

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application TC-143691 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

COMMISSION STAFF'S RESPONSE
TO SHUTTLE EXPRESS, INC.'S
OBJECTION TO AND MOTION TO
STRIKE NOTICE OF BRIEF
ADJUDICATIVE PROCEEDING

I. INTRODUCTION

1 Staff of the Washington Utilities and Transportation Commission (Staff) files this response to Shuttle Express's Objection to and Motion to Strike Notice of Brief Adjudicative Proceeding (BAP). Staff requests the Commission deny the motion and proceed with the scheduled Brief Adjudicative Proceeding.

II. ARGUMENT

A. The Commission's New Auto Transportation Rules streamline the application process, including clarifying the procedure for objections and providing for a brief adjudicative proceeding to address the issues that pertain to the objection

2 Shuttle Express objects not only to a brief adjudicative proceeding in this context, but also to Speedishuttle's pending application. Shuttle Express asserts that a full, conventional hearing is required to resolve its objection. Staff disagrees. Shuttle Express's argument fails to acknowledge the intent behind, and practical effect of, recent amendments to the Commission's auto transportation rules. These industry-specific rules expand upon the procedural rules (WAC 480-07-610) cited by Shuttle Express, to allow for a brief adjudicative proceeding.

On September 21, 2013, the Commission amended its rules governing the review of applications for authority to operate a passenger transportation company in Washington.¹ Shuttle Express was a stakeholder in the rulemaking proceeding and had an opportunity to comment.² The changes clarified and streamlined the application process for companies seeking to provide such service.³ When an application for new authority is filed, a notice is sent to existing companies providing them with an opportunity to object to the application on the limited grounds that the existing company is providing, to the Commission's satisfaction, the same service the application proposes to provide.⁴ WAC 480-30-116 specifies the contents of an objection and narrows the scope of objection to these issues.⁵ Under WAC 480-30-116, a company may not object to – and has no legitimate interest in – aspects of an application other than whether the applicant proposes to offer any services that overlap with the services the objecting party provides.⁶ If the Commission determines an objection is overruled, Staff reviews the application for compliance with other prerequisites for obtaining a certificate. The Commission may schedule a hearing, involving Staff and the

¹ *In re Amending and Adopting Rules in WAC 480-30 Relating to Passenger Transportation Companies*, Docket TC-121328, General Order R-572, Order Amending and Adopting Rules Permanently (2013), *codified at* WAC 480-30 (General Order R-572).

² A cursory review of documents filed in that proceeding shows Shuttle Express did provide comment, however, it appears that the objections now raised by Shuttle Express in its motion were not raised by it before the Commission in the rulemaking proceeding.

³ *Id.* ¶13. The Commission, in that same proceeding, also adopted rules governing fair flexibility in WAC 480-30-420), reducing the regulatory requirements for setting fares “consist with the effort to streamline the application process.” *Id.* ¶ 49. Shuttle Express has arguably benefited from these changes with multiple filings since the rule was adopted.

See also, *In re Application of Sani Mahama Maurou d/b/a Seatac Airport 24*, Docket TC-140399, Order 04, Order Denying Shuttle Express, Inc.'s request for review of Order 03, Temporary Reversal of Authority, and Stay of Action (October 31, 2014), ¶ 6.

⁴ WAC 480-30-116(2). Also see, Docket TC-140399, Order 04, ¶ 7.

⁵ Docket TC-121328, *General Order R-572*, ¶ 29.

⁶ TC-140399, Order 04, ¶ 12.

applicant, if Staff has concerns about the applicant's financial or regulatory fitness, to allow the applicant to provide testimony and evidence to respond.⁷ Objectors may then intervene.

4

The rationale behind the new streamlined application process is rooted in part in the Commission's interpretation of its statute and prior practice.⁸ The Commission has interpreted RCW 81.68.040 to require only *a notice and opportunity for hearing* on whether the existing certificate holder is satisfactorily providing the same service the applicant seeks to provide.⁹ The Commission recognized in its order adopting the revised auto transportation rules that those rules "are more consistent with the statutory requirements," and that, in the past, "Commission and applicants invest[ed] significant time and resources on challenges to an applicant's financial or regulatory fitness, business model, or service model, even though the statute does not identify these as grounds for an objection."¹⁰ The Commission's rules allow a notice and opportunity for hearing, and, accordingly, now require that adjudication of applications *subject to an objection filed under RCW 81.68.040* "will be accomplished in the simplest and most expeditious manner."¹¹

5

That efficient manner of adjudication is provided under WAC 480-30-136, which sets out that the objection will be conducted as a BAP under WAC 480-07-610, and the evidentiary scope of the BAP. Shuttle Express argues in its motion that a BAP cannot be scheduled because the pre-existing general procedural rule does not contemplate a BAP; however, the Commission should read the general procedural rule and the industry-specific

⁷ TC-140399, Order 04, ¶7. *Also see* Docket TC-140399, Order 01, Initial Order Sustaining in Part and Overruling in Part Objections to Application for New Authority, ¶ 8 (September 12, 2014).

