
Subject: FW: Shuttle Express v Speedishuttle; Dave Wiley Responses
Attachments: DR19-GO_Group_Agreement Bates # SS 0422-SS 0424-.PDF

From: Gruber, Maggi [<mailto:MGruber@williamskastner.com>]
Sent: Tuesday, November 15, 2016 5:39 PM
To: Brooks Harlow <bharlow@fcclaw.com>
Cc: Wiley, Dave <dwiley@williamskastner.com>; Elisheva Simon <esimon@fcclaw.com>; Velloth, Daniel <dvelloth@williamskastner.com>
Subject: Shuttle Express v Speedishuttle; Dave Wiley Responses

Mr. Harlow:

Below are Dave Wiley's responses to your November 13 email, which he drafted on his way out the door to the airport, per his agreement with you today:

Good afternoon, Dave. We now have Order 09. I spent most of Friday digesting it and analyzing how it impacts our case going forward, particularly regarding the outstanding discovery, and also regarding overall scheduling.

We have concluded that Order 09 does not have any meaningful impact on the scope of Petitioner's discovery as ruled by the ALJ a month and a half ago. True, it appears now almost a foregone conclusion Speedishuttle will be held not to have "determined how to implement [its approved business] plan consistent with its regulatory obligations." In theory that narrows the issues and could therefore narrow the discovery. But in practice we do not think it does. Moreover, the ALJ's discovery order anticipated, and is completely consistent with, both Order 08 and Order 09.

The reason discovery is not narrowed is that the Commission has given no hint whether or how it might act if it does find that Speedishuttle is not following the business plan that was approved. I am reasonably sure your client will vigorously resist any significant consequences or relief for Shuttle Express. In the end, it is likely to come down to a determination of the "public interest." In large part, our outstanding discovery is calculated to lead to admissible evidence bearing on what relief may be in the public interest under the circumstances.

In a nutshell, we are back to where we were almost a month ago. Respondent has overdue discovery, and we need it very soon to be able to timely undertake expert analysis and prepare our testimony. Since your emails in the string below, there have been a few changes. Here's my understanding of the current status:

DRs 2 and 12 have not changed—nothing new has been provided.

Speedishuttle has produced numerous documents and responses demonstrating it is operating consistent with the business model approved by the Commission. At all times, Speedishuttle has offered and continues to provide a business model that includes luxury vehicles, significantly increased accessibility for non-English speaking customers, individually-tailored customer service, tourism information and Wi-Fi service as specified by Order 04. Neither Speedishuttle nor the Commission, until the judge's ruling and Order 09, has ever referred to a "business plan" as opposed to a "business model" thus, we do not understand what the term "business plan" means relevant to Order 04 or even 08 and the oral ruling on September 27th. Please reread our response on September 30, 2016 to DR2 and the hundreds of Bates numbered pages responsive thereto. Particularly in light of Order 08, we are unaware of what more could be provided based on your response. Since Order 09 appears to be suggesting now a forward-looking analysis of Speedishuttle's operations particularly in light of ¶16 of Order 09 describing the proceeding as possibly providing the company "with an opportunity to conform its operations" with the new service model, this is a discovery and evidentiary issue that has been complicated, not clarified by Orders 08 and 09 as you infer, and we believe we have provided you documents responsive to that business model. In rereading the answer to DR 2, maybe you can further clarify.

As to DR 19, in a side email you asserted there are no responsive agreements other than the agreements filed with the Commission. But those have not truly “been provided” as you and the ALJ assert. We could get them from the Commission (and have asked for them now), but if we want to make them exhibits that process raises issues of authentication, completeness, and currency that should be all but non-existent with a data request response. We renew our request to you, accordingly.

Enclosed is the original GO Group ticketing agreement filed with the Commission.

Next, as to DR 9, despite your comments below, we still find the response to be ambiguous and renew our request that you supplement to clarify.

Of the roughly 13,000 on demand reservations noted in the response to Request 7, 11,000 (85%) are to the downtown area, mostly to the cruise piers and downtown hotels that are only served by route service by Shuttle Express. The time frame that was covered by the data we pulled was 6/12/2015 (the first day we had an on-demand reservation booked) through August 31, 2016.

As to the requests for financial information (DRs 14-16), in a side exchange we offered to consider a non-disclosure agreement and even provided you with a template. The ball is in your court on that. We can't wait much longer for the information, given our case schedule. We can still work on the non-disclosure idea, but we need the data promptly regardless and the ALJ ordered it some time ago.

We are actively working on this. Dan has edited your rendition (thank you) and I am reviewing on the flight to Phoenix today and will get the version to the client for review/revision/approval/rejection. However, we still must confront the judge's ruling on 9/27/16 that limits the totality of the issues on the financial front to whether Speedishuttle is operating below cost. We have repeatedly offered to stipulate that we have not made an operating profit since commencing operations on May, 2015. We even told the judge on 10/28 on our call we would answer an RFA on that, but one was not forthcoming, likely due to your apparent aversion to any limitation on financial issue production to a direct competitor which creates potential business tort liability for all.

