

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,  Petitioner and Complainant,  v.  SPEEDISHUTTLE WASHINGTON, LLC,  Respondent.	DOCKET NOS. TC-143691, TC-160516 & TC-161257  ANSWER OF SPEEDISHUTTLE TO PETITION FOR LIMITED INTERLOCUTORY REVIEW OF ORDERS 12/05/02
SPEEDISHUTTLE WASHINGTON LLC d/b/a SPEEDISHUTTLE SEATTLE,  Complainant,  v.  SHUTTLE EXPRESS, INC.,  Respondent.	

1 Pursuant to WAC 480-07-810(3), Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle  
("Speedishuttle") responds to Petitioner/Complainant's Petition for Qualified Limited Review of  
Orders 12/05/02 filed on January 9, 2017, as follows:

**I. SUMMARY OF RESPONSE**

2 Shuttle Express challenges the realization of the delay in the procedural schedule contained in  
Order 12/05/02, Granting Motion to Consolidate on ostensibly two bases: 1) it was not requested,  
and 2) it will cause additional harm to Shuttle Express. As will be shown by Speedishuttle, both  
the consolidation and the necessary, routine procedural delay are fully appropriate under the  
circumstances. Shuttle Express failed to demonstrate any harm from the brief delay and its  
Petition should be denied.

ANSWER OF SPEEDISHUTTLE TO PETITION FOR LIMITED  
INTERLOCUTORY REVIEW OF ORDERS 12/05/02 - 1

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## II. ARGUMENT

### A. Shuttle Express can hardly claim surprise or prejudice, while a short delay will increase efficiency

3 Shuttle Express appears to complain that the Administrative Law Judge somehow committed error in granting the Speedishuttle's Motion to Consolidate by providing an extension of the procedural schedule without first requiring the filing of a Motion for Continuance. This contention fails to acknowledge that some delay is inherently necessary through the consolidation of a new complaint proceeding with the existing rehearing and complaint proceedings, and that the balancing of duplication of proceedings against any potential harm in a brief delay was addressed as well by both Commission Staff and Shuttle Express in their responses to Speedishuttle's Motion to Consolidate.

4 Speedishuttle also originally noted in footnote 1 to its Motion its lack of objection to and/or support for suspending the pending schedule in this matter. That offer obviously necessitated the time for the Commission to rule on its Motion which had been extended by Shuttle Express over Speedishuttle's objections. Staff supported the Motion to Consolidate and in so doing, succinctly anticipated Shuttle Express' likely objection to consolidation on the basis that it "would necessitate another" reworking of the procedural schedule in existing consolidated dockets TC-143691 and TC-160516. "That is a valid concern but one that should yield to the interest of avoiding the multiplicity of hearings. Delay, in Staff's view, is better than duplication."<sup>1</sup>

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<sup>1</sup> Commission Staff's Response, ¶4.

5 Shuttle Express stridently argued against the inherent delay posed by consolidation: “[t]here 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.”<sup>2</sup> Shuttle Express is hardly surprised by this reality. Its primary argument against consolidation was to reiterate the same unfounded and conclusory point it has raised from the beginning of this proceeding, and which now unquestionably exceeds the scope of this proceeding as previously determined by the Commission in Order 08—that Shuttle Express has lost customers (and thereby money) to Speedishuttle and that if Speedishuttle is not put out of business through this proceeding by summer of 2017, Shuttle Express will likely lose even more customers and money.<sup>3</sup>

6 Thus, any concerns about the need for a resetting of the procedural schedule were already considered and addressed by Shuttle Express prior to the issuance of Order 12/05/02, and it is disingenuous at a minimum to now claim it is harmed by any perceived procedural shortcoming of that order.

7 Clearly, pursuant to WAC 480-07-400(2)(b)(iii), Speedishuttle is entitled to propound discovery to the Respondent Shuttle Express on its new Complaint allegations. Moreover, under the administrative law judge’s ruling of December 28, 2016, challenged data requests to Shuttle Express have effectively now been deflected to the Complaint proceeding and Speedishuttle would not only reissue those data requests but would be expected to develop additional data

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<sup>2</sup> Petitioner’s Answer in Opposition to Respondent’s Motion to Consolidate, ¶8.