⁸ WAC 480-30-116(1). WAC 480-30-136(1) and (2).

⁹ *In re Application of Northwest Smoking & Curing, Inc. d/b/a Seatac Direct*, Docket TC-130708, Order 03, Final Order Dismissing Adjudication, ¶ 9 (February 19, 2014) (citing to General Order R-572, ¶¶32-35 (quoting and explaining RCW 81.68.040)).

¹⁰ General Order R-572, ¶ 29.

¹¹ WAC 480-30-116(3).

rules in concert, as not precluding, and in fact affirmatively providing for, a BAP in this case.

B. A Brief Adjudicative Proceeding is consistent with the Administrative Procedure Act (APA)

6 Shuttle Express asserts that the APA “plainly bars the use of a BAP.” Staff disagrees. Under RCW 34.05.410(1)(a), the Commission may use a BAP by a rule adopting the procedures for brief adjudicative proceedings. Shuttle Express fails to note that the Commission has adopted a specific Commission rule, WAC 480-30-136, to adopt standards provided for in RCW 34.05.482 for adjudicative proceedings involving auto transportation applications.

7 Further, a BAP may be used in this matter, as opposed to more conventional hearing procedures, consistent with RCW 34.05.482. First, doing so does not violate any other provision of the law, and in fact is *consistent* with the law. RCW 34.05.482(1)(a). Second, protection of the public interest does not require additional notice for an opportunity to participate; this notice was *already* provided when the Commission published, in accordance with auto transportation rules, a notice of the pending certificate application in the transportation docket. RCW 34.05.482(1)(b). Third, this matter is entirely within one or more categories for which the agency, by rule, has adopted this section. RCW 34.05.482(1)(c). Finally, the issues and interests involved do not warrant the use of more complex adjudicative procedures. RCW 34.05.482(1)(d).¹²

8 Shuttle Express additionally argues that: (1) the APA, at RCW 34.05.422, states: “Unless otherwise provided by law: . . . (b) *applications for licenses that are contested* by a person having standing to contest under the law and review of denials of applications for

¹² TC-121328, General Order R-572.

licenses or rate changes *must be conducted as adjudicative proceedings*,” (2) this matter involves a contested license application, and (3) therefore, the matter must be conducted as a full-blown adjudicative hearing. The general premises are true, but the conclusion Shuttle Express draws is invalid.

9 Undoubtedly, the APA requires an “adjudicative proceeding” in this matter. But it is a leap not supported by any authority to conclude that said “adjudicative proceeding” must be a *full* adjudicative proceeding, with discovery, motions, etc. A BAP is a type of “adjudicative proceeding,” and the Commission, through rulemaking, has determined that BAPs satisfy due process in this context.

10 Significantly, the APA defines “adjudicative proceeding” very generally. Under RCW 34.05.010, “adjudicative proceeding” means “a proceeding before an agency in which an *opportunity for hearing* before that agency is required by statute or constitutional right before or after the entry of an order by the agency.” There is nothing in this provision even remotely suggesting that BAPs are not “adjudicative proceedings.”

C. Shuttle Express fails to demonstrate that “facts and circumstances” require the use of a full conventional hearing proceeding

11 Finally, Shuttle Express asserts that certain “facts and circumstances” require a full adjudicative proceeding with “full participation.” Staff disagrees. First, Shuttle Express asserts that the APA “bars” use of a BAP. However, as explained above, it does not. Second, it asserts that the applicant is an incumbent carrier, that it is represented by experienced counsel, and that the proposed service overlaps with Shuttle Express and the application would threaten “the economics” of providing door-to-door service to support a claim that “public interest” requires the use of a full proceeding. These four claims do not present cause to alter the proceeding. The first two have no bearing on the type of

proceeding required. The latter two will be addressed in the BAP, and Shuttle Express has already been provided the opportunity in the brief adjudicative proceeding to demonstrate to the Commission, for the Commission's determination, that it is providing the same service, and to demonstrate public harm. The Commission has already made a threshold determination that a Brief Adjudicative Proceeding is appropriate to decide the issues. That determination was appropriate. Although the presiding officer has discretion to determine that a different proceeding is required, "based on facts and circumstances presented," the additional facts and circumstances, in Staff's view, do not merit a different process.

IV. CONCLUSION

12 For the foregoing reasons, Staff respectfully requests that the Commission deny Shuttle Express's motion to strike the pending Brief Adjudicative Proceeding.

DATED this 17th day of December 2014.

Respectfully submitted,

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