

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In re the Application of</p> <p>SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE</p> <p>For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company</p>	<p>DOCKET TC-143691 <i>(Consolidated)</i></p> <p>ORDER 18</p>
<p>SHUTTLE EXPRESS, INC.,</p> <p>Complainant,</p> <p>v.</p> <p>SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE,</p> <p>Respondent.</p>	<p>DOCKET TC-160516 <i>(Consolidated)</i></p> <p>ORDER 11</p>
<p>SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE,</p> <p>Complainant,</p> <p>v.</p> <p>SHUTTLE EXPRESS, INC.,</p> <p>Respondent.</p>	<p>DOCKET TC-161257 <i>(Consolidated)</i></p> <p>ORDER 08</p> <p>ORDER GRANTING, IN PART, MOTION IN LIMINE</p>

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 a Petition for Rehearing of Matters in Docket TC-143691 and a formal complaint against Speedishuttle in Docket TC-160516. On August 4, 2016, the Commission consolidated Dockets TC-143691 and TC-160516.
- 3 On December 1, 2016, Speedishuttle filed with the Commission a formal complaint against Shuttle Express in Docket TC-161257. On January 5, 2017, the Commission consolidated Docket TC-161257 with Dockets TC-143691 and TC-160516.
- 4 On January 17, 2017, Speedishuttle filed with the Commission a Motion in Limine to Exclude Referenced Testimony seeking to exclude portions of testimony filed by witnesses for Shuttle Express on the basis that it exceeded the scope of the issues in this proceeding or was otherwise inadmissible.
- 5 On February 3, 2017, the Commission entered Order 16/Order 09/Order 06, Order Granting, In Part, Motion in Limine (Order 16). Order 16 granted Speedishuttle's motion to the limited extent that it sought to exclude testimony that exceeds the scope of this proceeding, but declined to make factual determinations related to witness credibility or interpretation of Commission laws and rules. Order 16 also denied Speedishuttle's motion to the extent that it requested the Commission to resolve factual disputes between the parties.
- 6 On April 21, 2017, Speedishuttle filed with the Commission a second Motion in Limine to Exclude Referenced Testimony filed by Shuttle Express (Motion). In its Motion, Speedishuttle seeks to exclude portions of testimony filed by three witnesses for Shuttle Express on the basis that it exceeds the scope of the issues in this proceeding or otherwise fails to rebut or respond to other witness testimony.
- 7 Specifically, Speedishuttle alleges that Shuttle Express continues to argue broad public interest issues related to the sustainability of two auto transportation providers in the same service area despite the Commission's previous rejection of that argument. Speedishuttle further argues that Shuttle Express witnesses claim to rebut or respond to Speedishuttle witness Jack Roemer's testimony, but then offer new arguments to which Speedishuttle has no opportunity to respond.

8 On May 4, 2017, Shuttle Express filed an Answer in Opposition to Motion in Limine (Answer). In its Answer, Shuttle Express argues that the testimony Speedishuttle seeks to strike is directly relevant to Shuttle Express’s petition for rehearing and complaint, that it falls well within the permissible scope or implications of the Commission’s prior orders, and that it directly rebuts Mr. Roemer’s response testimony.

DISCUSSION AND DECISION

9 We grant Speedishuttle’s Motion to the extent that it seeks to exclude testimony that was expressly excluded by Order 16 or otherwise exceeds the scope of this proceeding, but deny Speedishuttle’s Motion to the extent that it seeks to exclude testimony on other grounds.

10 WAC 480-07-495(1) governs the admissibility of evidence in Commission proceedings. The rule provides, in pertinent part, that “all relevant evidence is admissible if the presiding officer believes it is the best evidence reasonably obtainable, considering its necessity, availability, and trustworthiness.” As we noted in Order 16, the Commission need only determine at this stage of the proceeding whether any portion of the testimony to which Speedishuttle objects is so demonstrably irrelevant to the disputed issues that the Commission would not admit it into evidence if it were offered. We address Speedishuttle’s arguments in turn.

11 **Testimony Related to Market Sustainability.** Speedishuttle argues that Shuttle Express’s witness testimony attempts, once again, to reopen and reargue the issue of market sustainability, which we rejected implicitly in Order 08, and expressly in Order 16, and Order 17.¹ Speedishuttle also argues that portions of the proffered testimony

¹In its Answer, Shuttle Express notes the following typographical error in Order 16: “market sustainability ... was rejected in Order 04.” The Commission intended to reference Order 08, not Order 04. In Order 08, we held 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 ... To the extent that the allegations in the Petition for Rehearing in Docket TC-143691 overlap with the allegations in Shuttle Express’ complaint in Docket TC-160516, the issue will be similarly limited.” (Order 08 ¶ 25).

In Order 16, the Commission excluded portions of Mr. Kajanoff’s testimony related to market sustainability on the basis that they exceeded the scope of the proceeding as defined in Order 08. In Order 17, we noted that, “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

related to market sustainability are identical to testimony previously found inadmissible in Order 16. We agree, in part, and exclude those portions of Mr. Kajanoff's testimony related to market sustainability that were reoffered on rebuttal despite having been expressly excluded by Order 16. Accordingly, we exclude page 10, line 14 through page 13, line 9 of Mr. Kajanoff's testimony.

- 12 We will, however, allow those portions of Mr. Kajanoff's testimony that address the sustainability of the market when two providers offer the same service, which relates directly to Shuttle Express's allegation that Speedishuttle is providing the same service Shuttle Express provides.
- 13 Next, Speedishuttle argues that a portion of Mr. Marks's testimony related to market sustainability should be struck because it addresses levels of passenger volume and density in general terms. We agree. Mr. Marks provides a high-level critique of the overall sustainability of two carriers serving the same territory rather than specifically addressing the sustainability of two carriers providing the same service. Accordingly, we exclude page 24, line 1 through page 25, line 19 of Mr. Marks's testimony.
- 14 Finally, Speedishuttle requests the Commission strike portions of Mr. Wood's testimony related to market sustainability. Mr. Wood offers an extensive opinion on the share ride market in King County, but fails to relate his opinion to Shuttle Express's allegation that Speedishuttle is providing the same service it provides. Instead, Mr. Wood focuses broadly on what he believes the share ride market as a whole can sustain and presents various hypothetical worst-case scenarios, which are not useful to the Commission in making its determination about whether Speedishuttle is providing the same or different service than Shuttle Express provides. Accordingly, we exclude the following portions of Mr. Wood's testimony:

1. Page 2, line 17 through Page 6, line 7
2. Page 8, line 4 through Page 9, line 9

transportation providers and whether Shuttle Express will provide service to the Commission's satisfaction." (Order 17 ¶ 18). Shuttle Express states that it is puzzled by this language. As a point of clarification, we note that our finding applies only to testimony that discusses the market's ability to sustain two auto transportation providers generally, regardless of whether that service is different or the same.

3. Page 13, lines 1-3, through “survives”; lines 13-18 through “quality.”
4. Page 30, line 11 through Page 32, line 5

- 15 **Testimony that is Not Responsive to Other Witnesses.** Speedishuttle also argues that, in numerous places, both Mr. Wood and Mr. Kajanoff testify and complain that Mr. Roemer failed to address a specific issue, then go on to discuss and critique the subject of that omission. Speedishuttle first describes the testimony of Mr. Wood, who discusses regulatory policy, a topic that Speedishuttle contends was not directly discussed by any other witness, and is therefore addressed out of sequence in violation of the procedural schedule. Speedishuttle argues that allowing those portions of Mr. Wood’s testimony into the record would deprive it of due process or the opportunity to respond.
- 16 The portion to which Speedishuttle objects is significantly reduced by our decision to exclude nearly half of it on the basis that it exceeds the scope of this proceeding. We find, however, that the remaining portions merely offer Mr. Wood’s opinions in response to Mr. Roemer’s testimony related to Speedishuttle’s service features and operations. Accordingly, we decline to strike the remaining portions of Mr. Wood’s testimony to which Speedishuttle objects.
- 17 Speedishuttle further argues that portions of Mr. Kajanoff’s testimony are also filed out of sequence because they address omissions in Mr. Roemer’s testimony. We disagree. Mr. Kajanoff offers his opinion and critique of Mr. Roemer’s testimony, much of which repeats or rephrases points Mr. Kajanoff originally made in his direct testimony. Mr. Kajanoff does not introduce any new information to which Speedishuttle was deprived of an opportunity to respond. Accordingly, we decline to strike those portions of Mr. Kajanoff’s testimony.
- 18 By this Order, the Commission determines only that the excluded testimony would not be admitted if offered at the hearing. The Commission makes no determination regarding the admissibility of the remaining prefiled testimony.

ORDER

THE COMMISSION ORDERS THAT:

- 19 (1) Speedishuttle of Washington, LLC d/b/a Speedishuttle Seattle’s Motion in Limine to Exclude Referenced Testimony filed by Shuttle Express is GRANTED, in part,

as described in paragraphs 11, 13, and 14, above. The Commission otherwise DENIES the Motion.

- 20 (2) Shuttle Express, Inc. must file revised, redlined testimony consistent with the terms of this Order.

DATED at Olympia, Washington, and effective May 5, 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.