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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

3

4 In re Application No. D-078959)Docket No. TC-010273
of)Volume II

5)Pages 28-48

PEARSON, SHARYN & ZEPP, LINDA,)

6 D/B/A CENTRALIA-SEATAC AIRPORT)

EXPRESS, For Authority to)

7 Transfer all Rights Under)

Certificate No. C-993 to)

8 Centralia-SeaTac Airport)

Express, LLC.)

9 _____)

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A hearing in the above matter was

13 held on July 18, 2001, at 9:31 a.m., at 1300

14 Evergreen Park Drive Southwest, Olympia, Washington,

15 before Administrative Law Judge MARJORIE R.

16 SCHAER.

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The parties were present as

follows:

18

19 CENTRALIA-SEATAC AIRPORT EXPRESS,
LLC, by Greg Haffner, Attorney at Law, 555 W. Smith
Street, Kent, Washington 98035.

20

21 PROTESTANT LINDA ZEPP, by David K.
Palmer, Attorney at Law, Cullen Law Office, 626
Columbia Street, Suite 1-A, Olympia, Washington
22 98501.

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24 PACIFIC NORTHWEST TRANSPORTATION
SERVICES, INC., by James N. Fricke, President, P.O.
Box 2163, Olympia, Washington 98507.

25 Barbara l. Nelson, CSR Court Reporter

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1 THE COMMISSION, by Greg Trautman,
Assistant Attorney General, 1400 Evergreen Park
2 Drive, S.W., P.O. Box 40128, Olympia, Washington
98504-0128.

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1 JUDGE SCHAER: Let's be on the record.
2 We're here this morning for a hearing in Docket
3 Number TC-010273. This is a filing by Sharyn Pearson
4 seeking to transfer the certificate of
5 Centralia-Sea-Tac Airport Express to Centralia
6 Sea-Tac Airport Express, L.L.C.

7 This morning we are taking up the
8 prehearing conference in this matter that was
9 continued from June 26th, 2001. We're in the
10 Commission's Hearing Room 108, Commission's
11 headquarters building in Olympia, Washington. Today
12 is July 18th, 2001, and I'm Marjorie Schaer, the
13 Administrative Law Judge assigned to this proceeding.

14 I'd like to start by taking appearances
15 from all the parties. Since you've already made a
16 formal appearance at the first part of this hearing,
17 at this point, I'd just like you to give your name
18 and the party you represent, please, starting with
19 the Applicant.

20 MR. HAFFNER: Yes, Your Honor. Greg
21 Haffner. I represent the Applicant, Sharyn Pearson,
22 and actually Centralia-Sea-Tac Airport Express,
23 L.L.C.

24 JUDGE SCHAER: All right. And then Mr.
25 Palmer, for the Protestant.

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1 MR. PALMER: Yes, I'm David Palmer. I
2 represent the Protestant, Linda Zepp.

3 JUDGE SCHAER: Mr. Fricke?

4 MR. FRICKE: James Fricke, Pacific
5 Northwest Transportation Services, Inc., Protestant.

6 JUDGE SCHAER: Okay. And Mr. Trautman.

7 MR. TRAUTMAN: Greg Trautman, Assistant
8 Attorney General, representing Commission Staff.

9 JUDGE SCHAER: Okay. At our last session,
10 we talked about continuing this hearing till today,
11 and one of the major reasons for that gap was to
12 allow the parties to seek insurance coverage that
13 appeared to be broad enough to cover whatever entity
14 might be currently operating this permit. And at
15 this point, I'd like a report back from the parties
16 on where we are in that progress. I'm not sure which
17 of you is prepared to give that.

18 MR. HAFFNER: Your Honor, I can represent
19 to the Court that I believe this morning -- yes, this
20 morning, there was faxed to Ms. Bonnie Allen a
21 certificate of liability insurance with today's date,
22 July 18, 2001, that we may want to make an exhibit to
23 the hearing, but it doesn't -- it does seem to comply
24 with the agreement that we put on the record at the
25 last hearing, which was that it would cover the

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1 Applicant, as well as the original parties on the
2 permit and the members of the L.L.C., including Linda
3 Zepp individually and as a partner. I think the
4 document would probably be the best evidence of what
5 the insurance coverage now is.

6 JUDGE SCHAER: Has everyone received a copy
7 of this document, all parties? Mr. Fricke, did you
8 get a copy of this?

9 MR. FRICKE: No, I haven't.

10 JUDGE SCHAER: Pass one down to him,
11 please. Have the parties had an opportunity to
12 review this before right now?

13 MR. TRAUTMAN: Yes.

14 JUDGE SCHAER: Other than Mr. Fricke?
15 Let's wait just a moment, let him take a look, and
16 then proceed from there.

17 MR. FRICKE: Okay.

18 JUDGE SCHAER: Mr. Haffner has suggested
19 that we mark this document and make it an exhibit in
20 the case. Does anyone have a problem doing that?

21 MR. TRAUTMAN: No, Your Honor. I would
22 just add that we would view this as a temporary
23 document pending the filing of -- I believe it's a
24 Form E, which is the permanent document, which should
25 then also be filed as part of the record.

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1 JUDGE SCHAER: I'm going to mark this
2 document right now as Exhibit 1.

3 MR. PALMER: Your Honor, I don't have any
4 objection to it, but I do have a couple -- two
5 comments on it.

6 JUDGE SCHAER: We'll get to that in just a
7 moment. I'd prefer to have it in the record before
8 we start talking about it too much, unless there's
9 some concern about putting it in the record. So Mr.
10 Haffner, did you want to offer this exhibit at this
11 point?

12 MR. HAFFNER: Yes, Your Honor, I would
13 offer this as an exhibit.

14 JUDGE SCHAER: Any objections? Okay.
15 Exhibit 1 is admitted. Is there anything further you
16 wanted to say about Exhibit 1 at this point, Mr.
17 Haffner?

18 MR. HAFFNER: No, Your Honor.

19 JUDGE SCHAER: Okay. Then Mr. Palmer, did
20 you have any questions or comments you'd like to make
21 at this point?

22 MR. PALMER: Yes, Your Honor. Thank you.
23 Two. One is relatively minor. As was required by
24 the order, it says that each member of the L.L.C. is
25 to be an additional named insured, and it lists as

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1 one of the members Linda Zepp, which I believe was
2 pretty clear from the discussion at the last hearing
3 that she's not a member of the L.L.C. And it's my
4 understanding that this was -- that the insurance
5 company got the list of members from the Applicant.
6 I don't know what we need to do about that, but I
7 just wanted to make that issue clear.

8 The other thing is it covers the scheduled
9 autos, and I'm not sure what they have as scheduled
10 autos. There are a couple of vehicles that are
11 listed in the application that -- one was titled in
12 the name of Centralia-Sea-Tac Airport Express, the
13 other one was titled in the name of David and Linda
14 Zepp. Since the application was filed, those
15 vehicles have been, for lack of a better term,
16 abandoned at the Zepp premises. They're not used in
17 the business right now because the business has
18 refused to take them back. Particularly the one
19 that's titled in the name of the Centralia-Sea-Tac
20 Airport Express, I don't know if it's on the
21 insurance, because it just says scheduled autos. I
22 don't know if -- I guess I would want to know what
23 the Commission's position on whether they should be
24 scheduled autos, particularly the one that is titled
25 and is using the name's business. It's not being

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1 used to transport the general public.

2 I suppose if I were a creative Plaintiff's
3 lawyer and Ms. Zepp were driving it and there were an
4 accident, I might try to look to the business and
5 argue there was some sort of joint venture, but I
6 guess my reason of bringing that up is to make sure
7 that that is covered in the way that the Commission
8 feels it should be, as far as the insurance.

9 JUDGE SCHAER: Okay. Mr. Haffner, do you
10 have information beyond this certificate with you
11 that shows what vehicles are covered by this
12 insurance? Do you have whatever that schedule
13 includes with you?

14 MR. HAFFNER: I do not, Your Honor. I
15 don't know what scheduled autos are covered. My
16 response, however, to Mr. Palmer's inquiry, and he
17 and I discussed this yesterday, is that if those
18 vehicles have been removed, and I've just conferred
19 with one of the partners, that two of the vehicles on
20 the application are not -- are no longer in use by
21 the L.L.C., by the Applicant, and were in fact
22 returned to the Protestant, Ms. Zepp. And so those
23 should probably be -- that list should probably be
24 amended.

25 But in response directly to the inquiry by

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1 Mr. Palmer, I don't believe that there is an
2 obligation on the part of the Applicant to ensure the
3 vehicles that are titled in the name of the
4 Protestant and are being used by the Protestant;
5 they're not being -- they're no longer in the
6 possession of the Applicant. And if there's a
7 concern about insurance coverage, it would seem to me
8 that they should be insured by the Protestant.

9 JUDGE SCHAER: Well, my concern, Mr.
10 Haffner, and the reason I'm asking the question, is
11 that we've had the three-week continuation of this
12 prehearing so that the parties could work together
13 and put together what information might be needed
14 about insurance. And what I have before me now is
15 something that was faxed in a few minutes before the
16 hearing that doesn't show what's covered. And so I'm
17 asking you if there's some other information that you
18 have available to you?

19 MR. HAFFNER: I don't.

20 JUDGE SCHAER: And I'm going to check with
21 Commission Staff next to see if there's some record
22 that we have or, you know, what their concerns, if
23 any, might be, but I was hoping that we would have
24 sufficient information in the hearing room this
25 morning that we wouldn't have any of these questions

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1 arise. So Mr. Trautman, does Staff have any comment
2 at this point?

3 MR. TRAUTMAN: My understanding, from
4 speaking with Ms. Allen, is that typically the
5 insurance certificates do not specify the particular
6 vehicles, and they simply provide blanket coverage
7 for any vehicles or all vehicles that may be used
8 under the certificate.

9 JUDGE SCHAER: So is there a way I can tell
10 that this does that from looking at this form? I
11 notice that there's a checkmark by scheduled autos,
12 which led me to believe there might be a schedule of
13 autos. But is there something else that we have that
14 shows that this covers a complete fleet?

15 MR. TRAUTMAN: Can Ms. Allen answer?

16 JUDGE SCHAER: Does anyone object to Ms.
17 Allen responding on behalf of Staff?

18 MR. HAFFNER: No, Your Honor.

19 JUDGE SCHAER: I can swear her in, we can
20 call her as a witness, if you'd like that. If you
21 think it would be useful to let her talk without
22 having to go through Greg Trautman, we could do that.

23 MR. HAFFNER: I think it would be quicker
24 just to let her speak.

25 JUDGE SCHAER: Go ahead.

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1 MS. ALLEN: The certificate we have here is
2 acceptable as a temporary filing. We accept this
3 type of a certificate from an insurance agent for a
4 period of up to 60 days. At -- during that time, the
5 actual Form E insurance filing is what -- which is
6 the form we require, comes directly from the
7 insurance company. That filing is a blanket filing
8 that covers any and all vehicles operated under the
9 certificate. I mean, it basically holds -- it's my
10 understanding it holds them responsible for any
11 vehicles that are used under the certificate, so we
12 don't generally maintain a list of vehicles on any of
13 our insurance filings.

14 JUDGE SCHAER: And is this a standard type
15 of form, where we just -- it says scheduled autos,
16 but we really don't worry about scheduled autos; it's
17 just anything the company uses? That's where I'm
18 getting a little bit confused.

19 MS. ALLEN: That's my understanding of the
20 certificate itself. I have seen certificates that
21 specifically list vehicles, as well, but we accept
22 this only as a temporary filing, pending the blanket
23 filing that follows.

24 JUDGE SCHAER: Okay. And you don't know
25 when that might be or -- just usually within 60 days;

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1 is that --

2 MS. ALLEN: It's required to be filed
3 within 60 days of accepting a certificate of a
4 temporary filing.

5 JUDGE SCHAER: So that would be 60 days
6 from today or --

7 MS. ALLEN: Yes.

8 JUDGE SCHAER: Okay. Mr. Fricke, did you
9 have any questions about the insurance issue?

10 MR. FRICKE: No, Your Honor.

11 JUDGE SCHAER: Thank you. Having heard the
12 explanations that we just received, do parties have
13 any concerns about the sufficiency of this or any --
14 are there any problems with what we have now in terms
15 of going forward in the minds of any party? Mr.
16 Palmer.

17 MR. PALMER: Would the final Form E then be
18 corrected as far as the members of the L.L.C.?

19 MR. HAFFNER: I can suggest that that be
20 made. And by Mr. Palmer's comment, I'm assuming that
21 you want us to simply remove Linda Zepp from the
22 parenthetical?

23 MR. PALMER: Correct.

24 MR. HAFFNER: Because she is mentioned
25 afterwards as Linda Zepp, individually, and as a

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1 partnership.

2 MR. PALMER: Correct. And that's the way
3 that it was in the order.

4 MR. HAFFNER: Okay.

5 JUDGE SCHAER: With that commitment from
6 Mr. Haffner, are there any other concerns? So I
7 think we're at the point now of discussing where we
8 go from here and how we would like to proceed. Have
9 the parties had a chance to discuss that among
10 yourselves since our last meeting?

11 MR. HAFFNER: We have not, Your Honor.

12 JUDGE SCHAER: Okay.

13 MR. HAFFNER: And I think it would probably
14 be a good idea for us to discuss it before we go
15 further on the record.

16 MR. TRAUTMAN: I agree.

17 JUDGE SCHAER: Well, then, let's go off the
18 record for a few minutes to allow the parties and Mr.
19 Fricke to be included in the discussions to discuss
20 where we go from here. And I will be at my office
21 across the hall. When you're ready to have this
22 resumed, someone can come and summon me, but for now,
23 let's be off the record.

24 (Recess taken.)

25 JUDGE SCHAER: Let's be back on the record

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1 after a break. At this time, the parties, I believe,
2 are prepared to report how they wish to proceed. And
3 Mr. Haffner, are you ready to begin that discussion?

4 MR. HAFFNER: Yes, Your Honor.

5 JUDGE SCHAER: Go ahead, please.

6 MR. HAFFNER: We would propose, following
7 our discussion, that we stay this application until
8 resolution of the civil dispute that is currently
9 pending in Thurston County Superior Court under Cause
10 Number 01-2-00418-0, with the possibility of the
11 Applicant withdrawing the application prior to that
12 civil dispute being resolved, and the Applicant, or
13 Ms. Pearson, involved in some way submitting a new
14 application either for a transfer of the authority as
15 it is currently titled with the Commission in the
16 partnership of two, as we call it, the partnership of
17 Ms. Pearson and Ms. Zepp, to the partnership of what
18 I believe to be five people, including Ms. Pearson
19 and Ms. Zepp and Ms. Schoeller, S-c-h-o-e-l-l-e-r,
20 Mr. Davenport, D-a-v-e-n-p-o-r-t, and Mr. Hastings,
21 H-a-s-t-i-n-g-s, with a simultaneous application for
22 a lease from that partnership of five to the
23 Applicant in this particular case, the L.L.C., or we
24 may consider submitting an application to the
25 Commission if an application for approval is

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1 necessary for a lease or management agreement from
2 the partnership of two to the partnership of five,
3 and then possibly again simultaneously to the L.L.C.

4 Or there may be yet a third or other
5 alternative that we need to explore, but that is why
6 we are seeking a stay of the application, so that we
7 can explore those alternatives, so that we can become
8 more in compliance with the Commission's regulations
9 for operation of the permit by the owners who are
10 listed on the permit.

11 JUDGE SCHAER: So I understand it, then, if
12 there were questions about whether this application
13 should be redocketed or should be captioned in a
14 different manner, those are the kinds of issues that
15 you would be addressing if you were to make one of
16 these possible filings or --

17 MR. HAFFNER: I think what we really
18 discussed was that we're not looking at redocketing
19 this application; that any of these changes that we
20 are proposing would be so significantly different
21 from this current application that a new application
22 would need to be docketed. We explored the
23 possibility of simply amending this application, but
24 I think we've decided that, again, the changes are
25 too significant for a mere amendment; that it would

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1 be cleaner and clearer for everybody if we were to
2 simply submit a new application, if that is, in fact,
3 determined to be necessary.

4 JUDGE SCHAER: Okay. I received a letter,
5 I believe everyone did, on May 30th of this year from
6 Mr. Trautman indicating that the parties had -- he
7 had received an inquiry about simply having this
8 application withdrawn, and that was one of the topics
9 that was before us at the last hearing. What is your
10 thinking on keeping this proceeding going and staying
11 it, rather than just simply withdrawing the
12 application and coming back with something else?

13 MR. HAFFNER: Well, there is the
14 possibility, following the resolution of the civil
15 lawsuit, that the Court determines that Ms. Zepp is,
16 in fact, a member of the L.L.C., and that her
17 interest in the L.L.C. be determined at that time
18 through the civil lawsuit, and I would think that
19 that might change, then, Ms. Zepp's protest with
20 respect to this application. It would not probably
21 change Mr. Fricke's protest to this application.

22 But I think at that point, then, we have
23 the ownership issue resolved and we could proceed on
24 that. As I understand it right now, the problem that
25 we're having with proceeding further with this

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1 prehearing conference is to determine what the
2 ownership issue is and who has the authority to
3 transfer this permit.

4 JUDGE SCHAER: Okay. Mr. Palmer, any
5 thoughts, any comments you wish to share at this
6 time?

7 MR. PALMER: The main comment I would make
8 is that we talked about a number of issues, and I
9 guess it's my view that in order to give anything
10 intelligible, we need to come back with more details,
11 both so the parties can review the details, also the
12 Commission. So we've -- I think "or other
13 alternative" is probably a very good description of
14 what we need to -- we just need to talk about the
15 details.

16 JUDGE SCHAER: Okay. Mr. Fricke, do you
17 have any comments you wish to put in at this point?

18 MR. FRICKE: Well, in our discussions, I
19 think it was apparent that there was an attempt on
20 the part of the Applicant here to explore avenues of
21 coming in compliance with the Commission rules, and
22 so I'm completely in agreement with pursuing that
23 approach, rather than to continue to operate in
24 violation of the Commission rules.

25 JUDGE SCHAER: Okay. So you then agree

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1 with the proposal that Mr. Haffner is framing?

2 MR. FRICKE: Yes, Your Honor.

3 JUDGE SCHAER: Thank you. Mr. Trautman,
4 did you have anything you wanted to say on behalf of
5 Staff?

6 MR. TRAUTMAN: I think Staff would be
7 comfortable with the proposal. Your Honor had asked
8 about the possibility of withdrawing this
9 application. I believe my understanding was that
10 should one of these alternative courses be taken,
11 that, at that point, this application would likely be
12 withdrawn --

13 MR. HAFFNER: Yes.

14 MR. TRAUTMAN: -- and replaced with
15 whatever is substituted; correct?

16 MR. HAFFNER: Correct.

17 JUDGE SCHAER: Okay. Anything else anyone
18 wants to have on the record at this point?

19 MR. HAFFNER: I might add, Your Honor, that
20 we did discuss about there being -- that this
21 resolution seems somewhat open-ended and indefinite
22 as to when we should revisit this issue. We
23 understand that the civil dispute is scheduled for a
24 trial in the end of January of 2002. And I think it
25 might be prudent to schedule a hearing on this matter

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1 sometime in early February of 2002 to determine
2 whether that civil dispute has, in fact, been
3 resolved and whether we can then resume this hearing
4 or whether that trial got bumped and had to be
5 rescheduled and this matter needs to continue to be
6 stayed, but I think we probably should have some time
7 when we revisit this.

8 JUDGE SCHAER: Mr. Palmer, what do you
9 think about some kind of a check-back?

10 MR. PALMER: I have no objection to that.

11 JUDGE SCHAER: Okay. Mr. Trautman.

12 MR. TRAUTMAN: Staff has no objection.

13 JUDGE SCHAER: Mr. Fricke.

14 MR. FRICKE: No objection.

15 JUDGE SCHAER: What I'm going to do, then,
16 is I'm going to suspend this application, put it on
17 hold or put it in a stay until there has been either
18 some kind of an alternative proposal made that we
19 could discuss along with discussing then whether it's
20 appropriate to dismiss this application or until the
21 parties are ready to go forward in this application,
22 understanding that going forward in this application
23 may involve going through a trial in Thurston County
24 Superior Court.

25 I have been hopeful, every time your

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1 conversations take an hour or so, that somehow minds
2 are going to reach some kind of understanding and
3 resolve some of these issues. To the extent that you
4 can work together to resolve any of the issues
5 involving the Commission and the portion of this
6 dispute that includes our regulation of this carrier,
7 I encourage you to use this time to do so and
8 encourage you to include Commission Staff in any
9 discussions so that they may report to the Commission
10 their understanding of what is proposed and how it
11 would comport with Commission laws and rules.

12 Are there any questions of me, given that
13 ruling? Okay. Then thank you for your time. This
14 hearing is adjourned.

15 (Proceedings adjourned at 10:50 a.m.)

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