

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-161527

PETITIONER’S ANSWER IN
OPPOSITION TO MOTION IN
LIMINE (ORAL ARGUMENT
CONDITIONALLY
REQUESTED)

INTRODUCTION

- 1 Shuttle Express, Inc. files this answer in opposition to the Speedishuttle of Washington, LLC Motion in Limine (“Motion”). Superficially, Respondent does not seem to understand what this case is about. Or, more likely, it fully understands the case and knows that when the hearing is finally held and all the evidence is admitted, Respondent will be in trouble. Whatever the reason, Respondent has cluttered this docket with more procedural efforts to avoid and delay a merits hearing than undersigned counsel has ever seen at the Commission, even in major multi-billion dollar utility cases. The Motion is yet another effort to avoid key public interest and public policy issues. In so doing it would overturn several prior Commission orders sub silentio.
- 2 Shuttle Express shares, to a great extent, the Commission’s frustration with the “constant flurry” of motions and petitions in this case. Respondent has attempted to delay or avoid

a merits hearing not once, but at least eight times.¹ Now, after eight-plus failed attempts to avoid and/or delay indefinitely a merits hearing, the instant Motion seeks to gut the factual support for Shuttle Express's case. The testimony would go from about 72 pages to 16 total pages. In other words, over 75% of the factual support for the Shuttle Express rehearing and complaint would be eliminated. Eliminating 75% of the evidence in this case would serve the interests of Speedishuttle. But it would ignore the public interest, which is contrary to the Commission's primary statutory obligation.²

3 Speedishuttle valiantly tries to avoid the public interest issues in this case.³ But they will not go away. Implicitly, the Motion invites Commission error, by effectively seeking a ruling that would determine the outcome of the case in advance of the hearing, by precluding admission of nearly all the relevant testimony. Inevitably (and ironically), in post-hearing briefs Respondent could then argue that the record lacked sufficient evidence to support the relief that Shuttle Express is seeking.

4 Respondent's litigation tactics should be recognized for what they are and soundly rejected. The Commission should take in the evidence first, and then make a decision based on that evidence *after* post-hearing briefing. In a case that is all about public

¹ And this does not even count the months of discovery delays and need for repeated motions to compel and discovery conferences. Nor does it count Speedishuttle's premature petition for judicial review of Order 08. First, Respondent opposed rehearing altogether. Speedishuttle Answer, TC-143691, June 7, 2016. Then it moved to dismiss the Complaint. Speedishuttle Motion, TC-160516, June 7, 2016. Next it tried to overturn the order granting rehearing. Speedishuttle Petition, TC-143691, Aug. 24, 2016. As part of that, it sought to file a reply that the Commission rejected. Speedishuttle Petition, TC-143691, Sept. 12, 2016. And still facing the clearly uncomfortable prospect of a rehearing Respondent filed for a petition for reconsideration of Order 08. Speedishuttle Petition, TC-143691, Oct. 4, 2016. That petition requested an indefinite stay of the case. *Id.* After those were denied, Respondent again sought dismissal of the Complaint by summary determination. Speedishuttle Motion, TC-143691, Dec. 21, 2016. And it filed a complaint of its own that alleged no harm, but once again has delayed the merits hearing by over two months. Speedishuttle Complaint, TC-161257, Dec. 1, 2016.

² See, e.g., RCW 80.01.040.

³ As well as the rights of Shuttle Express under the public service laws.

interest and policy, the Commission needs a broad range of evidence to make the right decision, not merely the skeleton of a case that Speedishuttle would offer.

5 Finally, the Respondent has failed to even articulate, let alone meet, the prerequisites for an order in limine under Washington law. Its Motion must be denied.

DISCUSSION

I. The Respondent Has Failed to Articulate the Two Key Prerequisites for an Order in Limine.

6 The Respondent notes that WAC 480-07-375(1)(d) mentions motions in limine.⁴ But WAC Ch. 480-07 nowhere articulates or provides the standards for granting a motion in limine. However, there is a long line of Washington court cases⁵ on the prerequisites for entry of an order in limine. Respondent does not cite or discuss a single one of them.

Had it done so, it would be clear that such an order is not appropriate here.

7 Review of a panoply of Washington cases reveals that orders in limine are generally used in jury trials, not judge trials. The reason is that the entire purpose of a motion in limine is to prevent even the existence of highly prejudice and irrelevant evidence from being exposed to a jury.⁶ *See, e.g., State v. Kelly*, 102 Wn.2d 188, 193 (1984) (“The purpose of a motion in limine is to dispose of legal matters so counsel will not be forced to make comments in the presence of the jury which might prejudice his presentation. [quoting *State v. Evans*, 96 Wn.2d 119, 123 (1981)]”). Accordingly, the evidence to be excluded

⁴ And it identifies Evidence Rules 401-403, which are loosely followed by the Commission, as the foundation for motions in limine in Washington.

⁵ Petitioner did not locate any Commission orders articulating the grounds for it to grant a motion in limine in an extensive Westlaw search and does not believe that any exist.

⁶ Very often they are used in criminal cases to exclude evidence of prior convictions or other bad acts by the defendant, as in the following case of *State v. Kelly* (murder trial).

must be shown to be clearly inadmissible and highly prejudicial.

8 The Washington Supreme Court, in the leading case of *Fenimore v. Donald M. Drake Constr. Co.*, 87 Wn.2d 85, 92, 549 P.2d 483 (1976), established the two substantive prerequisites to granting exclusion in limine. That case, like most, was tried to a jury.

The moving party must show both clear inadmissibility and great prejudice:

[A] motion [must] describe[] the evidence which is sought to be excluded with sufficient specificity to enable the trial court to determine that it is clearly inadmissible under the issues as drawn or which may develop during the trial, and if the evidence is so prejudicial in its nature that the moving party should be spared the necessity of calling attention to it by objecting when it is offered during the trial.

87 Wn.2d 92 (emphasis added); *see also*, *Douglas v. Freeman*, 117 Wash. 2d 242, 254–56, 814 P.2d 1160, 1167–68 (1991); *Gammon v. Clark Equip. Co.*, 38 Wash. App. 274, 286–87, 686 P.2d 1102, 1110 (1984), *aff'd*, 104 Wash. 2d 613, 707 P.2d 685 (1985).

9 Respondent’s Motion fails to meet either of the prerequisites for excluding the Shuttle Express testimony.

II. The Motion Neither Discusses Nor Demonstrates the Type of Prejudice Needed to Support an Order in Limine.

10 Respondent did not even discuss in its Motion how or why the evidence proffered is so prejudicial that it should not even be called to the attention of the trier of fact. Indeed, it is difficult to comprehend how the hypothetical (but not articulated) prejudice would be avoided, since this is not a jury case. The trier of fact is the same entity that must review all of the evidence anyway before it could possibly exclude that evidence.

11 Respondent may feel its argument that it has to file responsive testimony is sufficiently prejudicial. But Washington law, articulated in the cases quoted and cited above (and many others), does not establish that fact as meeting the test. Nor do the cases suggest

that that fact is even material to a motion in limine. The clear purpose of motions in limine in Washington is to prevent juries from learning not just of prejudicial evidence, but of significantly prejudicial evidence. The purpose is not to prevent a court—or here an agency with broad powers—from considering all the evidence and using its expertise deciding at the conclusion of the case which evidence to believe and what weight to give all the evidence in its final order. And even in jury cases, the court must strike the right balance between the asserted prejudice and the relevance.

12 Finally, if Respondent is relying on its time and effort to prepare and file responsive testimony as its showing of prejudice, then not only is authority lacking, that discussion belies its argument that the Shuttle Express testimony is irrelevant. To meet the prerequisite to exclude, the testimony must be “clearly inadmissible.” *Fenimore, supra*. If it is so clear that the testimony is irrelevant and the Commission cannot consider it, then Respondent does not need to spend any time on filing evidence in response. It can simply argue on post-hearing brief that the Commission should not consider the evidence. Because Respondent feels compelled to obtain an advance determination of “irrelevance,” the question of admissibility must not be “clear.”

13 The foregoing dichotomy illustrates well why movants must show both “clear” inadmissibility and great prejudice. Excluding testimony that may in hindsight be considered relevant, or may become relevant as the trial unfolds, risks error and reversal. Thus, motions in limine in bench trials are rare in the case reporters. The Iowa Supreme Court articulated the risk of indiscriminate exclusion orders very well in *Lewis v. Buena Vista Mut. Ins. Ass'n*, 183 N.W.2d 198, 200–01 (Iowa 1971):

The motion in limine is a useful tool, but care must be exercised to avoid indiscriminate application of it lest parties be prevented from even trying to prove their contentions. ... [T]he motion in limine is not ordinarily employed to choke off an entire claim or defense, as it was here regarding arson. Rather, it is usually used to prohibit mention of some specific matter, such as an inflammatory piece of evidence, until the admissibility of that matter has been shown out of the hearing of the jury. [Citations omitted.]

... The motion is a drastic one, preventing a party as it does from presenting his evidence in the usual way. Its use should be exceptional rather than general. ... The motion should be used, if used at all, as a rifle and not as a shotgun, pointing out the objectionable material and showing why the material is inadmissible and prejudicial. Since no one knows exactly how the trial will proceed, trial courts would ordinarily be well advised to require an evidentiary hearing on the motion when its validity or invalidity is not manifest from the face of the motion.

See also, Reidelberger v. Highland Body Shop, Inc., 83 Ill.2d 545, 550, 416 N.E.2d 268, 271 (1981)(“in limine order a powerful [and “potentially dangerous”] weapon. ... Before granting, ... courts must be certain that such action will not unduly restrict the opposing party's presentation of its case.”).

14 Respondent has not shown, and really cannot show, the significant prejudice needed to justify an order in limine. Absent such prejudice, the Commission should not tie the hands of either itself or of Shuttle Express and potentially create reversible error.

III. The Evidence Sought to be Excluded is Relevant and Admissible.

15 The burden is on Respondent, as movant, to show both clear inadmissibility and significant prejudice if the testimony is admitted. Because no cognizable prejudice was shown in the Motion, the Commission could and should stop here and deny it. But the Motion also fails to establish clear inadmissibility, as will be discussed in summary fashion below.

A. The Motion is in Effect an Improper Collateral Attack on Numerous Prior Orders Denying Speedishuttle's Opposition to Rehearing and Efforts to Dismiss the Complaint; and is Another Disguised Motion for Summary Determination.

16 Because the Motion takes an unwise “shotgun” approach to nearly the entire Shuttle Express case, this answer will not review that 70+ page case line by line, or even question by question. The Motion does not deserve that⁷ and the record does not need dozens more pages re-litigating for a ninth time whether the Commission should and will hear the allegations of the Petition and Complaint. The Commission has made that determination repeatedly, each time rejecting Respondent’s efforts to avoid a hearing. “Allowing a party to litigate matters that have been or should have been resolved at an earlier stage [by a motion in limine] not only allows those dissatisfied with the court’s initial ruling a chance to relitigate, but also deprives their opponents of the procedural protections that attach at summary judgment.” *Louzon v. Ford Motor Co.*, 718 F.3d 556, 561 (6th Cir. 2013).⁸

17 Because the Motion seeks to eliminate over 75% of the evidence that Shuttle Express has filed, it is in large part really a disguised motion for summary determination of numerous issues and claims. Once again, that is not the proper or intended use of a motion in limine. *See, e.g., Meyer Intellectual Props. Ltd. v. Bodum, Inc.*, 690 F.3d 1354, 1378 (Fed. Cir. 2012); *Mid-America Tablewares, Inc. v. Mogi Trading Co.*, 100 F.3d 1353, 1363 (7th Cir. 1996) (motion in limine as a substitute for summary judgment “not a

⁷ As the court noted in *Lewis v. Buena Vista, supra*, Shuttle Express should not “be required to try [its case] twice—once outside the jury’s presence to satisfy the trial court of its sufficiency and then again before the jury.” The extensive arguments on the sufficiency, relevance, and consequences of nearly all of Shuttle Express’s testimony should be reserved for post-hearing brief. Shuttle Express should not be required to argue its whole case before Respondent has even submitted a single word of its own testimony, especially after repeated motions to dismiss have already been denied.

⁸ Because the federal cases on motions in limine are based on Federal Evidence Rules 401-403, and those rules mirror the state evidence rules 401-403 on which state cases are based, the federal cases are relevant and instructive.

proper basis for a motion to exclude evidence prior to trial.”).

18 While the Commission has restricted discovery—which is within its discretion—and made interlocutory statements in prior orders regarding its interpretation of the overall case, it has also expressly allowed the petition for rehearing to go forward. And the day after Respondent filed the instant Motion, the Commission soundly denied Respondent’s motion to dismiss the Complaint. In so doing, it expressly addressed and acknowledged the broad scope of the Complaint:

Speedishuttle relies on our decision in Order 08, arguing that because the Commission held it would not permit Shuttle Express to “relitigate the 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: [internal quotation omitted.]

Thus, the Commission acknowledged in Order 08 that Shuttle Express’s 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. [Note 4: “Moreover ... [a]s 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.”] Accordingly, Speedishuttle’s Motion fails to address the complaint as a whole.

Order 14 at 3 (Dkt. TC-143691)(emphasis added). Thus, Speedishuttle makes the same overarching mistake in interpretation of the Commission’s prior orders as it did in its recently denied Motion for Summary Determination.

19 As the Commission acknowledged in Order 14, the Complaint has never been narrowed. Moreover, the Complaint incorporated and relied on all of the factual allegations of the rehearing petition. Petition and Complaint, ¶ 37.⁹ And because the Respondent’s

⁹ “Shuttle Express realleges the allegations contained in paragraphs 2 through 35 above.” Petition and Formal Complaint of Shuttle Express, Dkt. TC-143691, May 16, 2016,

answers to the Petition and Complaint failed to expressly admit or deny the factual allegations of the Petition,¹⁰ Shuttle Express not only can, but must, provide some evidence to support all of the allegations if they are to be relied on in post-hearing briefing.

20 Respondent should not be allowed, in the guise of a motion in limine, to re-litigate Commission Orders 06, 08, 09, and 14. Nor should it be allowed to effectively move yet again for summary determination in a motion in limine, especially when it runs counter to a prior order denying summary determination. The arguments in the Motion are best reserved for post-hearing briefing after all the evidence is in.

B. The Testimony is Not Only Relevant to “Liability” Issues, but also Provides Important Background, Context, and Facts the Commission May Need to Consider in Determining What is an Appropriate Remedy to Protect the Public Interest.

21 As discussed above, Shuttle Express should not be forced to submit what amounts to a post-hearing brief just to get its testimony admitted. The Motion is improper and overly broad. It should be denied in its entirety without the need for either Shuttle Express or the Commission to justify the testimony line by line. If there is anything at all that the Commission might find to be possibly questionable, then—and only then—the Commission should entertain oral argument on the Motion and ask the parties to address specific passages.¹¹ In other words, the Commission should reject the “shotgun” and require Respondent to use a “rifle.” But Shuttle Express does not encourage either oral argument or rifle shots on this Motion, because it is unfounded, ignoring both prior orders and the applicable law.

¹⁰ Speedishuttle Motion to Strike, Dkt. TC-143691, June 14, 2016.

¹¹ Argument could occur at the start of the hearing. Or, the Commission could request supplemental briefing on the relevance of one or a few specific passages prior to hearing.

22 The law starts with RCW 80.01.040, which provides, in part, that “commission shall ... [r]egulate in the public interest, as provided by the public service laws, all persons engaging in the transportation of persons....” As far as the “public service laws” at issue, the Petition and Complaint cites all of RCW Chapter 81.68 and at least seven other RCW sections. It also cites and discusses at least eleven WAC sections. In contrast, the Motion discusses RCW Ch. 81.68 superficially only. It fails to mention any of the other RCWs invoked or implicated by the Petition and Complaint. Out of the eleven WAC sections at issue in the case, the Motion discusses only one of them, WAC 480-30-140.

23 Based on the Petition and Complaint, the Commission needs to apply a number of the public service laws and regulations to the facts to reach a final order. Moreover, some of those laws give the Commission great leeway to act in order to protect the public interest. For example, the Petition is based on RCW 81.04.200, which can be based on:

- “[C]hanged conditions”
- “[O]r by showing a result injuriously affecting the petitioner which was not considered or anticipated”
- “[O]r that the effect of such order has been such as was not contemplated by the commission or the petitioner,”
- “[O]r for any good and sufficient cause which for any reason was not considered and determined in such former hearing.”

Note the legislature’s repeated use of the conjunction “or.” The Commission can act based on any of the foregoing grounds. And the last one, “good and sufficient cause” is extremely open-ended.

24 Similarly open-ended and granting broad discretion is the complaint statute, RCW 81.04.110. It provides, in small part, for complaint against “abuses” that: “are

unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly....” Again, each time the conjunction is “or.” And the remedies the Commission is empowered to grant are equally broad and non-specific. It may: “correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed ... as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition....”

25 As for the rehearing, “good and sufficient cause” gives wide latitude to support a case under RCW 81.04.200. And terms like “fair” or “unfair” and “reasonable” or “unreasonable” are inherently broad. It is really inconceivable that any of the testimony at issue could be deemed “clearly” not relevant to the complaint under RCW 81.04.110.¹² And in Order 14, the Commission has just held that the issues under consideration are much broader than Respondent asserts in the Motion. The issues raised in the Motion at best go to the weight to be given to the challenged testimony, which should be reserved for the final order after all the evidence is heard and considered, not pre-determined prior to the hearing.

26 In light of the foregoing and other public service laws and rules, the Commission is given

¹² The Petition for Rehearing has been somewhat limited. The Commission stated it does not intend to “re-litigate the BAP” or “permit a collateral attack on [its] rules.” But those qualifications are based on red-herring arguments by Respondent and an abundance of caution to make it clear that relief will be forward-going, not retroactive. To be clear, Shuttle Express’s case is based in part on past acts and omissions and alleged “abuses” (as used in the statute) of Speedishuttle. But that does not imply or require that the Commission take any retroactive action. Both RCW 81.04.110 and 81.04.200 expressly and clearly contemplate that the Commission may take forward-going action based on past “abuses” or even innocent but unexpected consequences resulting from past actions by a carrier and/or the Commission. Introducing facts regard the BAP and real-world application of the Commission’s rules simply provides background and context that will assist the Commission in determining what actions to take next in order to protect the public interest and the parties’ rights. It is not a “re-litigation.”

numerous grounds to grant relief. It also has the jurisdiction and nearly unbridled authority as to the scope and nature of the relief it may order. Accordingly, Shuttle Express has tried to present a case that provides background, context, and facts and opinions that will help the Commission fashion appropriate relief for the “abuses” complained of.¹³ The Motion, in contrast, attempts to create a skeleton of a case that would deny the Commission access to important facts that may well factor into what relief is in the public interest. The result would either be: 1) an unfair restriction on what relief could be supported by the limited evidence, or 2) a grant of relief that Speedishuttle could contend on review was unsupported by sufficient evidence and therefore reversible.

27 Shuttle Express does not consider this case to be like a lawsuit, as Respondent argues. Yes, the parties have certain rights. But fundamentally this case is about public policy and the public interest. Neither of those will be protected if the Commission accepts Respondent’s invitation to make its decision in the absence of most of the facts. The Commission does not often get a case where the very viability of a public service used by three quarters of a million people a year could be terminated or curtailed by Commission action or inaction. Even if the final order does not act upon all the evidence presented, the Commission should encourage a full presentation of the facts for its consideration.

28 Respondent, not having discussed or even mentioned 90% of the pertinent statutes and regulations, has not met its burden as movant to show “clear inadmissibility.”

¹³ See Note 12, *supra*.

C. The Commission Has Never Issued an Order Expressly Approving Respondent's Provision of "Walk-up" Service.

29 Finally, but briefly, Shuttle Express feels compelled to address (yet again) Respondent's argument that the Commission has "conclusively" already ruled that "Speedishuttle was permitted to provide walk-up service and that it would not reconsider that ruling."

Motion at 13. This argument is unfounded. It is based not on an actual order, but rather a "Notice" and "Determination" to not issue an order at that time.¹⁴ As such, the Notice was not an order, was not appealable, and was not preclusive in any way.

30 This is not the first time this erroneous argument has been made. SpeediShuttle made this assertion in its Motion to Strike filed on September 12, 2016.¹⁵ Except for certain matters relating to discovery, that Motion to Strike was denied in its entirety in Order 08. Thus, this renewed attempt to give preclusive effect to a "non-order" is also another untimely attempt to overturn a portion of Order 08, by using a motion in limine.

31 The issue of Respondent's inconsistent testimony and statements on walk-ups really should be an ultimate issue in the case, after full discovery, cross-examination, hearing, and briefing.¹⁶ But Shuttle Express will address it briefly here because it is important the Commission not be led to commit error by treating its "Notice" as an "order."

32 Under the Administrative Procedure Act ("APA"), "[o]rder," without further

¹⁴ Notice of Determination not to Amend Order 04 (Dec. 14, 2015)("Notice").

¹⁵ Asserting that "walk-up service" was already "addressed and resolved" in the Notice. *Id.* at 4.

¹⁶ Briefly, "walk-up" service was not specifically discussed in Order 02 or Order 04. But both orders relied, in part, on the supposed commitment to offer greeters to all arriving air travelers at baggage. Since walk-ups cannot be greeted at baggage claim and since Speedishuttle denied that it would offer walk-up service at the application hearing in TC-143691, the existence of this service could be a changed condition, injurious result not considered, or an effect that was not contemplated. All of these would fit squarely within the considerations of RCW 81.04.200.

qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.” RCW 34.05.010(11)(a). Nothing in the “Notice” suggests that it was a “final determination” of the legal interests of any person. The Notice is not found on the Commission website under the “orders” tab. And although the Notice was filed after the entry of Order 05, the next order in the number sequence was an actual order, Order 06. The Notice was not given an order number in the docket. In form and substance it was not an order.

33 Furthermore, the APA requires that “orders” be entered by the “members of the agency head” (commissioners here) or the “presiding officer.” RCW 34.05.461(1). The presiding officer in Docket TC-143691 has, from the outset (including the Notice of Intent to Amend Order 04), been the same ALJ. Neither the commissioners nor the ALJ issued the “Notice” in question. It was issued by the Commission Secretary—further evidence it was not intended to be an order.

34 The APA also requires that, “[t]he order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief.” RCW 34.05.461(3). No such statement was included. Nor were other formal content requirements of RCW 34.05.461(3) clearly set forth in the Notice, though it might be contended that some of them were implicit. Again, in form and substance it was not an order.

35 From what is in and what is not in the Notice, the obvious intent was not to issue an order, but simply to let the parties know that no action was going to be taken at that time. Reasons were given, but because there was no order, they cannot be binding on the

Commission nor on the parties.¹⁷ And it is disingenuous for SpeediShuttle to fault Shuttle Express for not appealing the Notice. There was nothing to challenge and no identification of the procedures or rights to challenge, as would have existed in a real order. Had Shuttle Express sought judicial review of the “Notice” it would have been thrown out of court for trying to appeal a non-order.¹⁸

36 The Commission should not disregard its Order 08, which implicitly already rejected Respondent’s efforts to have the Notice given the weight and authority of an order.

CONCLUSION

37 The Motion is not a proper or cognizable motion in limine. In practice and effect it would modify or overturn numerous prior orders of the Commission. And it fails to meet the two prerequisites for an order in limine. It should be denied entirely.¹⁹ At

¹⁷ Moreover, the rationale was based on the narrow facts, laws, and regulations under consideration at that time. The Shuttle Express Petition and Complaint go far beyond those considerations, both factually and legally. For example, the Notice did not consider this definition found in WAC 480-30-036: “By-reservation-only service’ means transportation of passengers by an auto transportation company, with routes operated only if passengers have made prior reservations.” (Emphasis added). Nor did it consider this provision in WAC 480-30-096(3)(a)(ii), enumerating the requirement contents of an auto transportation application: “Door-to-door service requires a time schedule in compliance with WAC 480-30-281 (2)(c) and may be restricted to ‘by reservation only’” (Emphasis added). Both WAC 480-30-281(2)(c)(ii) and WAC 480-30-356(3)(d)(ii) also reference and acknowledge that service may be limited to “by reservation only.” Though the Commission’s rules unquestionably both define and allow for “by reservation only” service at least four times, Respondent’s comments in 2015 year omitted that fact, so they weren’t discussed in the Notice.


¹⁸ Probably with the encouragement of the Respondent’s and Commission’s attorneys.

¹⁹ Only if the Commission has concerns about any specific fact in the proffered testimony, it should require very narrow oral argument or supplemental briefing.

most, it should treat all challenges of the Motion as going to the weight of the evidence, to be addressed in post-hearing briefs and the final order.

Respectfully submitted this 27th day of January, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2017, 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 27th day of January, 2017.



Elisheva Simon
Legal Assistant