<sup>3</sup> Shuttle Express, without adequate (or analytically accurate) foundation or admitted evidence, actually now goes so far as to claim that both Shuttle Express and Speedishuttle will perish, along with the entire shared ride industry in King County, if any further delay is allowed. “The sky is falling” is not a resonant or otherwise compelling argument here.

requests based on responses to those submitted in its Complaint proceeding all of which must now be factored into the case schedule.

8 Moreover, in the typical case, the Commission could be expected to convene a prehearing conference on the Complaint pursuant to WAC 480-07-430 to address various procedural issues in the now consolidated case. It understands in the subject consolidation Order however that a prehearing conference may not be necessary due to the similarity of issues and witnesses in the consolidated hearing, but that consolidation, as is obvious, again includes requisite extensions of time in order to afford due process to the Complainant, Speedishuttle, to accommodate discovery of any additional relevant evidence supporting the allegations in the Complaint.<sup>4</sup>

9 As it presently stands, Speedishuttle is apparently expected by Shuttle Express to file response testimony without first obtaining discovery on its complaint which is unquestionably a deprivation of basic due process. The short delay anticipated by the Administrative Law Judge to mid-May for now a two-day hearing will increase efficiency as well by permitting Speedishuttle to engage in discovery and file testimony responding to Shuttle Express and in favor of its own complaint simultaneously.

**B. Shuttle Express' latest argument is based on unfounded and unsupported allegations**

10 As noted, in vehemently opposing any continuance, Shuttle Express also once again seeks to litigate its "market sustainability" argument relying upon its prefiled (but not admitted) testimonial evidence to support its claim. However, Shuttle Express' conclusory statements

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<sup>4</sup> Moreover, under the current case schedule, Speedishuttle's response testimony is due a week from tomorrow. It obviously cannot prepare that testimony now pending clarification of the extended hearing schedule pursuant to the Order of Consolidation and the joinder of the issues in the rehearing and complaint(s) proceedings.

regarding the future of shared ride service in Washington are irrelevant to this proceeding. They amount to a collateral attack on the Commission's previous orders in this proceeding and are based upon unfounded and inaccurate conclusions about the cause of Shuttle Express' decline in the airport ground transportation market, and the reality of the effect of both regulated and unregulated competition and should not be considered in support of the petition for review at issue.

11 Although Shuttle Express has repeatedly asserted it is entitled to a natural monopoly in the King county auto transportation market and trumpeted its rhetoric about insufficient market capacity for multiple service providers throughout this proceeding, these comments are inappropriately made, erroneously calibrated and exceed the scope of this consolidated proceeding following Order 08 as further addressed by the Administrative Law Judge. To remind Shuttle Express, at the hearing on September 27, 2016, the Administrative Law Judge articulated the following:

...I want to clarify the scope of the proceeding at this point, and just make it clear that it's limited to, number one, whether SpeediShuttle is providing the service the Commission authorized it to provide consistent with the business model approved by the Commission in Docket TC-143691, and whether SpeediShuttle is providing service below cost as alleged in the complaint in Docket TC-160516. And those are the only issues that we're looking at.<sup>5</sup>

Shuttle Express' repeated assertions about its declining market share, simply have no bearing on the narrowed scope of the rehearing/complaint proceeding.

12 Not only do these recurring arguments seek to resuscitate purely irrelevant issues, more fundamentally, they also collaterally attack the unappealed 2013 rulemaking by which entry

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<sup>5</sup> Transcript of Telephonic Hearing, Volume III, pages 168-199, at p. 185: 6-14.

under WAC 480-30 et seq. was dramatically revised by the Commission.<sup>6</sup> Shuttle Express' contention about the future of shared ride service ignores and/or dismisses the Commission's 2013 rulemaking, which supported increased competition and rejected the anti-competitive stances of industry incumbents like Shuttle Express, finding:

[t]he Commission disputes the assumption on the part of some companies that markets have a fixed service saturation point that has already been reached in all markets, or that a company does not have the ability or responsibility to adapt its service and business model to a changing competitive market.<sup>7</sup>

Shuttle Express' and other incumbents draconian predictions about the market were thus previously considered and rejected by the Commission, as were Shuttle Express' attempts to claim that it is legally entitled to monopoly status, rather than adapt to fully serving the market through changes to service offerings and various economies of scale and market orientation.

13 Finally, Shuttle Express' transparent attempts to force Speedishuttle's hasty retreat from the market are again founded upon the premise that it will otherwise suffer irreparable harm. Irreparable harm is not something which must be simply accepted if pled or attested to. Other than decrying a pattern of revenue loss which was precipitated well before Speedishuttle's arrival and indeed likely even before the 2013 Rulemaking, Shuttle Express cannot establish its entitlement to a "sinecure" which was never granted it in the first place.

14 Assuming that somehow the Commission deigns to consider this recurring argument here which has been alleged in the original Petition for Rehearing, prominently in Shuttle Express' Opposition to the Request for Stay on October 21, 2016 and repeatedly in the prefiled testimony

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<sup>6</sup> General Order R-572, Docket No. TC-121328, (Aug 2013), ("The 2013 Rulemaking").

<sup>7</sup> *Id.* at ¶42.

it cites and weaves throughout its current pleading opposing continuance in the consolidated docket, Speedishuttle now offers, without waiving its right to object to the admissibility of similar information and testimony at hearing, the Declaration of Jack Roemer in response and support of this Answer.

15 As set forth in Mr. Roemer's declaration, which is attached hereto and incorporated by reference as if set forth herein, Shuttle Express cannot establish that any particular component of its apparent financial losses is directly attributable to Speedishuttle's operations. In fact, as noted, Shuttle Express' passenger decline predated Speedishuttle's operations in Washington, despite increases in overall ground transportation trips to and from SeaTac International Airport during the same period and which are expected to continue in the future. Consequently, multiple other explanations and hypotheses exist for Shuttle Express' declining passenger counts that cannot be ruled out as an explanation, including competition from unregulated transportation companies like Uber and Lyft, parking lots, light rail, black cars et al.

### III. CONCLUSION

16 Shuttle Express originally argued against consolidation of Speedishuttle's Formal Complaint on the basis that it would lead to delay in the previously consolidated proceedings and that such delay would constitute irreparable harm to Shuttle Express such that the increased efficiency in consolidating proceedings would be outweighed by the harm to it. This argument was appropriately considered and rejected by the Administrative Law Judge.

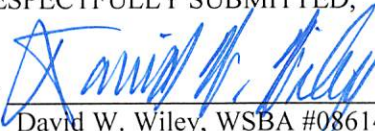
17 Shuttle Express now complains on Petition that procedural delay was not suggested and repeats its familiar claims of predetermined harm. Neither the Administrative Law Judge, this

Commission, nor the King County Superior Court have yet conclusively resolved the rehearing issue that Speedishuttle's unrestricted certificate may be retroactively restricted, or that it should have ever been implicitly limited as Shuttle Express argued in its Petition for Administrative Review of Order 02 which the Commission rejected in Order 04. For its part, Speedishuttle continues to contend its service is exactly what the Commission envisioned when it modified the entry rules in 2013. Thus, there is no established harm in the brief procedural delay to Shuttle Express, which Shuttle Express itself also preemptively anticipated. The modest delay occasioned by consolidation and a resetting of the procedural schedule is fully warranted here in order to increase the efficiency of this proceeding, precisely the goal of the Commission's consolidation rule at WAC 480-07-320.

DATED this 10<sup>th</sup> day of January, 2017.

RESPECTFULLY SUBMITTED,

By



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**CERTIFICATE OF SERVICE**

I hereby certify that on January 10, 2017, I caused to be served the original and three (3) copies of the foregoing documents to the following address via first class mail:

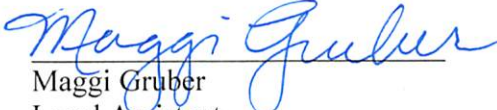
Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
Attn.: Records Center  
P.O. Box 47250  
1300 S. Evergreen Park Dr. SW  
Olympia, WA 98504-7250

I further certify that I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via the WUTC web portal; and

served a copy via email and/or first class mail, postage prepaid, to:

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Dated at Seattle, Washington this 10<sup>th</sup> day of January, 2017.

  
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