

**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 07
SHUTTLE EXPRESS, INC., Complainant, v. SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE, Respondent.	DOCKET TC-160516 <i>(Consolidated)</i> ORDER 02 PREHEARING CONFERENCE ORDER AND ORDER OF CONSOLIDATION; NOTICE OF HEARING (Set for February 1, 2017, at 9:00 a.m.)

- BACKGROUND.** On May 16, 2016, Shuttle Express, Inc. (Shuttle Express) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Rehearing of Matters in Docket TC-143691 and to Cancel or Restrict Certificate No. C-65854 Based on Misrepresentations by Applicant, Errors and Omissions in Prior Proceedings, and Changed Conditions not Previously Considered (Petition).
- Also on May 16, 2016, Shuttle Express filed with the Commission a Formal Complaint against Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle (Speedishuttle) for its Rules, Regulations, or Practices in Competition with Complainant that are Unreasonable, Insufficient, Unremunerative, Discriminatory, Illegal, Unfair, or Tending to Oppress the Complainant in Docket TC-160516 (Complaint).
- Shuttle Express alleges, among other things, that Speedishuttle is engaging in direct competition with Shuttle Express by providing service identical to the service that Shuttle Express provides.

4 **CONFERENCE.** On August 2, 2016, the Commission convened a prehearing
conference before Administrative Law Judge Rayne Pearson to determine the scope of
the issues to be presented in these dockets and to adopt a procedural schedule.

5 **APPEARANCES.** Brooks E. Harlow, Lukas, Nace, Gutierrez & Sachs, LLP, McLean,
Virginia, represents Shuttle Express. David Wiley, Williams, Kastner & Gibbs PLLC,
Seattle, Washington, represents Speedishuttle. Julian Beattie, Assistant Attorney General,
Olympia, Washington, represents Commission staff (Staff).

6 **INTERVENTION.** No party sought to intervene in the proceeding.

7 **PETITION FOR REHEARING.** Shuttle Express's Petition for Rehearing was granted,
as reflected in Order 06 in Docket TC-143691.

8 **MOTION TO STRIKE "ANSWERS" TO PETITION AND COMPLAINT.** On June
14, 2016, Shuttle Express filed a Motion to Strike "Answers" to Petition and Complaint
of Shuttle Express, Inc. (Motion to Strike). In its Motion, Shuttle Express requests the
Commission strike both Staff's answer to its Petition and Speedishuttle's answer to its
Petition and Complaint, or, in the alternative, allow Shuttle Express to file a brief in
response to both answers. On July 28 and August 1, respectively, Speedishuttle and Staff
filed responses opposing the Motion to Strike.

9 The Commission denies the Motion to Strike. We agree with Staff that its response
appropriately offered Staff's opinion on the threshold issue of whether Shuttle Express's
Petition should be granted. We also agree with Speedishuttle that its answers present no
confusion regarding whether it admits or denies the allegations set forth in the Complaint.
Finally, we deny Shuttle Express's request to respond to Staff's and Speedishuttle's
answers. Shuttle Express will be afforded ample opportunity to address the issues raised
in the parties' answers through pre-filed testimony, cross-examination at hearing, and in
post-hearing briefing.

10 **CONSOLIDATION.** Shuttle Express's Petition and Complaint include a motion to
consolidate these matters. Speedishuttle and Staff oppose the motion.

11 Because they share common issues of law and fact, the Commission consolidated
Dockets TC-143691 and TC-160516. Consolidation will increase administrative
efficiency and conserve both the Commission's and the parties' resources.

12 **PROTECTIVE ORDER.** Shuttle Express and Speedishuttle jointly request the
Commission issue a protective order in these dockets to protect the contents of discovery

from public disclosure. Shuttle Express relies on RCW 34.05.446(1), which provides that “the presiding officer ... may enter protective orders.”

13 We deny the parties’ request for a protective order. The Public Records Act (PRA), RCW 42.56, requires the Commission to make all documents publicly available unless a statutory exemption expressly states otherwise. The PRA authorizes the Commission to withhold confidential information that utilities and solid waste collection company provide pursuant to RCW 80.04.095 or RCW 81.77.285.¹ No comparable provision allows the Commission to give confidential treatment to auto transportation company documents.

14 The Administrative Procedure Act (APA) does not supersede the PRA. The Commission must give effect to both statutes. Accordingly, the Commission interprets RCW 34.05.446(1) to preserve an agency’s ability to enter protective orders, among other purposes, to shield information that the PRA authorizes the Commission to withhold from public disclosure. Because the Commission has no authority under the PRA to give confidential treatment to auto transportation company documents, RCW 34.05.446(1) does not authorize the Commission to enter a protective order to do so.

15 **CONSENT TO ELECTRONIC SERVICE.** All parties have consented to service electronically. The Commission, therefore, may serve only electronic copies of notices and orders in this docket to the party and representative email addresses on file with the Commission.

16 **DISCOVERY.** Discovery will be conducted under the Commission’s discovery rules, WAC 480-07-400 – 425.

17 **PROCEDURAL SCHEDULE.** The parties were unable to agree on a proposed procedural schedule due to Speedishuttle’s objection to the administrative law judge’s rulings on the Petition and consolidation. Accordingly, the Commission adopts the procedural schedule set forth in Appendix B to this Order.

18 **DOCUMENT FILING REQUIREMENTS.** Parties must file all pleadings, motions, briefs, and other prefiled materials in compliance with all of the following requirements:

- (a) Parties must submit electronic copies in native Microsoft format (Word, Excel, etc.) and searchable Adobe Acrobat (.pdf) of all documents by 5:00 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties must follow WAC

¹ RCW 42.56.330(1).

480-07-140(5) in organizing and identifying electronic files. Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/efiling) or by e-mail to records@utc.wa.gov.

- (b) Parties must file the one paper copy (with original signatures, if applicable) of the documents with the Commission by 5:00 p.m. on the first business day following the filing deadline as provided in WAC 480-07-145(6). The documents must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. All hard copy filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250.
- (c) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge (rpearson@utc.wa.gov) by 5:00 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish the electronic copies by delivering them on a flash drive, DVD, or CD.

19 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **5:00 p.m. on January 25, 2017**. The Commission requires electronic copies (in native format, if available, and searchable Adobe Acrobat (.pdf)) and one paper copy of the exhibits. If any of the exhibits contain information that is designated as confidential or highly confidential, the party must also file one electronic copy (in Adobe Acrobat (.pdf)) and one paper copy of the redacted version of each such exhibit. The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits. The paper copies of the exhibits also must be organized into sets that are tabbed and labeled.

20 **EXHIBIT LISTS.** Each party must file a list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits, as well as cross-examination exhibits. The parties must file and serve their exhibit lists by **5:00 p.m., January 25, 2017**.

21 **CROSS-EXAMINATION TIME ESTIMATES.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Cross-examination time estimates are not filed but must be provided to the administrative law judge and the other party by 5:00 p.m. on January 25, 2017.

- 22 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter on **Wednesday, February 1, 2017, at 9:00 a.m., in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**
- 23 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1355.
- 24 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

DATED at Olympia, Washington, and effective August 4, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
CONSOLIDATED DOCKETS TC-143691 and TC-160516**

PARTY	REPRESENTATIVE	PHONE	FAX	E-MAIL
Shuttle Express, Inc. d/b/a Shuttle Express	Brooks E. Harlow Lukas, Nace, Gutierrez & Sachs, LLP 8300 Greensboro Dr., Suite 1200 McLean, VA 22101	(703) 584-8680	(703) 584-8696	bharlow@fcclaw.com
Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle	David Wiley Williams, Kastner & Gibbs PLLC 601 Union St., Suite 4100 Seattle, WA 98101	(206) 628-6600	(206) 628-6611	dwiley@williamskastner.com
Commission Staff	Julian Beattie Assistant Attorney General 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128	(360) 664-1225	(360) 586-5522	jbeattie@utc.wa.gov

APPENDIX B

PROCEDURAL SCHEDULE

CONSOLIDATED DOCKETS TC-143691 and TC-160516

EVENT	DATE
Complainant Testimony	November 21, 2016
Respondent Testimony and Optional Staff Testimony	December 12, 2016
Complainant Rebuttal Testimony	January 2, 2017
Discovery Cutoff	January 11, 2017
Evidentiary Hearing	February 1, 2017
Simultaneous Briefs	March 3, 2017
Reply Briefs	March 24, 2017