

**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 14
SHUTTLE EXPRESS, INC., Complainant, v. SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE, Respondent.	DOCKET TC-160516 <i>(Consolidated)</i> ORDER 07
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE, Complainant, v. SHUTTLE EXPRESS, INC., Respondent.	DOCKET TC-161257 <i>(Consolidated)</i> ORDER 04 ORDER DENYING MOTION FOR SUMMARY DETERMINATION

BACKGROUND

- 1 On March 30, 2015, the Washington Utilities and Transportation Commission (Commission) entered a final order granting the application of Speedishuttle of Washington, LLC d/b/a Speedishuttle Seattle (Speedishuttle) for a certificate of public

convenience and necessity to operate as an auto transportation company in Docket TC-143691.

- 2 On May 16, 2016, Shuttle Express, Inc. (Shuttle Express) filed a Petition for Rehearing of Matters in Docket TC-143691 and a formal complaint against Speedishuttle in Docket TC-160516. 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.¹
- 3 On December 21, 2016, Speedishuttle filed a Motion for Summary Determination of Shuttle Express's Formal Complaint (Motion). In its Motion, Speedishuttle argues that the "lone remaining issue"² in Shuttle Express's formal complaint is whether Speedishuttle is providing service at fares below cost, and that Shuttle Express cannot demonstrate, as a matter of law, that Speedishuttle's tariff practices constitute predatory pricing. Because the applicable statutes do not contain the phrase "predatory pricing," Speedishuttle argues that federal antitrust laws and related case law should guide the Commission's decision. Finally, Speedishuttle argues that no claim for relief exists for providing service at fares below cost.
- 4 On January 10, 2017, Shuttle Express filed an answer to Speedishuttle's Motion. Shuttle Express argues that Speedishuttle's attempt to narrow Shuttle Express's complaint to the single issue of predatory pricing under federal antitrust laws should be rejected because below-cost pricing is only one element of its complaint. Shuttle Express further argues that below-cost pricing is governed by public service laws and the public interest, not federal antitrust laws.

DISCUSSION AND DECISION

- 5 We deny Speedishuttle's Motion. Speedishuttle seeks to dismiss Shuttle Express's complaint in its entirety, claiming that the Commission previously limited it to the single issue of "predatory pricing." Speedishuttle relies on our decision in Order 08, arguing that because the Commission held it would not permit Shuttle Express to "relitigate the

¹ On December 1, 2016, Speedishuttle filed with the Commission a formal complaint against Shuttle Express, and, on December 16, filed a Motion to Consolidate its complaint with the proceedings in Dockets TC-143691 and TC-160516. On January 5, 2017, the Commission entered Order 12/05/02, Order Granting Motion to Consolidate.

² Speedishuttle's Motion for Summary Determination, ¶ 6.

BAP,” we summarily dismissed all of the allegations in the complaint other than whether Speedishuttle provides service below cost. Speedishuttle completely ignores, however, that we provided the following guidance in the very next paragraph:

[T]he 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 ... To the extent that the allegations in the Petition for Rehearing in Docket TC-143691 overlap with the allegations in Shuttle Express’ complaint in Docket TC-160516, the issue will be similarly limited.³

Thus, the Commission acknowledged in Order 08 that Shuttle Express’ complaint includes allegations related to the service Speedishuttle currently provides, and in no way limited the issues solely to whether Speedishuttle is providing service at fares below cost.⁴ Accordingly, Speedishuttle’s Motion fails to address the complaint as a whole.

6 Even if we construe Speedishuttle’s Motion as a motion for partial summary determination, we reach the same conclusion. WAC 480-07-380 provides that a party may move for summary determination of one or more issues if the pleadings filed in the proceeding, taken together with any properly admissible evidence, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

7 As an initial matter, Speedishuttle’s argument that federal antitrust laws should guide our decision is flawed. Shuttle Express’ claim that Speedishuttle is providing service below cost is made pursuant to RCW 81.04.110 and RCW 81.28.010. The former allows the Commission to take action upon complaint if a carrier’s “rates, charges, rules, regulations, or practices” are “unreasonable, unremunerative, discriminatory, illegal, unfair, intending or tending to oppress the complainant,” and the latter requires a carrier’s rates to be “just, fair, reasonable, and sufficient.” These statutes grant the Commission

³ Order 08 ¶ 25.

⁴ Moreover, the Administrative Law Judge did not, as Speedishuttle argues, bifurcate the issues in the original consolidated dockets when she addressed the scope of this proceeding at the discovery hearing on September 27, 2016. As Shuttle Express notes in its Answer, each of the Commission’s previous orders and rulings accepts a broader range of issues than only below-cost pricing.

broad authority to consider evidence proffered by a complaining party that demonstrates a competitor's rates are generating little or no income, which is precisely what Shuttle Express alleges. Although Speedishuttle is correct that neither statute expressly refers to "predatory pricing" or "fares below cost," those concepts are generally contemplated by the statutory language. Speedishuttle's Motion therefore fails to demonstrate that it is entitled to judgment under the applicable laws.

8 Nor does Speedishuttle's Motion show that there is no genuine issue as to any material fact. Because many factual issues related to Speedishuttle's cost of providing service remain in dispute, it would be premature for the Commission to make a determination about whether Speedishuttle's rates are unremunerative or otherwise violate Commission laws and rules at this juncture.

9 Accordingly, we find that Speedishuttle's Motion fails to show that there is no genuine issue as to any material fact and that Speedishuttle is entitled to judgment as a matter of law, and conclude that the Motion should be denied.

ORDER

THE COMMISSION ORDERS THAT Speedishuttle of Washington, LLC d/b/a Speedishuttle Seattle's Motion for Summary Determination is DENIED.

DATED at Olympia, Washington, and effective January 18, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

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.