

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| In re the Application of |) | DOCKET TC-143691 |
| |) | |
| SPEEDISHUTTLE WASHINGTON, |) | |
| LLC d/b/a SPEEDISHUTTLE |) | ORDER 01 |
| SEATTLE |) | |
| |) | |
| For a Certificate of Public Convenience |) | ORDER DENYING MOTION TO |
| and Necessity to Operate Motor |) | STRIKE NOTICE OF BRIEF |
| Vehicles in Furnishing Passenger and |) | ADJUDICATIVE PROCEEDING |
| Express Service as an Auto |) | |
| Transportation Company |) | |
| |) | |

BACKGROUND

- 1 On October 10, 2014, Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle (Speedishuttle or Applicant) filed with the Washington Utilities and Transportation Commission (Commission) an application for a certificate of public convenience and necessity to operate as an auto transportation company (Application). Speedishuttle proposes to provide door-to-door service between SeaTac Airport and points within King County.

- 2 On November 12, 2014, Shuttle Express, Inc. (Shuttle Express) filed a letter objecting to the Application on the grounds that the Applicant seeks to provide the same service Shuttle Express currently provides. On November 20, 2014, Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter Shuttle also filed an objection. On December 2, 2014, the Commission issued a Notice of Brief Adjudicative Proceeding Setting Time for Oral Statements on January 12, 2015, at 1:30 p.m.

- 3 On December 4, 2014, Shuttle Express filed a Motion to Strike the Notice of Brief Adjudicative Proceeding (Motion). Shuttle Express objects to the use of a Brief Adjudicative Proceeding (BAP) to hear objections to the Application on two grounds. First, Shuttle Express argues that the Administrative Procedures Act (APA), Chapter 34.05 RCW, requires a full evidentiary hearing for this type of proceeding. Shuttle Express relies on RCW 34.05.422(1)(b), which provides, in part, that “applications

for licenses that are contested by a person having standing to contest under the law ... must be conducted as adjudicative proceedings.” According to Shuttle Express, such applications are expressly excluded from the list of matters that may be resolved in a BAP under RCW 34.05.482.¹

4 Second, Shuttle Express argues that a BAP is not in the public interest because: 1) the Applicant is an incumbent carrier represented by counsel; 2) the Application seeks to overlap existing service; and 3) the Applicant’s proposed authority would possibly undermine the economics of providing nearly ubiquitous door-to-door service throughout King County. Accordingly, Shuttle Express claims, protection of the public interest requires full participation by the existing certificate holders, which a BAP would not allow.

5 Speedishuttle and Staff filed responses to the Motion, and both parties make similar points. Speedishuttle notes that the new rules governing the Commission’s review of applications for auto transportation authority clarify and streamline the application process for companies seeking to provide service,² and expressly allow for BAPs to address objections to applications for authority. Staff echoes this point, and notes that the new rules similarly narrow the scope of objections. Under WAC 480-30-116(3), hearings are limited to the question of whether the objecting company holds a certificate to provide the same service in the same territory as the Applicant seeks to provide, and if so, whether the objecting company provides that service to the satisfaction of the Commission.³ Staff contends that the new rules are more consistent with RCW 81.68.040, which requires only a “notice and opportunity for

¹ RCW 34.05.482 provides, in part, that

(1) an agency may use brief adjudicative proceedings if: (a) the use of those proceedings in the circumstances does not violate any provision of law; (b) the protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties; (c) the matter is entirely within one or more categories for which the agency by rule has adopted this section and RCW 34.05.485 through 34.05.494; and (d) the issue and interests involved in the controversy do not warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

² *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).

³ WAC 480-30-116(3). The revisions to WAC 480-30-116, effective September 21, 2013, provide greater specificity than the prior rule by identifying the narrow issues the Commission will consider in an adjudicated application for new certificate authority.

hearing” on whether the existing certificate holder is satisfactorily providing the same service the applicant seeks to provide.

- 6 Both Staff and Speedishuttle note that RCW 34.05.410(1)(a) expressly permits agencies to promulgate rules adopting the use of BAPs in place of adjudicative proceedings otherwise governed by RCW 34.05.413 through 34.05.476.⁴ The parties also note that Shuttle Express relies on RCW 34.05.422 as the basis for its objection; that section, however, falls within the range of statutory provisions exempted by RCW 34.05.410(1)(a).
- 7 Finally, Staff and Speedishuttle contend that the use of a BAP under WAC 480-30-136(1)⁵ is wholly consistent with RCW 34.05.482 and in the public interest: it does not violate any provision of law; full notice and opportunity to participate was given industry-wide; the matter is entirely within a category for which the agency has adopted procedures for BAPs; and the issues and interests do not warrant the use of more complex procedures. Speedishuttle also notes that the issues raised by Shuttle Express – specifically, its claims that the Application seeks to overlap existing service and could undermine the economics of providing nearly ubiquitous door-to-door service throughout King County – are precisely the issues that will be addressed in the BAP.

DISCUSSION AND DECISION

- 8 We deny the Motion. When an existing carrier objects to an auto transportation application, RCW 81.68.040 requires only “notice and an opportunity for hearing” to determine whether the existing carrier is satisfactorily providing the same service the applicant seeks to provide. On September 21, 2013, the Commission adopted auto transportation rules consistent with these statutory requirements. The Commission noted in its adoption order that in the past, “the Commission and applicants invested

⁴ RCW 34.05.410 provides, in part, “(1) Adjudicative proceedings are governed by RCW 34.05.413 through 34.05.476 except as otherwise provided: (a) by a rule that adopts the procedures for brief adjudicative proceedings in accordance with the standards provided in RCW 34.05.482 for those proceedings.”

⁵ WAC 480-30-136(1) outlines the procedures for applications subject to objection, and provides that, “The commission will consider applications for which an objection has been received through brief adjudicative proceedings under WAC 480-07-610, unless the presiding officer determines, based on the facts and circumstances presented, that a hearing or different process is required.”

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 those as grounds for objection.”⁶ Shuttle Express now contends that WAC 480-30-136 conflicts with RCW 81.68.040 and RCW 34.05.422(1)(b), which bars the application of BAP procedures with respect to “applications for licenses that are contested by persons having standing to contest under the law.”

9 We reject Shuttle Express' collateral attack on Commission rules. Shuttle Express actively participated in all stages of the rulemaking process. The company had ample opportunity to raise the issue of inconsistency between the proposed rule and applicable statutes. Far from challenging the use of BAPs to address objections to applications for authority, Shuttle Express proposed language that would restrict the Commission's flexibility to use processes *other* than BAPs,⁷ which the Commission ultimately rejected. We take a dim view of Shuttle Express' claim in this proceeding that WAC 480-30-136 is unlawful when Shuttle Express took the opposite position during the rulemaking process.

10 Shuttle Express also incorrectly interprets the law. For purposes of this discussion we will assume, without deciding, that auto transportation certificates are “licenses” the contested applications for which RCW 34.05.422(1)(b) requires an adjudicative proceeding to consider. Even under that assumption, however, the APA expressly authorizes BAPs to review such contested applications when the agency has “a rule that adopts the procedures for brief adjudicative proceedings in accordance with the standards provided in RCW 34.05.482.”⁸ The Commission has done precisely that.

11 RCW 34.05.482 provides that agencies may use BAPs if :

- (a) The use of those proceedings in the circumstances does not violate any provision of law;
- (b) The protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties;

⁶ General Order R-572, ¶29.

⁷ Comments submitted via email from Steve Salins for Shuttle Express, March 12, 2013.

⁸ RCW 34.05.410(1)(a).

(c) The matter is entirely within one or more categories for which the agency by rule has adopted this section and RCW 34.05.485 through 34.05.494; and

(d) The issue and interests involved in the controversy do not warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

12 Using a BAP to address objections to auto transportation applications is fully consistent with these requirements. First, conducting a BAP in these circumstances does not violate any other provision of the law. To the contrary, RCW 81.68.040 requires only “notice and opportunity for hearing,” which is what a BAP encompasses.

13 Second, protection of the public interest requires neither additional notice nor an additional opportunity to participate. The Commission notified existing carriers and all other interested parties of the Application by publication in the transportation docket, as required by rule.⁹ All certificated auto transportation companies with standing to object were afforded the opportunity to do so, and those companies who filed objections became parties to the proceeding.

14 Third, this matter is entirely within the purview of WAC 480-30-136, which is a category for which the agency, by rule, has adopted the relevant provisions of the APA.

15 Finally, the issues and interests in controversy do not warrant the use of the procedures outlined in RCW 34.05.413 through 34.05.479. WAC 480-30-116(3) provides that adjudications of auto transportation applications are “limited to the question of whether the objecting company holds a certificate to provide the same service in the same territory, whether the objecting company provides the same service, and whether an objecting company will provide the same service to the satisfaction of the Commission.” A BAP will provide the parties with ample opportunity to fully address these limited issues.

16 Shuttle Express’s contention that using a BAP in this case is contrary to the public interest is also without merit. When promulgating WAC 480-30-116, the Commission determined that the public interest is best served by using a BAP to assess whether an applicant seeks to provide overlapping service and whether the service that applicant proposes to offer would harm the travelling public. The

⁹ See WAC 480-30-116(1).

Applicant's status as an incumbent carrier represented by counsel is largely irrelevant and does not alter that determination. Shuttle Express has not identified any circumstances that would justify, much less require, a proceeding other than a BAP to protect the public interest.

- 17 We find that a BAP is an appropriate mechanism for addressing the objections in this docket. The BAP will allow each of the parties to present witness testimony, offer exhibits, and make oral argument. The parties will be afforded a full and fair opportunity to address the issue of whether the existing certificate holders are satisfactorily providing the same service the Applicant seeks to provide. That is all the statutes, Commission rules, and public interest require.

ORDER

THE COMMISSION ORDERS That Shuttle Express, Inc.'s Motion to Strike Notice of Brief Adjudicative Proceeding is DENIED.

Dated at Olympia, Washington, and effective December 22, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge