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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In re Application TC-091575 of)
4)
4 XINBAO WANG, d/b/a)
ELLENSBURG EXPRESS)
5) DOCKET NO. TC-091575
For a Certificate of Public) Volume I
6 Convenience and Necessity to) Pages 1 - 16
Operate Motor Vehicles in)
7 Furnishing Passenger and)
Express Service as an Auto)
8 Transportation Company.)

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A prehearing conference in the above matter
11 was held on December 14, 2009, at 1:30 p.m., at 1300
12 South Evergreen Park Drive Southwest, Olympia,
13 Washington, before Administrative Law Judge ADAM TOREM.

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The parties were present as follows:

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ELLENSBURG EXPRESS, by XINGBAO WANG, Owner,
17 1404 North Thayer Avenue, Ellensburg, Washington
98926; telephone, (509) 607-2865.

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WASHINGTON UTILITIES AND TRANSPORTATION
19 COMMISSION, by JENNIFER CAMERON-RULKOWSKI, Assistant
Attorney General, 1400 South Evergreen Park Drive
20 Southwest, Post Office Box 40128, Olympia, Washington
98504-0128; telephone, (360) 664-1186.

21

CWA, INC., d/b/a AIRPORTER SHUTTLE, by
22 RICHARD JOHNSON (via bridge line), President, 1416
Whitehorn Street, Ferndale, Washington 98248;
23 telephone, (360) 543-9369.

24 Kathryn T. Wilson, CCR

25 Court Reporter

0002

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

2 JUDGE TOREM: Good afternoon. It is Monday
3 afternoon, December the 14th, 2009, a little after 1:30
4 in the afternoon. I'm Judge Adam Torem, and I'm an
5 administrative law judge with the Washington Utilities
6 and Transportation Commission. This is the prehearing
7 conference scheduled for Docket TC-091575. This is the
8 case of Xinbao Wang and the Ellensburg Express in an
9 application for automobile transportation authority.

10 Today we are going to go through the reason
11 for the prehearing conference and determine the issues
12 in this case, make sure everyone understands who the
13 various parties are and then set up a schedule as
14 needed to address the issues and perhaps hold an
15 evidentiary hearing to determine if the Commission will
16 grant the request for the certificate authority to
17 operate between Ellensburg and Seattle.

18 The Commission received the application on
19 October the 1st, 2009, and was published in the docket
20 on October the 12th. The protest that came in on
21 November the 4th, 2009, was from Mr. Richard Johnson as
22 the general manager of CWA, Incorporated, or the
23 Airporter Shuttle, and we then sent out a prehearing
24 conference notice regarding today's proceeding back on
25 November the 18th, 2009.

0003

1 At this time, I want to take appearances. I
2 know on the telephone line we have Mr. Johnson, but I
3 also wanted everyone to hear how to make an appearance.
4 The only other attorney in the room is
5 Ms. Cameron-Rulkowski, an assistant attorney general.
6 She will be representing Commission staff, and I will
7 have her make an appearance first, and then we will go
8 to you, Mr. Wang and Mr. Johnson as well.

9 MS. CAMERON-RULKOWSKI: On behalf of
10 Commission staff, Jennifer Cameron-Rulkowski, assistant
11 attorney general. My address is 1400 South Evergreen
12 Park Drive Southwest, PO Box 40128, Olympia,
13 Washington, 98504-0128. My telephone number is area
14 code (360) 664-1186. My fax number is (360) 586-5522,
15 and my e-mail address is jcameron@utc.wa.gov.

16 JUDGE TOREM: Thank you. Mr. Wang, will you
17 please go ahead and read your appearance, which will
18 you include the name, address, telephone numbers, and
19 e-mail for the court reporter?

20 MR. WANG: My name is Xinbao Wang. I'm the
21 manager of the company. My location is 1404 North
22 Thayer Avenue, which is T-h-a-y-e-r, Ellensburg,
23 Washington, 98926. My telephone number is
24 (509) 607-2865. My e-mail is synbaxp@yahoo.com.

25 JUDGE TOREM: Mr. Wang, that's a different

0004

1 address than the application.

2 MR. WANG: Yes.

3 JUDGE TOREM: What's the address on Thayer
4 again?

5 MR. WANG: 1404.

6 JUDGE TOREM: Is that the address we should
7 use to serve the prehearing conference order?

8 MR. WANG: That is correct.

9 JUDGE TOREM: I'll see that I get that
10 updated. Mr. Johnson, if you will go ahead and make
11 your appearance now.

12 MR. JOHNSON: Certainly. Richard Johnson.
13 I'm the president of CWA. Our address is 1416
14 Whitehorn Street, Ferndale, Washington, 98248;
15 telephone number, (360) 543-9369; e-mail,
16 richard@airporter.com, and fax is (360) 380-1538.

17 JUDGE TOREM: Thank you, Mr. Johnson. Today
18 what we will need to do is sort out what the issues in
19 the case are, and Mr. Wang called to my attention
20 before we got started something in the protest
21 regulation, which is WAC 480-30-116, and it's
22 subparagraph 4, and I believe it's 4(a), there is a
23 suggestion that a protest is not appropriate for
24 someone seeking a charter or excursion service, and
25 that raises the question as to, Mr. Johnson, your

0005

1 desire to protest this application and perhaps to
2 explain a little bit how you understood the application
3 and why you filed the protest.

4 MR. JOHNSON: Certainly. Our understanding
5 of the application was that Mr. Wang intended to
6 provide a scheduled service back and forth from
7 Ellensburg to Seattle twice a day, once in the morning,
8 once at night, and that's defined as a scheduled
9 business, not a charter.

10 A charter is defined when an entire group of
11 people hire the vehicle and as one group are taken on a
12 move.

13 JUDGE TOREM: Ms. Cameron-Rulkowski, did the
14 Commission understand the application to be for a
15 scheduled service as well?

16 MS. CAMERON-RULKOWSKI: Your Honor, I had
17 assumed that it was, but I certainly would be
18 interested to hear from the applicant if that's how
19 they meant it.

20 MS. WANG: Can I speak on behalf of Mr. Wang?

21 JUDGE TOREM: Ms. Wang, if you want to speak
22 on behalf of the company.

23 MS. WANG: I think there is kind of
24 misunderstanding. First, thank you all for being here
25 and giving us tips on the process. As a matter of

0006

1 fact, I think Mr. Johnson was correct that originally,
2 September, actually, we originally applied for
3 application for the bus certificate, and then that's
4 the beginning where in the middle of our marketing
5 research, and then through several months of marketing
6 research, we have finally determined that the charter
7 and excursion service is more suitable to address the
8 public needs and interests in Ellensburg area, and
9 that's why we are actually hoping today we can make it
10 clear and clarify the entire process.

11 We first apologize for any inconveniences
12 that may have occurred during the process due to our
13 lack of understanding of the differences between the
14 different certificates or applications. So we would
15 actually determine to withdraw our regular bus
16 application, but we will want to continue with our
17 charter and excursion carrier certificate application.

18 So I think it is probably something we should
19 discuss in more detail because we have some different
20 application package to be submitted hopefully today, so
21 that's pretty much clarifying some of the
22 misunderstandings therein.

23 JUDGE TOREM: Can you describe to me the
24 characteristics of what service you do want to offer?
25 What would be the average daily or weekly travel?

0007

1 MS. WANG: Please correct me, because I'm on
2 behalf of Mr. Wang. We happen to have the same last
3 name, but I think you assume I'm the Mrs. Wang. If I
4 understand correctly, our business goal is to provide
5 flexible and affordable shuttle service solution to
6 local Ellensburg residents and people in the same area
7 there.

8 We did research. Currently, there is no
9 charter where excursion service providers in
10 Ellensburg, and also, we have actually made many
11 acquaintances here during our market research through
12 many groups of people that want to go, for instance,
13 grocery shopping in those Asian markets on the west
14 side of Washington, and there are also many groups of
15 people who want to go for shopping centers for holiday
16 shopping as well, and they want to have a flexible, and
17 they also want to have kind of like more customized,
18 kind of like a shuttle solution.

19 Also, in addition, based on research, there
20 is also some other groups of people that want to
21 actually have short-term trips while considering the
22 location of Ellensburg right in the middle -- that's
23 why we call it Central Washington -- and there are many
24 groups of people who are interested to explore the west
25 side but also the east side of Washington for

0008

1 short-term trips, and we can guarantee, there is really
2 plenty of interest and needs.

3 So based on those kind of public needs and
4 interests, we have come to decide our customer service
5 where our company go will be providing this flexible
6 and available and affordable charter and excursion
7 services, the short tours or trips, and those are for
8 groups of people who want to go for holiday shopping or
9 grocery shopping or just exploring parks or other stuff
10 they want to have. That will be our purpose for now.

11 JUDGE TOREM: So Mr. --

12 MR. WANG: I had one more. There is a file
13 called RCW 81.70.020. In Section 6, the excursion
14 service may be regular schedule, so that's why we
15 propose --

16 MS. WANG: That's what cause the initial
17 misunderstanding, so at beginning we are thinking about
18 those excursion service needs to have some kind of
19 schedule as well, so we put actually a schedule there;
20 although, we were not really sure at the beginning
21 point when we initiated the application.

22 After reading all through those menus, we
23 have become clearer and clearer, and that's our first
24 and also our current intention to start such a charter
25 and excursion service.

0009

1 MR. WANG: That is correct.

2 JUDGE TOREM: Ms. Cameron-Rulkowski?

3 MS. CAMERON-RULKOWSKI: I'm looking at the
4 application, and I see that there is a check box there,
5 yes or no, and the question is, "Do you plan on
6 providing charter or excursion service," and the box is
7 checked "no" there.

8 MR. WANG: Yes. Because we just got the
9 message from Tina -- excursion and charter service if
10 we apply to regular service, like the daily base. So
11 the excursion service and the charter service will
12 automatically add to our applications. That's why we
13 didn't check that box.

14 MS. CAMERON-RULKOWSKI: You mean that's why
15 you checked no?

16 MR. WANG: Yes.

17 JUDGE TOREM: Mr. Johnson, hearing the
18 description of not a regular airport service per the
19 schedule that was originally appended to the
20 application in October, is your company, the Airporter
21 Shuttle, still interested in pursuing a protest to what
22 would sound like a modification to this, at least in
23 concept? I think you would have to see it in writing
24 to make a firm decision, but conceptually so that
25 Mr. Wang and Ms. Fen Wang can also hear what's your

0010

1 reaction to what you heard this afternoon.

2 MR. JOHNSON: I'm pleased to hear they are
3 willing to withdraw the regular scheduled service
4 application and they are interested now in a charter
5 excursion permit. I would like to see in writing what
6 their specific plans are. My sense from what I've
7 heard is they are rather disorganized in what they are
8 looking for, and to carry passengers when you are
9 disorganized I think is a real concern to me from a
10 safety point of view.

11 That's my quick gut reaction is glad to hear
12 that the regular scheduled application has been
13 withdrawn, but for me to give any firm opinion on a
14 charter and excursion permit, I've got to see it first
15 and also have to contemplate their lack of knowledge.

16 MS. WANG: Can I have three quick points just
17 in response to Mr. Johnson's response? Thank you for
18 that first. Quickly first, point number one, how can
19 you tell that we are disorganized? I'm just feeling
20 curious, and also, how would you see that because you
21 feel that we are disorganized so we will not be able to
22 provide safety or safety insurance?

23 Point number two, according to the state law,
24 if we actually applying for excursion and charter
25 service, the protest the law does not apply, which

0011

1 means you feel happy or not, we actually are justified
2 to go on to apply for such kind of certificate.

3 Point number three --

4 MR. WANG: Number three is the airport
5 shuttle service is not good for us --

6 MS. WANG: As residents.

7 MR. WANG: Yes, correct. They charter too
8 much, and they take about two hours and 45 minutes for
9 one trip. Imagine that. If the customer wants to go
10 to Seattle in town, the customer will take about six
11 hours on their road, so no one taking their bus.
12 That's why it's interesting, the --

13 JUDGE TOREM: Let me interrupt. I appreciate
14 the back and forth today, but today is just a
15 procedural conference, and I wanted to at least in
16 fairness hear what the points were. If we have a trial
17 to determine whether your company is fit, willing, and
18 able to provide the service, or the issue comes up as
19 to whether your company is replacing something that's
20 already being provided to the satisfaction of the
21 Commission, then we will take those issues up sometime
22 next year at an evidentiary hearing, but there seems to
23 be a procedural joint we have to get to soon and decide
24 whether this case is being set for hearing. It does
25 not sound like it needs to be, and that if you are

0012

1 filing an application to which there is no protest,
2 then by law, Mr. Johnson's protest to this application
3 becomes moot.

4 So my suggestion is that today, we set a
5 deadline by which you will refile your application. At
6 that point, I'll know what it is and so will
7 Mr. Johnson. If he wishes to characterize your new
8 application and revised application as still an
9 application for scheduled service and wants to make a
10 legal argument that his protest still stands, we will
11 hear that later.

12 If he wants to withdraw his protest based on
13 the revised application, that will be something he can
14 communicate as well, but it appears you are still
15 looking to talk with Tina Leipski of our staff today or
16 somebody else here at the Commission and file something
17 for all of us to review. I as the judge am not
18 available to provide any technical assistance or advice
19 on how you should proceed. It does appear you need
20 more time because what I have in front of me was filed
21 in October and Mr. Johnson's protest from early
22 November.

23 Ms. Cameron-Rulkowski, do you have another
24 suggestion procedurally other than setting, perhaps,
25 another date for a prehearing conference a month from

0013

1 now to proceed, and we can all do that by phone as well
2 to save you the trip over the mountains.

3 Ms. Cameron-Rulkowski, what do you think?

4 MS. CAMERON-RULKOWSKI: May I ask the
5 applicant a question?

6 JUDGE TOREM: Yes.

7 MS. CAMERON-RULKOWSKI: Did you say you have
8 a revised application to file today?

9 MR. WANG: Yes.

10 MS. WANG: You can also consider as a
11 withdrawal of original one, so that actually probably
12 will automatically allow Mr. Johnson to withdraw his
13 protest if our original application does not exist
14 anymore, and that's for the charter and excursion
15 service application. We will be filling out the new
16 application forms today.

17 MS. CAMERON-RULKOWSKI: Your Honor, I don't
18 have anything else to suggest. I guess I would make
19 one comment, and that is if it appears that the revised
20 application is for charter and excursion service only,
21 then we don't necessarily need a hearing.

22 JUDGE TOREM: My understanding is when the
23 application came in on October 1st, Ms. Leipski looked
24 at it and had some e-mail exchanges with the Wangs, and
25 then it was set on the docket based after the

0014

1 processing and that a charter and excursion service
2 would not be necessarily published on the docket for
3 protest due to the law.

4 It may be published as a notice just to show
5 the application came in. I'm not familiar personally
6 with how that section of our commission works on
7 processing a charter and excursion application, because
8 as there are typically no hearings on them, as a judge,
9 I wouldn't see that part. So if you are telling me you
10 have a new application, what I wanted to make sure was
11 that I didn't force your hand to file a new application
12 and perhaps waive the fee that was required. I don't
13 know if you are not prepared to file whatever new fee
14 is there or you are looking to have the old application
15 fee applied --

16 MR. WANG: I can pay the fee.

17 JUDGE TOREM: I encourage you to inquire into
18 it with the filing staff whether the \$200 already paid
19 can be applied, or if it's a separate fee that's
20 already been paid and processed.

21 MR. WANG: Because we live too far away from
22 here, sometime we communicate through the e-mail. It's
23 not so convenient for us. We want to see some staff.
24 We want to listen to their suggestion, and then we can
25 follow their suggestion to fill out the forms, because

0015

1 there are so many rules, so many forms on the UTC Web
2 site, so it's very difficult for us to fill out the
3 forms by the staff, so next time, I need somebody to
4 assist me to do the work step by step if possible.
5 Thank you.

6 MS. CAMERON-RULKOWSKI: I could suggest that
7 as soon as this hearing is over, I will see if
8 Ms. Leipski would be available. I don't know if she
9 would be, but possibly she would be available to speak
10 with you today.

11 JUDGE TOREM: So Mr. Johnson, it sounds as
12 though, and I'll confirm this with Mr. Wang and Ms. Fen
13 Wang, you are withdrawing the application we've
14 docketed for this case, so what I will do is issue an
15 order dismissing the application on the voluntary
16 withdrawal, and then this docket will be over.

17 The only way we would resume the proceeding
18 in front of me or any other judge is if another
19 application is processed, given notice, and another
20 protest is received, so only then would we take that
21 up. So Mr. Wang, is that your intent?

22 MR. WANG: Yes.

23 JUDGE TOREM: Mr. Johnson, it sounds as
24 though this docket is going to become moot. Is that
25 your understanding as well?

0016

1 MR. JOHNSON: That's correct, yes.

2 JUDGE TOREM: Whether or not you get notice
3 of the next application is up to our staff, I believe,
4 or any individual communications you might have with
5 Mr. Wang or Ms. Fen Wang, and I take it you both have
6 each other's contact information, and I'll leave it up
7 to you. I can't make any orders as to forcing copies
8 to go back and forth, but I'll leave it up to the two
9 of you as potential competitors to work out those
10 differences, if there are any, and there may not be at
11 this point. Ms. Cameron-Rulkowski anything else from
12 Commission staff?

13 MS. CAMERON-RULKOWSKI: No, Your Honor.

14 JUDGE TOREM: I will send out an order
15 dismissing this case and explaining in the order why
16 it's being dismissed on a voluntary withdrawal and then
17 a presumed reapplication. We are adjourned here at ten
18 minutes to two. Thank you.

19 (Prehearing adjourned at 1:53 p.m.)

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