As to DR 20, in a side discussion you indicated that Respondent reports its outbound trips electronically to the Port using a transponder. That is still a “report” and it has to be recorded somehow by Respondent and the Port. We need those trip counts in whatever form they can be reasonably produced. If the transponder reports trips by time and date, we would like that detail as well, not just monthly totals.

As I indicated we don't have any “reports filed with the Port” which is the judge's ruling. Transponders do not separately “report” to the Port. DR 19, as revised, asked for documents Speedishuttle files with the Port and again, there are not any.

In conclusion, when can we expect the remaining outstanding or incomplete responses to be provided? I understood you had been continuing to work on them, so I hope it will not take more than a few more days.

Next, as far as overall scheduling, here is what I propose:

We still critically need to work these date adjustments out. I propose a discovery conference under WAC 480-07-415 the week of November 28. I need relief which I have maintained since August 2, on the hearing date most of all, due to my federal court schedule but as I mentioned, I may have a more conservative hearing date proposal than what I initially envisioned.

12/5/16 – Petitioner testimony

12/23/16 – Respondent and staff testimony

Week of 12/27 – Depositions of Respondent's witness(es)/officer

1/6/17 – Respondent reply testimony

1/13/17 – Discovery cutoff

2/1/17 – Hearing

TBA - Depositions of Shuttle Express witnesses (when do you want them?)

This proposal cuts your testimony time by 3 days compared to the prior schedule. But it cuts our reply time by a week. Overall, we think this proposal is a reasonable compromise given that the reason we had to continue the Petitioner's opening testimony due date was Respondent's discovery delays. It is the weekend and I do need to run this by our client, to make sure it can work with any holiday or travel plans. We do need to pin down the new dates soon, so I'm running it by you at the same time.

Subject to my client's approval I propose that Mr. Roemer be deposed in Seattle and Mr. Morton be deposed by telephone. I'd love to go to Hawaii, but I don't think we have time and it's expensive for all of us. Otherwise I will have to ask the ALJ to order both of them to Olympia and I think she will grant that request. Given the importance of Mr. Morton, I think this is a meaningful concession. If your client can agree, I think we can as well.

I am not ignoring your discovery, but that's a separate issue that we will take up in due course.

We need this particularly in light of your successive data requests which in the midst of all the other issues, was very time-pressured. We now request follow-up on your outstanding responses on which we "met and conferred" September 20, 2016.

Finally, you have asserted that your client may seek to appeal Order 09 to the courts. I have extensively researched whether that is a final order for purposes of review and it most definitely is not. "An agency action is "final" when it 'imposes an obligation, denies a right, or fixes a legal relationship as a consummation of the administrative process.'" *Wells Fargo Bank, N.A. v. Dep't of Revenue*, 166 Wash. App. 342, 356, 271 P.3d 268, 276 (2012), as corrected (Apr. 18, 2012) (citing *Bock v. State*, 91 Wash.2d 94, 99, 586 P.2d 1173 (1978)); see also, *United & Informed Citizen Advocates Network v. WUTC*, 97 Wash.App. 1032 (1999)(unpublished). Order 09 is certainly helpful to our case, but it affords Petitioner absolutely no remedy and does not require the Respondent to do anything whatsoever. Thus, it cannot constitute a final order for appeal purposes under the APA or any of the cases I could find on the point.

Not until the Commission decides whether and what remedy it will order—after hearing and briefing—at the conclusion of the case, will there be an appealable order. Indeed, despite Order 09 it is possible that Petitioner—not respondent—would be the "aggrieved" party and the one seeking judicial review, if no meaningful relief were ordered. We urge you not to pursue an appeal at this time as it would be premature and improper. If and when Respondent is aggrieved and wants to go to court it will be able to, eventually. But it makes no sense to try that gambit without a complete record.

As you know, we fundamentally disagree on this point.

Maggi Gruber

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WASHINGTON OREGON ALASKA



2015 Wholesale Shared Ride Rate Agreement

Agency: The GO Group, LLC
Agency Contact: Name: John C. McCarthy Email: jmccarthy@airportexpress.com
Phone: 773-843-2318 Fax: 773-927-1084
SpeediShuttle Seattle: SpeediShuttle Washington, LLC d/b/a SpeediShuttle Seattle Cert. # C065854
Sales Period: WUTC Approval Effective Date Through December 31, 2015

This agreement ("Agreement") is by and between Agency and SpeediShuttle Seattle (the "Parties"). The Parties hereby agree as follows:

- A. **Term**
The Agreement is effective for shared ride sales made and booked with SpeediShuttle Seattle from the WUTC Approval Effective Date through December 31, 2015.
- B. **Net Rates**
Agency shall be billed at net rates for services at the rates set forth of **Exhibit A** hereto. Rates will be determined by SpeediShuttle Seattle annually. Any shared ride services not specifically provided for will be quoted to Agency on request.
- C. **Payment**
Payments are due net, thirty days from receipt of invoice. Late payments will be assessed a finance charge of 1 ½% per month.
- D. **Bookings**
All bookings must be made by reservation, in advance. Bookings must specify arrival and departure times, pickup and drop off location and flight information. Incomplete bookings will be rejected. Bookings must be made at least twenty-four (24) hours in advance. SpeediShuttle Seattle will not accept vouchers for transportation that is not evidenced by a reservation made by Agency. Vouchers, if any, will not be returned to Agency.
- E. **Insurance**
SpeediShuttle Seattle will maintain policies of insurance in not less than the amount required by regulatory bodies including the Washington Utilities and Transportation Commission and the Port of Seattle at its own cost and expense.
- F. **Indemnification**
SpeediShuttle Seattle will indemnify and hold harmless Agency, its officers, employees and agents against and from all claims, suits, judgments, losses, damages, fines or costs resulting from any claim, suit or demand by any third party, including but not limited to, injuries to or deaths of persons or loss of property arising out of the provision of services under this agreement.
- G. **Notices**
Notices related to this agreement shall be in writing and sent via certified mail to:

To SpeediShuttle Seattle:
SpeediShuttle Washington, LLC
1132 Bishop St., Ste. 2312
Honolulu, HI 96813
Attn: Cecil S. Morton

To Agency:
The GO Group, LLC
1200 W. 35th St.
Chicago, Illinois 60609
Attn: John C. McCarthy

H. General Provisions

- a. All services shall be provided in compliance with all applicable laws and regulations and shall be performed in a high-quality and safe manner.
- b. SpeediShuttle Seattle shall not be liable for delays due to circumstances beyond its control.
- c. Regulated rates provided in this Agreement are not valid unless and until they are approved by the Washington Utilities and Transportation Commission.
- d. In the event Agency fails to comply with any of the terms and provisions of this Agreement, SpeediShuttle Seattle may, at its sole option, cease providing services without obligation to Agency.
- e. Any modifications to this Agreement must be in writing, signed by both parties and, if required approved by the Washington Utilities and Transportation Commission.

Each of the undersigned represents and warrants that he or she is duly authorized to execute this Agreement on behalf of the entity first indicated below. This Agreement is subject to regulatory approval by the Washington Utilities and Transportation Commission. SpeediShuttle Seattle will notify Agency within two (2) business days of receiving approval or denial from the Commission.

SpeediShuttle Washington, LLC

The GO Group, LLC

Signature

Signature

Cecil Morton

John C. McCarthy

Printed Name

Printed Name

President & CEO

President

Title

Title



Exhibit A
2015 Wholesale Shared Ride Rates

One-Way Seat In per Passenger Between Sea-Tac and				
Zip Code	Area	Retail	Discount	Net Rate
98101	Downtown Seattle	15.99	1.60	14.39
98109	Seattle/Queen Anne	15.99	1.60	14.39
98104	Seattle/Downtown	15.99	1.60	14.39
98121	Seattle/Denny Regrade/Pier 66	15.99	1.60	14.39
98154	Seattle/Safeco Plaza	15.99	1.60	14.39
98122	Seattle/Central Area	17.99	1.80	16.19
98102	Seattle/Eastlake	20.15	2.01	18.14
98112	Seattle/Madison Park	20.49	2.05	18.44
98119	Seattle/Queen Anne/Pier 31	20.99	2.10	18.89
98195	UW Campus	21.49	2.15	19.34
98105	Seattle/Univ. District	21.99	2.20	19.79
98004B	Bellevue Hotels	22.00	2.20	19.80
98005B	Bellevue Hotels	22.00	2.20	19.80
98006B	Bellevue Hotels	22.00	2.20	19.80
98007B	Bellevue Hotels	22.00	2.20	19.80
98008B	Bellevue/Crossroads Hotels	22.00	2.20	19.80
98052B	Redmond Hotels	25.00	2.50	22.50

- All rates are per person fares and apply to passengers occupying a seat.
- Cancellation Policy – Reservations must be cancelled at least two (2) hours prior to the scheduled pickup time. No shows are chargeable at full net rates above.
- Baggage Policy – Two standard size bags per passenger. Additional baggage or oversize baggage will be at an extra charge.
- Gratuity not included.
- Reservations can be made up to twenty-four (24) hours prior to the scheduled pickup time by telephone to (844) 877-3334, by email to reservations@speedishuttleseattle.com or by fax to (808) 873-2158.
- Our call center is available 24 hours per day at (844) 877-3334 to respond to guests' concerns, questions or changes.

Arrival Procedures

We monitor incoming flights. Guests will be greeted in baggage claim with a name sign on arrival and directed to their shuttle. Please have them look for our greeters holding a SpeediShuttle sign.

Departure Procedures

Departures will be confirmed with the guests the day prior to the scheduled pickup by telephone or email. Due to the nature of shared ride service guests should be at the pickup point fifteen minutes prior to their scheduled pickup time and all fifteen minutes after their scheduled pickup time.