

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application No. D-078959 of	)	DOCKET NO. TC-010273
	)	
PEARSON, SHARYN & ZEPP, LINDA,	)	THIRD SUPPLEMENTAL ORDER
D/B/A CENTRALIA-SEATAC	)	
AIRPORT EXPRESS,	)	APPROVING AMENDED
	)	MANAGEMENT AGREEMENT;
For Authority to Transfer all Rights	)	ORDER APPROVING A
Under Certificate No. C-993 to Centralia-	)	SECURITY INTEREST IN
SeaTac Airport Express, LLC	)	CERTIFICATE NO. C-993;
	)	AND DISMISSING APPLICATION
.....	)	D-078959

1     *Synopsis: The Commission approves and adopts an agreed settlement providing for clear and lawful responsibility for operations as a reasonable way to protect consumers by assuring that the entity operating Certificate No. C-993 has Commission authority and adequate insurance coverage. The order also approves a security interest in the Certificate.*

**I. BACKGROUND**

2     On February 23, 2001, Sharyn Pearson filed with the Commission an application to transfer Auto Transportation Bus Certificate C-993 from Pearson, Sharyn & Zepp, Linda, d/b/a Centralia-SeaTac Airport Express to Centralia-SeaTac Airport Express, LLC. Linda Zepp, Ms. Pearson’s partner, and Pacific Northwest Transportation Service, Inc., protested against granting the application. The Commission initiated the transfer hearing process to examine the issues presented.

3     An initial prehearing conference was heard on due and proper notice before Administrative Law Judge Marjorie R. Schaer on June 26, 2001. That conference was reconvened on July18, 2001. At the June 26 prehearing conference, Commission Staff expressed concern that the insurance coverage held by the Pearson/Zepp partnership might not provide coverage to all entities operating the permit, as required by RCW 81.68.060 and WAC 480-30-070. Commission Staff also indicated that the entity operating the permit might lack Commission authority, leading to questions about who would be responsible if customers or members of the public were injured,

and with the possible lack of knowledge of, and compliance with, Commission safety, insurance, and other laws and rules. *See, RCW 81.68.020, .030 (2), (4), .040; WAC 480-30-020, -030(6).*

- 4 At the July 18, 2001 continuation of the first prehearing conference, an insurance binder was provided that indicated that adequate insurance coverage had been obtained that covered all individuals involved, the Pearson/Zepp partners, and the proposed transferee. Commission Staff indicated that the insurance binder should be replaced within sixty days by a Form E certificate of insurance. The Form E is sent directly to the Commission by the insurance company.
- 5 The parties sought to stay the Commission proceeding because they were also involved in litigation focused on the Partnership Act (Title 25 RCW) in a Thurston County Superior Court action, Number 01-2-00418-0. The parties expected a trial date in January 2002. The parties agreed to schedule another prehearing conference in February 2002, at which the parties could report on the outcome of the lawsuit, and the remainder of this proceeding could be planned. A prehearing conference order entered September 24, 2002, recognized that proof of insurance had been filed, and stayed this proceeding until the conclusion of the Superior Court action.
- 6 A second prehearing conference was heard on February 12, 2002. A schedule for the remainder of the proceeding was planned, with distribution of documents to take place on March 25, 2002, and hearings to take place on April 25, 2002. On March 25, 2002, Linda Zepp filed the documents on which she intended to rely in the April 25 hearing. These included a copy of the Settlement Agreement, Promissory Note, Guaranties and Settlement Agreement—First Amendment that recorded the resolution of the Superior Court action. The documents provide that payments were to be made to Ms. Zepp and her husband, allowing her half of the Zepp/Pearson partnership to be purchased by Ms. Pearson and members of the transferee. The agreement's guaranties include Ms. Pearson granting a security interest in the Certificate held by the partnership to Ms. Zepp. The security interest included in these documents is the one that the Zepps ask the Commission to recognize in this proceeding. *RCW 81.68.030, .040, .070; WAC 480-30-030(8).*
- 7 Also included in March 25, 2002, filing were a number of exhibits to the Superior Court settlement agreement that were filed as confidential documents. Redacted, non-confidential versions of these documents were later made exhibits to the

settlement proposal filed by the parties with the Commission. The confidential documents filed on March 25, 2002, are the confidential versions of the exhibits to the settlement proposal filed with the Commission. They are part of the record on which this order is based.

8 A prehearing conference was scheduled for the morning of April 25, 2002, and the substantive hearing in the matter scheduled to proceed later in the day on April 25, 2002. On April 12, 2002, Sharyn Pearson filed with the Commission a request to withdraw the transfer application in this docket. Commission Staff, Linda Zepp and Pacific Northwest Transportation Services, Inc., filed responses opposing the request. As reasons, parties claimed that Ms. Pearson had not followed through on an agreement to pursue either a lease or a management agreements between Pearson & Zepp d/b/a Centralia-SeaTac Airport Express and Centralia-SeaTac Airport Express, LLC, and that Centralia-SeaTac Airport Express owed the Commission 2001 regulatory fees in accordance with and WAC 480-30-110. A letter ruling entered by ALJ Schaer on April 23, 2002, found that there were significant issues that needed to be addressed in this matter, and indicated that the purpose of a prehearing conference scheduled April 25, 2002, for the exchange of exhibits would be expanded to cover the concerns expressed by the parties.

9 A letter apparently from Sharyn Pearson sent to “Cal” and “Bob” was received at the Commission by telefacsimile on April 24, 2002<sup>1</sup>. The letter indicated that “Shari” was in Nevada, and had no current plans to return to Washington State. At the April 25, 2002, prehearing conference the parties sought a sixty-day continuance of the hearing, and indicated that a management agreement allowing Centralia-SeaTac Airport Express, LLC to manage the certificated operations would be filed with the Commission by May 2, 2002.

10 On April 30, 2002, an updated certificate of liability insurance for Sharyn Pearson & Linda Zepp in the amount of \$1,000,000 was filed with the Commission. On May 2, 2002, a Management Agreement on behalf of Centralia-SeaTac Airport Express, LLC, was filed with the Commission.

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<sup>1</sup> It is the Commissioners’ understanding that “Cal” and “Bob” referred to in the letter are shareholders in Centralia-SeaTac Airport Express, LLC.

11 A prehearing conference to identify and mark documentary evidence and a hearing on the application were scheduled for June 21, 2002, with the substantive hearing to follow. At the prehearing conference on June 21, the parties expressed a desire to discuss settlement. The parties were granted the time remaining in the prehearing conference for these discussions, with an understanding that the hearing would commence as scheduled at 9:30 a.m.

12 The hearing was convened at 9:30 a.m. on June 21, 2002, in Olympia, Washington. At the hearing the parties presented an oral proposed settlement to the ALJ. The parties agreed to prepare a settlement agreement that contained stipulated facts that they all agreed on, and to identify for the Commission the conclusions they sought, based on those facts. They also agreed to file with the Commission documents that supported their proposed resolution. A First Amendment to the Management Agreement was filed with the Commission on June 21, 2002. The amendment extends the parties' original management agreement until the outcome of an application to be filed by the Zepps seeking transfer of the Certificate No. C-993 is known. The application was delivered to Commission Staff at the hearing. A "draft order" (with exhibits) was filed with the Commission On July 2, 2002. This document reflects the settlement agreement proposed on June 21, 2002. The parties ask the Commission, based on the agreement and documents filed, to resolve all remaining issues in the application proceeding. The parties also agree to waive an initial order, and ask the Commission to enter a final order approving the settlement. Some of the exhibits filed with the Commission have been redacted to exclude confidential information. An unredacted version of each exhibit was filed with the Commission as a confidential document on March 25, 2002.

## II. TERMS OF AGREEMENT

13 The parties ask the Commission to authorize a security interest against auto transportation Certificate No. C-993 in accordance with WAC 480-30-030. They seek a security agreement in favor of Linda Zepp and David Zepp, secured parties. As a factual predicate for this request, the parties filed with the Commission a copy of the settlement agreement in their Superior Court action, dated November 7, 2001. Exhibit B of this agreement is a copy of a promissory note dated December 10, 2001, that Centralia-SeaTac Airport Express executed and delivered to Linda and David Zepp. Centralia-SeaTac is the proposed transferee in this application case, and is operating Certificate No. C-993 under a management agreement. Exhibits C, D, and

E, respectively, of the settlement agreement are Guaranty Agreements in favor of the Zepps made by Sharyn Pearson and Everett Pearson (the applicants), Robert W. Hastings and Patricia Hastings, and Arthur Davenport.

- 14 Exhibits E, F, G, and H to the Superior Court settlement reflect security interests in the regular and charter certificates of Centralia-SeaTac Airport Express provided by the Pearsons, the Hastings, and Mr. Davenport to the Zepps. The Zepps filed financing statements with the Department of Licensing; copies are provided as Exhibits I, J, K, and L of the settlement. The parties ask the Commission to approve the security interest agreements granted in favor of the Zepps against auto transportation bus Certificate C-993 in accordance with RCW 81.68.030, .040, and 070; and WAC 480-30-030(8).
- 15 The parties agree in their settlement proposal to the Commission that Sharyn Pearson's request to dismiss this application should be granted. Ms. Pearson made her request in a letter dated April 12, 2002. Ms. Pearson has not participated in this proceeding since April 12, 2002. In response to Ms. Pearson's request, the parties conferred and reached the settlement discussed in this Order. As part of their proposed settlement, they request that the application be dismissed.
- 16 As the third part of their settlement proposal, the parties seek Commission approval of a First Amendment to their Management Agreement which is designed to ensure that Centralia-SeaTac Airport Express is managed in accordance with laws and Commission rules pending consideration of a transfer application seeking to transfer Certificate No. C-993 to Black Hills Transportation and Airport Services, Inc. This application was handed to Commission Staff at the June 21, 2002, hearing in this matter. Certificate No. C-993 is currently operating under a management agreement that will terminate at the entry of this order. The parties ask the Commission to conclude that the management agreement and the First Amendment to the Management Agreement comply with the laws and rules governing auto transportation companies.
- 17 Finally, at the June 21, 2002, hearing the parties waived their right to petition for administrative review under WAC 489-09-780(2) and asked that the Commission enter this order as its final order under WAC 480-09-780(8).

### III. DISCUSSION AND DECISION

18 The Commission approves and adopts the result of the parties' settlement as a reasonable resolution of the regulatory problems experienced by the Centralia-SeaTac airporter service. The agreement will protect customers and the general public by ensuring that Centralia-SeaTac has adequate insurance and managers who are familiar with the laws and rules governing certificated bus service. The Commission accepts the parties' waiver of an initial order in this proceeding. The Commission approves a security interest in Certificate No. C-993 to Linda Zepp, approves the management agreement and amended management agreement that allow Centralia-Sea-Tac Airport Express, LLC to operate the Certificate pending a future transfer, and dismisses Application D-078959.

### IV. FINDINGS OF FACT

- 19 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including auto transportation companies.
- 20 (2) Pearson, Sharyn & Zepp, Linda, d/b/a Centralia-SeaTac Airport Express is an "auto transportation company" as defined in RCW 81.68.010(3) and as that term otherwise may be used in Title 81 RCW. Pearson, Sharyn & Zepp, Linda, d/b/a Centralia-SeaTac Airport Express is engaged in Washington State in the business of supplying airporter services between Lewis and Thurston Counties and SeaTac Airport under authority of Certificate No. C-993 to the public for compensation.
- 21 (3) The parties to this proceeding filed a proposed settlement on July 2, 2002.
- 22 (4) Linda Zepp, David Zepp, Sharyn Pearson, Everett Pearson, Robert W. Hastings, Patricia Hastings, and Arthur C. Davenport made a Settlement Agreement dated November 7, 2001 to resolve litigation in Thurston County Superior Court action No. 01-2-00418-0. As part of this Settlement Agreement, Centralia-SeaTac Airport Express, LLC (the "LLC") executed and delivered a Promissory Note dated December 10, 2001 to Linda Zepp and David Zepp, wife and husband (the "Zepps"). That agreement provides the

basis for the Zepp's claim of a security interest in Certificate No. C-993. This claim is recognized by the parties in their settlement. A copy of the settlement agreement, including its exhibits, is included in the Commission's file in this proceeding.

- 23 (5) On April 11, 2002, Sharyn Pearson filed with the Commission a request to withdraw her application in this proceeding. On April 23, 2002, ALJ Schaer entered a letter ruling that the request to withdraw would be considered at a prehearing conference scheduled for April 25, 2002. Ms. Pearson did not appear, nor was she represented at the prehearing conference. The other parties to the proceeding presented a proposal for settling this matter at the hearing in this matter convened at 9:30 a.m. on April 25, 2002. Ms. Pearson did not appear, nor was she represented at the hearing.
- 24 (6) Mr. Ditlevson, for Centralia-SeaTac Airport Express, LLC, Mr. Palmer, for Linda Zepp, Mr. Fricke, for Pacific Northwest Transportation Services, Inc., and Mr. Trautman, for the Commission Staff of the Washington Utilities and Transportation Commission, indicated at the hearing that none had an objection to the dismissal of applicant Sharyn Pearson's application.
- 25 (7) Linda Zepp has formed Black Hills Transportation and Airport Services, Inc. ("Black Hills"). The Partnership and Black Hills will apply for Commission approval of the transfer of the Partnership's regular and charter authority from the Partnership to Black Hills.
- 26 (8) While this Application is pending, the partnership consents to the LLC utilizing its regular and charter authority. The parties have filed this consent with the Commission. The Partnership and the LLC made the First Amendment to the Management Agreement for that purpose. A copy is attached as Exhibit N. Otherwise, the original Management Agreement would terminate upon the entry of this order.
- 27 (9) At the hearing on June 21, 2002, the following parties waived their right to petition for administrative review under WAC 480-09-780(2) and requested that the Commission enter a settlement draft order as its final order under WAC 480-09-780(8): David K. Palmer, for Linda Zepp; Richard L. Ditlevson, for Centralia-SeaTac Airport Express, LLC; Gregory J. Trautman

for Commission Staff; and James N. Fricke, for Pacific Northwest Transportation Services, Inc.

## V. CONCLUSIONS OF LAW

- 28 (1) The Washington Utilities and Transportation Commission has jurisdiction  
over the subject matter of, and parties to, this proceeding. *Title 81 RCW.*
- 29 (2) The settlement proposed by the parties on June 21, 2002, and supported by  
their factual agreements and agreed conclusions based on those facts filed  
with the Commission July 2, 2002, is in the public interest, because it protects  
customers and the public by ensuring that Certificate No. C-993 is managed  
appropriately and that all parties managing or owning the permit have  
adequate insurance. The elements of the settlement should be approved and  
adopted by the Commission as a reasonable resolution of the issues presented  
by its terms. *WAC 480-09-465; WAC 480-090-466.*
- 30 (3) The security interest granted in favor of the Zepps against Auto  
Transportation Bus Certificate C-993 complies with the laws and regulations  
governing Auto Transportation Companies.
- 31 (4) The parties waived their right to petition for administrative review under  
WAC 480-09-780(2). The Commission should accept their proposed terms as  
stated.

## VI. ORDER

32 THE COMMISSION ORDERS That the security interests granted in favor of the  
Zepps against Auto Transportation Certificate C-993 are authorized.

33 THE COMMISSION ORDERS FURTHER:

- 34 (1) That the management agreement and first amendment to the management  
agreement are approved;



- 35 (2) That the terms of the settlement proposed by the parties on June 21, 2002, as reflected by the “draft order” and the exhibits thereto filed by the parties on July 2, 2002, is approved and adopted as a full and final resolution of this transfer application proceeding; and
- 36 (3) That Application D-078959 is dismissed.

Dated at Olympia, Washington, and effective this \_\_\_\_\_th day of August, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner