sup> Moreover, it knows that the airport ground transportation business is seasonal. The profitability of an entire year usually depends on five peak travel months, beginning in May. Accordingly, if Speedishuttle is not required to comply with the business plan it sold to the Commission in its application—by the summer of 2017—the consequences may well be dire.

4 As the axiom goes, “justice delayed is justice denied.” When this case finally goes to hearing, the evidence will show that Shuttle Express has lost almost 60% of its prior

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<sup>3</sup> Staff Response to Speedishuttle's Motion to Consolidate, Speedshuttle Washington LLC d/b/a Speedishuttle Seattle v. Shuttle Express, Inc. (Dkt. TC-161257, Dec. 29, 2016).

<sup>4</sup> Respondent's Answer to Formal Complaint, Speedshuttle Washington LLC d/b/a Speedishuttle Seattle v. Shuttle Express, Inc. (Dkt. TC-161257, Dec. 29, 2016).

<sup>5</sup> *See, e.g.*, Respondent's Motion to Dismiss Compliant, Shuttle Express Inc. v. Speedshuttle Washington LLC d/b/a Speedishuttle Seattle (Dkt. TC-160516, June 7, 2016); Respondent's Petition for Administrative Review, Shuttle Express Inc. v. Speedshuttle Washington LLC d/b/a Speedishuttle Seattle (Dkt. TC-143691, August 24, 2016); Respondent's Petition for Leave to File Reply, Shuttle Express Inc. v. Speedshuttle Washington LLC d/b/a Speedishuttle Seattle (Dkt. TC-143691, Sept. 12, 2016); Respondent's Petition for Reconsideration of Order 08 (Dkt. TC-143691, Oct. 4, 2016); Speedishuttle Washington LLC's Motion for Summary Determination of Shuttle Express's Formal Complaint (Dec. 21, 2016)

<sup>6</sup> Respondent has essentially admitted as much more than once in its filing in this case last year. *See, e.g.*, Speedishuttle Washington LLC's Petition for Reconsideration of Order 08 (“Speedishuttle ought to be afforded a reasonable interval in which to evaluate whether it wishes to remain in this more circumscribed market or effectuate an orderly exit.”). And Complainant's testimony conclusively established that Speedishuttle's actual service is functionally identical to that of Shuttle Express. Opening Testimony of Petitioner by Paul Kajanoff, (Dkt. TC-143691, et al., Dec. 21, 2016)

reservations to downtown Seattle hotels and piers as a result of Speedishuttle's entry.<sup>7</sup> Evidence will further show that both Speedishuttle and Shuttle Express are now losing money and their combined passenger counts are not increasing, but continuing to decline.<sup>8</sup> And the evidence will show there consequently is a real risk that either or both of the two carriers will fail and have to exit the market, because in hindsight it is clear that the market cannot support two carriers providing the exact same service.<sup>9</sup>

5 The Order's conclusion that Shuttle Express will not be harmed by the delay in the hearing is neither supported nor supportable. Indeed, the Petitioner's pre-filed testimony in this case—while not yet admitted—is replete with evidence of the ongoing harm.<sup>10</sup> Speedishuttle has now been able to duplicate the Shuttle Express service and take nearly all its passengers from Shuttle Express for the summer travel seasons of 2015 and 2016. Indeed, it is difficult to conceive how the loss of about 45% to 60% of Shuttle Express's prior passengers to Speedishuttle for a third consecutive summer could **not** be harmful.

6 To the contrary, as the proffered testimony shows, the harm is so great that SeaTac travelers are facing a substantial risk of the loss of share ride van service to and from the airport. This would be an irreparable harm to the public interest, as hundreds of

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<sup>7</sup> *Id.* (P. Kajanoff Testimony), at 13. It is true that this evidence has not yet been admitted or verified, as Speedishuttle pointed out in its letter filing of December 29 2016. But neither were any of its allegations verified, as pointed out in the Shuttle Express letter filing of December 30, 2016. More importantly, while the facts remain disputed and subject to the Commission's ultimate findings and rulings, the very survival of share ride as a public service is most definitely at issue in these cases. To blithely assume that a further two to three month delay will not cause harm puts the public interest at great risk and is, in itself, and an unwarranted assumption. Moreover, all of the pre-filed testimony will be verified tomorrow, in conjunction with the Shuttle Express answer to be filed in opposition to the pending motion for summary determination.

<sup>8</sup> *Id.*, (P. Kajanoff Testimony).

<sup>9</sup> Opening Testimony of Petitioner by Don Wood at 28-30 (Dkt. TC-143691, et al., Dec. 21, 2016);

<sup>10</sup> Had there actually been a motion or request for a continuance pending Shuttle Express could have verified the contents of the pre-filed testimony by declaration or affidavit. But the determination to continue the case despite the absence of a pending request—while a longer term concern—came as a surprise in the order. Again, all of the pre-filed testimony will be verified tomorrow, making the issue moot, if there is one.

thousands of passengers today still rely on the service throughout King County.<sup>11</sup>

7 The loss of up to 60% of Shuttle Express’s 2017 summer business to Speedishuttle—which was never contemplated by the Commission but will almost certainly occur if the hearing is delayed to May—most definitely harms Shuttle Express. Further, it risks great and irreparable harm to the public interest because it puts share ride service itself at risk.<sup>12</sup> In contrast, Speedishuttle’s new complaint—the cause of the delay and this potentially irreparable harm—does not even allege that it has been, is being, or even will be harmed in any way by the alleged actions complained of.

### **CONCLUSION**

8 To protect the public interest and be consistent with Order 08, the Commission should modify the portions of Order 12/05/02 that continued the hearing. The parties should attempt to agree on any pre-hearing procedural changes or additions that may be necessitated by the consolidation, but within the constraints of the current February 28<sup>th</sup>

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<sup>11</sup> The Commission may also wish to consider the possibility of collateral harm to the public in Pierce and Snohomish counties. Shuttle Express does not bifurcate these counties operationally, however it may be forced to do so if relief is not granted.

<sup>12</sup> Since Speedishuttle also is losing money it is hard to see how delay can benefit it in the long term, either.

hearing date. If the Commission finds that a hearing delay is inevitable because of the consolidation, then it may wish to consider reversing the consolidation as well.<sup>13</sup>

Respectfully submitted this 9<sup>th</sup> day of January, 2017.

LUKAS, NACE, GUTIERREZ &  
SACHS, LLP



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<sup>13</sup> Because Speedishuttle's new complaint does not allege that it is being harmed, the only negative consequence of deferring that case to a separate track is some potential process inefficiency. But that harm pales in comparison to the potential harms of further delay of the Shuttle Express petition and complaint.

## CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2017, I served a copy the foregoing document via email, with a copy via first class mail, postage prepaid, to:

<p>Julian Beattie 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: <a href="mailto:jbeattie@utc.wa.gov">jbeattie@utc.wa.gov</a></p>	<p>David W. Wiley Williams Kastner Two Union Square 601 Union Street, Suite 4100 Seattle, WA 98101 206-233-2895 Email: <a href="mailto:dwiley@williamskastner.com">dwiley@williamskastner.com</a></p>
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Dated at McLean, Virginia this 9th day of January, 2017.



Elisheva Simon  
Legal Assistant