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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 In The Matter of the)
4 Application of BLACK HILLS) Docket No. TC-021110
5 TRANSPORTATION AND AIRPORT) D079093
6 SERVICES, INC. For Authority)
7 To Transfer All Rights Under) Volume I
8 Certificate No. C-993.) Pages 1 to 18
9 _____)

10 A hearing in the above matter was held on
11 December 11, 2002, from 9:30 a.m to 10:05 a.m., at 1300
12 South Evergreen Park Drive Southwest, Room 108, Olympia,
13 Washington, before Administrative Law Judge MARJORIE
14 SCHAER.

15 The parties were present as follows:
16 THE COMMISSION, by SHANNON SMITH, Assistant
17 Attorney General, 1400 South Evergreen Park Drive
18 Southwest, Post Office Box 40128, Olympia, Washington
19 98504-0128, Telephone (360) 664-1192, Fax (360)
20 586-5522, E-Mail ssmith@wutc.wa.gov.

21 BLACK HILLS TRANSPORTATION AND AIRPORT
22 SERVICES, INC., by DAVID K. PALMER, Attorney at Law,
23 CULLEN LAW OFFICE, LLP, 66 Columbia Street Northwest,
24 Suite 1-A, Olympia, Washington 98501, Telephone (360)
25 786-5000, Fax (360) 943-7707, E-Mail
26 cloffice1@qwest.net.

27 PACIFIC NORTHWEST TRANSPORTATION SERVICES,
28 INC., by JAMES N. FRICKE, President, Post Office Box
29 2163, Olympia, Washington 98507-2163, Telephone (360)
30 754-7113, extension 103, Fax (360) 754-7118, E-mail
31 jimf@capair.com

32 Joan E. Kinn, CCR, RPR
33 Court Reporter

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1 P R O C E E D I N G S

2 JUDGE SCHAER: We are here this morning for a
3 hearing in Docket Number TC-021110. This matter arises
4 from Application Number D-79093 filed by Linda Zepp
5 seeking to transfer a Certificate of Public Convenience
6 and Necessity to Operate Motor Vehicles and Furnishing
7 Passenger and Express Transportation Service.

8 Today is December 11th, 2002, and we're
9 appearing in Room 108 of the Commission headquarters.
10 My name is Marjorie Schaer, and I am the Administrative
11 Law Judge assigned by the Commission to this proceeding.

12 I want to start by taking appearances, and
13 since this is the only hearing we have had in this
14 matter, I would like the long form of the appearance
15 that includes your E-mail address and your telefax
16 number, if you would, please. And I will start with
17 you, Mr. Palmer.

18 MR. PALMER: Good morning, Your Honor. My
19 name is David K. Palmer. My address is 626 Columbia
20 Street Northwest, Suite 1-A, Olympia, Washington 98501.
21 Our telephone number is (360) 786-5000. Our fax number
22 is (360) 943-7707. My E-mail is clofficel@qwest.net,
23 that's net and not com, and I am appearing for the
24 Applicant, Black Hills Transportation and Airport
25 Services, Inc.

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1 JUDGE SCHAER: Okay, Mr. Fricke, do you want
2 to go ahead and make an appearance.

3 MR. FRICKE: James N. Fricke, President of
4 Pacific Northwest Transportation Services, Inc., Post
5 Office Box 2163, Olympia, Washington 98507-2163.
6 Telephone number is (360) 754-7113, extension 103. Fax
7 number is (360) 754-7118. And my E-mail address is
8 jimf@capair.com, appearing as Protestant.

9 JUDGE SCHAER: Thank you.
10 Ms. Smith.

11 MS. SMITH: I'm Shannon Smith, Assistant
12 Attorney General, appearing on behalf of Commission
13 Staff. My address is 1400 South Evergreen Park Drive
14 Southwest, P.O. Box 40128, Olympia, Washington
15 98504-0128. My direct line is area code (306) 664-1192,
16 fax number is 586-5522, E-mail address
17 ssmith@wutc.wa.gov.

18 JUDGE SCHAER: And I believe you misspoke
19 when you gave your area code as 306.

20 MS. SMITH: That's correct.

21 JUDGE SCHAER: And that should be 360?

22 MS. SMITH: Yes.

23 JUDGE SCHAER: Thanks.

24 We have one preliminary matter to address
25 this morning, and that is that Mr. Fricke informed me

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1 off the record that it is his intention to withdraw his
2 protest at this time, and so I will ask you, Mr. Fricke,
3 to go ahead and say what you would like to say about
4 that on the record, confirm whether that's a correct
5 understanding of what you had to say.

6 MR. FRICKE: Yes, Your Honor. On behalf of
7 the Protestant, after reviewing matters thoroughly, we
8 have determined that it would be in the best interests
9 of the proceeding and ourselves to withdraw our protest
10 from the proceeding.

11 JUDGE SCHAER: Okay.

12 Does anyone else wish to speak to this?

13 MR. PALMER: No, Your Honor.

14 JUDGE SCHAER: Thank you, then, Mr. Fricke,
15 and you are excused, or you're welcome to stay if you
16 would like.

17 MR. FRICKE: Oh, I will.

18 JUDGE SCHAER: Okay.

19 At this point, I think the better course for
20 us is to go ahead and put on a prima facie case to show
21 that the elements of public convenience and necessity
22 other than the need element are present. Basically I
23 would like you to put a presentation on indicating that
24 the company has financial fitness and is familiar with
25 the laws and rules of the Commission. So I don't know

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1 if you have exhibits you would like to distribute at
2 this time, Mr. Palmer, or if counsel would like to
3 discuss whether they think that it's necessary to
4 continue forward. Should we go off the record for a
5 moment?

6 MR. PALMER: Can we go off the record.

7 JUDGE SCHAER: Okay, we're off the record.

8 (Discussion off the record.)

9 JUDGE SCHAER: I'm going to begin by marking
10 for identification certain documents that Mr. Palmer has
11 distributed while we were off the record. During the
12 time we were off the record, we discussed how to move
13 forward and what kinds of documents would need to be
14 provided. And is there anything else that we discussed
15 off the record that either counsel would like to reflect
16 at this time?

17 MR. PALMER: No, Your Honor.

18 JUDGE SCHAER: I'm going to mark for
19 identification as Exhibit 1 a copy of Application to
20 Transfer Authority of an Auto Transportation Company,
21 given number D-79093, and the document appears to be in
22 three pages and then with an additional two pages of
23 explanation for some of the questions where answers did
24 not fit on the form.

25 Let's go off the record for just a moment.

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1 (Discussion off the record.)

2 JUDGE SCHAER: I'm going to mark for
3 identification as Exhibit 2 a document titled at the top
4 Assignment of Assets.

5 I'm going to mark for identification as
6 Exhibit 3 a Certificate of Incorporation issued to Black
7 Hills Transportation and Airport Services, Inc.

8 And I'm going to mark for identification as
9 Exhibit 4 a Certificate of Existence Authorization for
10 Black Hills Transportation and Airport Services. This
11 is dated yesterday and indicates that this corporation
12 is continuing as a duly authorized corporation in the
13 State of Washington.

14 At this point, I would like to have the
15 applicant present its direct case. Would you like to
16 call a witness, Mr. Palmer?

17 MR. PALMER: Yes, Your Honor, I call Linda
18 Zepp.

19 JUDGE SCHAER: Ms. Zepp, please stand and you
20 can either testify from there, or we can put you down at
21 the end where you can spread out a bit depending on
22 where your comfort level is.

23 MR. PALMER: Here's fine.

24 (Witness sworn.)

25 JUDGE SCHAER: Go ahead, Mr. Palmer.

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1 MR. PALMER: Thank you.

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3 Whereupon,

4 LINDA ZEPP,

5 having been first duly sworn, was called as a witness

6 herein and was examined and testified as follows:

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8 DIRECT EXAMINATION

9 BY MR. PALMER:

10 Q. Ms. Zepp, would you please state your name

11 for the record.

12 A. Linda Zepp, Z-E-P-P.

13 Q. And are you the Linda Zepp referred to in the

14 Auto Transportation Bus Certificate issued to Sharyn

15 Pearson and Linda Zepp doing business as Centralia

16 SeaTac Airport Express?

17 A. Yes, I am.

18 Q. And were you a founding partner of that

19 business?

20 A. Yes.

21 Q. Are you familiar with Black Hills

22 Transportation and Airport Services, Incorporated?

23 A. Yes.

24 Q. Could you describe your roles in that

25 business?

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1 A. I am sole owner of Black Hills Transportation
2 and Airport Services, Inc.

3 Q. So you would be the sole shareholder?

4 A. Yes.

5 Q. And are you its president?

6 A. Yes.

7 Q. I'm going to hand you what have been marked
8 Exhibits 2, 3, and 4. Now does Exhibit 2 transfer the
9 promissory note from Centralia SeaTac Airport Express,
10 LLC and the collateral to Black Hills?

11 A. Yes, it does.

12 Q. And the other two documents, do they show the
13 incorporation of Black Hills Transportation and Airport
14 Services, Inc.?

15 A. Yes, they do.

16 MR. PALMER: I would move to introduce those
17 exhibits into evidence.

18 JUDGE SCHAER: Any objection?

19 MS. SMITH: No objection.

20 JUDGE SCHAER: Okay.

21 BY MR. PALMER:

22 Q. I'm now going to show you what's marked as
23 Exhibit 1, which is an Application to Transfer Authority
24 of an Auto Transportation Company. On page 3, is that
25 your signature?

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1 A. Yes, it is.

2 Q. And have you had a chance to review this
3 document today?

4 A. Yes.

5 Q. Is it accurate?

6 A. Yes, it is.

7 MR. PALMER: I would move to introduce
8 Exhibit 1.

9 JUDGE SCHAER: Any objection?

10 MS. SMITH: No objection.

11 JUDGE SCHAER: That document is admitted.

12 MR. PALMER: I don't have any other
13 questions.

14 JUDGE SCHAER: Did you have questions,
15 Ms. Smith?

16 MS. SMITH: No, Your Honor, Commission Staff
17 has no questions.

18 JUDGE SCHAER: Okay.

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20 E X A M I N A T I O N

21 BY JUDGE SCHAER:

22 Q. It would help me, Ms. Zepp, if we just went
23 through a few of the basics in your application so that
24 I'm sure I understand. You have indicated that you are
25 the owner of the corporation, and by that I understand

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1 that you own all of the stock in the corporation; is
2 that correct?

3 A. That's correct.

4 Q. And I'm looking and asking these questions at
5 Exhibit 1, so you might want to look at that as well.

6 At the bottom of the first page, you're asked about your
7 tariff and time schedule, and you indicate that the
8 transferee would be adopting the schedule of the
9 transferor; is that correct?

10 A. Correct.

11 Q. Do you have a copy of that with you?

12 A. The time schedule?

13 Q. Mm-hm.

14 A. No, I don't.

15 Q. Okay. Now on the second page of Exhibit 1 at
16 the top it talks about familiarity with the rules of the
17 Commission. Are you familiar with the rules that govern
18 your company?

19 A. Yes.

20 Q. Okay. And then number nine speaks to an
21 equipment list and indicates on the application,
22 purchaser will either operate the current vehicles or
23 acquire new ones. What vehicles do you have right now
24 in general terms; how many vans, how many something
25 else?

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1 A. Five.

2 Q. Five vans?

3 A. Five.

4 Q. And are all of those used for transporting
5 customers to SeaTac or Olympia Airport?

6 A. Correct.

7 Q. And do you have insurance on all of those
8 vehicles that complies with the Commission's insurance
9 requirements?

10 A. Yes.

11 Q. And do you have a plan for maintenance of
12 those vehicles?

13 A. Yes.

14 Q. Looking now at item 13 in Exhibit 1, there's
15 a balance sheet for the business, and is this the
16 balance sheet for the transferor or the transferee, or
17 are they one and the same? Who has this money that
18 we're looking at?

19 A. Oh, I do, this is actually for Black Hills.

20 Q. So this is a balance sheet for Black Hills?

21 A. Yes.

22 Q. And it shows that you have total assets in
23 the company of \$103,000; is that correct?

24 A. Correct.

25 Q. Do you believe that amount is going to be

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1 sufficient to allow you to carry forward the business in
2 a businesslike appropriate way?

3 A. Yes, I do.

4 Q. And is it your plan to put the registration
5 and title of all of your vehicles in the name of the new
6 corporation?

7 A. Yes, that is my plan.

8 Q. And do you have any certificates of authority
9 issued by governmental entities other than the
10 Commission?

11 A. No.

12 JUDGE SCHAER: Okay, those were all of the
13 questions that I had. Is there any redirect for this
14 witness?

15 MR. PALMER: No, Your Honor.

16 MS. SMITH: Nothing.

17 JUDGE SCHAER: Thank you for your testimony.
18 Do you have any other witnesses you wish to
19 call?

20 MR. PALMER: No, Your Honor.

21 JUDGE SCHAER: All right.

22 Does Commission Staff have any witnesses it
23 wishes to call?

24 MS. SMITH: No.

25 JUDGE SCHAER: Okay.

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1 Well, thank you for your time today and for
2 being so well prepared, and we will move forward with
3 this expeditiously so that you can follow forward with
4 your own plans.

5 MS. SMITH: Your Honor.

6 JUDGE SCHAER: Yes.

7 MS. SMITH: If I may ask whether the
8 Administrative Law Judge intends to ask the parties
9 whether they would waive an initial order and go
10 directly to final order by the Commission.

11 JUDGE SCHAER: Okay, let's go off the record
12 for a moment and let you explain that to Mr. Palmer.

13 (Discussion off the record.)

14 JUDGE SCHAER: While we were off the record,
15 Ms. Smith explained to Mr. Palmer and Ms. Zepp the
16 option that applicants have if all parties agree of
17 asking to waive an initial order and have this matter go
18 straight to a final order, and both of you would need to
19 waive, both parties would need to waive the initial
20 order if you wanted this to proceed in that manner.

21 MS. SMITH: The Commission Staff waives an
22 initial order.

23 JUDGE SCHAER: Mr. Palmer.

24 MR. PALMER: The Applicant waives an initial
25 order.

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1 JUDGE SCHAER: All right.

2 And then also in our discussion off the
3 record, Mr. Palmer indicated that he believes it would
4 be helpful to the record to have an explanation of the
5 vehicles that are being used and the process that's
6 being gone through in order to get those into the name
7 of Ms. Zepp or corporation. Would you go ahead and give
8 us that information now, Mr. Palmer.

9 MR. PALMER: Thank you, Your Honor. We have
10 brought this application as part of our exercise of our
11 property rights under Article 9 of the Uniform
12 Commercial Code, which is I believe RCW Chapter 62(a).
13 This process requires a default by the party, which the
14 application sets out has occurred. Once the default has
15 occurred, the secured party, in this case Black Hills by
16 virtue of the assignment, is entitled to take possession
17 of the collateral. We made this application in order to
18 take possession of the permit. If the application is
19 granted, we will take possession of the permit and also
20 the other collateral, which includes the vehicles.
21 That's step one.

22 Step two is realizing on the collateral to
23 satisfy our debt, and we have two options there. One is
24 what is called strict foreclosure. That is we give a
25 notice to the debtor stating our intention to exercise

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1 strict foreclosure, and if they don't object, we retain
2 the collateral, including the vehicles and the permit,
3 as Black Hills' property. That would obviously require
4 us to retitle the vehicles as Black Hills'. The other
5 option is to have either a public or private sale,
6 although a private sale would make more sense here. In
7 that case, you sell the property for -- the collateral
8 for the best price, and then there are some procedures
9 for disbursing the proceeds. Obviously that would
10 require another application to transfer the permit, and
11 then the vehicles would also then be retitled in the
12 name of the subsequent purchaser.

13 So anyway, I make this statement to explain
14 the commercial law, which is trying to make fit with the
15 transportation law, and also to explain in particular of
16 the titling to the vehicles, that they -- in essence,
17 the titling will be handled appropriately trying to make
18 fit both the commercial law and the transportation law
19 issue here.

20 JUDGE SCHAER: Thank you.

21 Let's be off the record for a moment.

22 (Discussion off the record.)

23 JUDGE SCHAER: While we were off the record,
24 Mr. Palmer provided some information about what his
25 comments about transfer included. It's my understanding

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1 that those comments should be limited to the
2 circumstance of if the transferee wanted to transfer the
3 permit again. Is that a correct understanding,
4 Mr. Palmer?

5 MR. PALMER: Yes, Your Honor.

6 JUDGE SCHAER: Okay.

7 Is there anything else to come before the
8 Commission this morning?

9 Hearing nothing, thank you for your work here
10 today, and we are adjourned.

11 (Hearing adjourned at 10:05 a.m.)

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