

**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 17
SHUTTLE EXPRESS, INC.,  Complainant,  v.  SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE,  Respondent.	DOCKET TC-160516 <i>(Consolidated)</i>  ORDER 10
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE,  Complainant,  v.  SHUTTLE EXPRESS, INC.,  Respondent.	DOCKET TC-161257 <i>(Consolidated)</i>  ORDER 07   ORDER AMENDING ORDER 08

**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 with the 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.<sup>1</sup>
- 3 On August 4, 2016, the Commission entered Order 06, Order Granting Petition for Rehearing. On August 24, 2016, Speedishuttle filed a Petition for Administrative Review of Order 06.
- 4 On September 27, 2016, the Commission entered Order 08, Order Denying Requests for Review of Order 06; Denying Leave to Reply; Granting, in Part, Motion to Strike (Order 08). Order 08 clarified that the 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.
- 5 On December 1, 2016, Speedishuttle filed with the Commission a formal complaint against Shuttle Express in Docket TC-161257, alleging that Shuttle Express has used independent contractors and paid commissions to unauthorized agents in violation of Commission orders and Commission rules.
- 6 On January 5, 2017, the Commission entered Order 12/05/02, Order Granting Motion to Consolidate; Order of Consolidation (Order 12). In response to Order 12, Commission staff (Staff) notified the Commission that it would independently investigate the allegations set out in Speedishuttle's complaint.
- 7 On March 17, 2017, Staff filed testimony related to its investigation of Shuttle Express's use of independent contractors. Staff alleges that Shuttle Express violated Commission rules on 40,727 occasions between January 2014 and September 2016 by using non-

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<sup>1</sup> Also on May 16, 2016, Shuttle Express filed with the Commission a Formal Complaint Against 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.

owned vehicles and non-employee drivers to provide regulated auto transportation service.

8 On March 23, 2017, the Commission issued a Notice of Intent to Amend Order 08 and Notice of Opportunity to File Written Response (Notice). The Notice informed the parties that the Commission, on its own motion, intends to modify Order 08 to include on rehearing the issue of whether Shuttle Express is providing service to the Commission's satisfaction pursuant to RCW 81.68.040 and WAC 480-30-140.<sup>2</sup>

9 The Notice permitted the parties to file a written response to the Commission's proposed amendment to Order 08 no later than Thursday, March 30, 2017, and advised the parties to include with their response any proposed modifications to the procedural schedule.

10 On March 30, 2017, Staff notified the Commission that it neither opposes the Commission's proposed amendment to Order 08 nor recommends any changes to the existing procedural schedule.

11 Also on March 30, Shuttle Express filed a response to the Commission's Notice. Shuttle Express opposes amending Order 08 and argues that doing so would conflate the laws governing a new application for service with the laws governing regulatory violations. Shuttle Express further contends that diminishing its rights under its certificate retroactively would add an additional penalty that is not available under existing laws.

12 Finally, Shuttle Express argues that, in the event the Commission decides to amend Order 08 to address the issue of whether Shuttle Express provides service to the Commission's satisfaction, the Commission should allow all of Shuttle Express's pre-filed rebuttal testimony that fairly addresses the responsive testimony filed by Speedishuttle and Staff, notwithstanding prior rulings that have limited the scope of the issues related to the long-term impact on the public interest. Shuttle Express also requests the Commission allow and enforce its discovery requests for financial and ridership data that supports its

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<sup>2</sup> At the hearing on Speedishuttle's application in Docket TC-143691, Speedishuttle requested the Commission find that Shuttle Express does not provide service to the Commission's satisfaction as a basis for granting its authority. The Commission did not reach that question in its final analysis, instead finding that Speedishuttle proposed to offer different service than Shuttle Express provides.

contention that having two direct competitors is unsustainable. Shuttle Express does not support any change to the procedural schedule.

- 13 Also on March 30, Speedishuttle filed a response to the Commission's Notice that supports the Commission's proposed amendment to Order 08. Speedishuttle argues that, to the extent the Commission now believes that Speedishuttle must establish that Shuttle Express failed to serve to the Commission's satisfaction in order for Speedishuttle to continue to operate without restriction, due process requires the Commission to ultimately determine whether Shuttle Express is providing service to the Commission's satisfaction rather than exclude that issue. Speedishuttle further argues that the Commission should not permit Shuttle Express to reargue issues expressly ruled upon in the application case, including the value of Speedishuttle's service features and the sustainability of service. Speedishuttle does not believe any change to the procedural schedule is necessary.

#### DISCUSSION AND DECISION

- 14 We amend Order 08 to include in our rehearing of Order 04 the issue of whether Shuttle Express will provide the same auto transportation service Speedishuttle offers to the Commission's satisfaction. The Commission did not reach that issue in the original BAP, finding that Speedishuttle did not propose to offer the same service Shuttle Express was providing. It has become increasingly apparent that each of the parties, as well as the Commission, has a different understanding of what comprises the "same service" under the circumstances presented here. We find that we cannot resolve the Petition for Rehearing and the complaints in this consolidated proceeding without clarifying that understanding and correspondingly determining whether Shuttle Express will provide that service to the Commission's satisfaction.
- 15 Shuttle Express misconstrues our intent in proposing to amend Order 08. We will not consider granting Speedishuttle unrestricted authority to provide the same service Shuttle Express provides as a remedy for any rule violations Shuttle Express may have committed. Rather, we will determine whether Shuttle Express will provide service to the Commission's satisfaction in the context of rehearing our decision on Speedishuttle's original application. Whether the Commission will impose penalties or other remedies for the violations alleged in Speedishuttle's complaint is unrelated to, and in no way contingent upon, the Commission's decision to address the issue of satisfactory service.

- 16 Nor has the Commission “prejudged” whether the alleged violations occurred. We accept the prefiled testimony Commission Staff and Speedishuttle submitted as just that – testimony these parties intend to provide at the evidentiary hearing. We will make any factual findings based on that and all other prefiled testimony only after the Commission admits it into the record and it has been subject to cross-examination. We referenced Staff’s testimony in the Notice as the latest indication that the Commission needs to consider the issue of whether Shuttle Express will provide service to the Commission’s satisfaction and to ensure Shuttle Express has sufficient opportunity to respond to the testimony in that light.
- 17 The Commission also does not consider the prefiled testimony that Staff and Speedishuttle have submitted to be “retroactive” support for deficiencies in the original record in Docket TC-143691. That record contains ample evidence of Shuttle Express’s past violations of Commission rules through its “rescue service.”<sup>3</sup> Staff and Speedishuttle offer evidence to supplement the record with information about the same type of activities in which Shuttle Express allegedly engaged after the Commission closed that record. The Commission must determine whether Shuttle Express “will provide” service to the Commission’s satisfaction.<sup>4</sup> Commission rules expressly contemplate that the Commission will consider past and current patterns of behavior in making that predictive judgment.<sup>5</sup> The evidence Staff and Speedishuttle propose to offer would further inform the Commission’s decision-making on that issue.
- 18 We decline Shuttle Express’s invitation to broaden the scope of the issues to include the market sustainability of two carriers serving the same territory. Shuttle Express fails to establish any connection between the market’s ability to sustain two auto transportation providers and whether Shuttle Express will provide service to the Commission’s satisfaction. We also deny Shuttle Express’s request that we revisit our prior rulings and allow Shuttle Express to pursue its data requests seeking Speedishuttle’s financial and ridership data. We continue to find that Shuttle Express is not entitled to such information.

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<sup>3</sup> See Order 04 ¶¶ 22-23.

<sup>4</sup> RCW 81.68.040.

<sup>5</sup> WAC 480-30-140(3)(b).

**ORDER**

**THE COMMISSION ORDERS THAT:**

- 19 (1) Order 08 is amended to include on rehearing the issue of whether Shuttle Express  
will provide service to the Commission's satisfaction pursuant to RCW 81.68.040 and  
WAC 480-30-140(3)(a).
- 20 (2) Order 08 otherwise remains in full force and effect.

DATED at Olympia, Washington, and effective April 3, 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.**