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BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

In re Application No. D-079295 of)Docket TC-041353
)Volume I
DIAMOND-WEST TRANSPORTATION COMPANY,)Pages 1-21
INC.)
)
For Extension of Authority Under)
Certificate No. C-01054 For a)
Certificate of Public Convenience)
and Necessity to Operate Motor)
Vehicles in Furnishing Passenger)
and Express Service as an Auto)
Transportation Company.)
_____)
In re Application No. D-079309 of)Docket TC-041725
)
CWA, INC., d/b/a CENTRAL WASHINGTON)
AIRPORTER)
)
For Extension of Authority Under)
Certificate No. C-01073 For a)
Certificate of Public Convenience)
and Necessity to Operate Motor)
Vehicles in Furnishing Passenger)
and Express Service as an Auto)
Transportation Company.)
_____)

A pre-hearing conference in the
above-entitled matter was held at 9:34 a.m.
on Wednesday, December 8, 2004, at 1300 South
Evergreen Park Drive, S.W., Olympia,
Washington, before Administrative Law Judge
THEODORA MACE.
Barbara L. Nelson, CCR
Court Reporter

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1 The parties present were as follows:

2 COMMISSION STAFF, by Jonathan Thompson,
3 Assistant Attorney General, 1400 S. Evergreen Park
4 Drive, S.W., P.O. Box 40128, Olympia, Washington,
5 98504-1028.

6 SHUTTLE EXPRESS and CWA, INC., by David
7 L. Rice, Attorney at Law, Miller Nash, LLP, 4400 Two
8 Union Square, 601 Union Street, Seattle, Washington
9 98101.

10 DIAMOND-WEST TRANSPORTATION COMPANY,
11 INC., by William J. Davis, Owner, 18225 N.E. 416th
12 Street, Enumclaw, Washington 98022.

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1 JUDGE MACE: Let's be on the record in
2 Docket Numbers TC-041353, this is an application of
3 Diamond-West Transportation Company, Inc., and
4 TC-041725, an application of CWA, Inc.

5 We're here today for a pre-hearing
6 conference in those two dockets. The Diamond-West
7 application is one that was originally filed for an
8 extension of authority under Certificate Number
9 C-01054, for a certificate of public convenience and
10 necessity to provide passenger service between
11 Seattle and Ellensburg, with service to Bellevue,
12 Redmond, Issaquah, North Bend, Snoqualmie Pass,
13 Easton, Cle Elum, intermediate points, and points
14 within one mile of I-90, via I-90, SR-10, SR-906,
15 I-405, and SR-520.

16 I understand that Diamond-West has filed a
17 request to amend its application, and the
18 application, as amended, would ask for authority to
19 conduct passenger service, excluding door-to-door
20 service between Seattle, Snoqualmie Pass, including
21 lodges and resorts within three miles of Snoqualmie
22 Pass, with service to Bellevue, Redmond, Issaquah,
23 North Bend, Snoqualmie Pass, intermediate points, and
24 points within one mile of I-90 via I-90, SR-10, I-405
25 and SR-520.

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1 We have also noticed for today a pre-hearing
2 conference in the other docket I mentioned, the
3 application of CWA, which is an extension of -- an
4 application for extension of authority under
5 Certificate Number C-01073 for a certificate of
6 public convenience and necessity to provide -- pardon
7 me, to add to its current authority to provide -- to
8 conduct passenger transportation between Yakima,
9 Ellensburg, Cle Elum and the Seattle-Tacoma
10 International Airport, and the Seattle Amtrak
11 Station, passenger service between Yakima, Ellensburg
12 and Cle Elum.

13 I don't know. That may have been confusing.
14 They want to add that passenger service between
15 Yakima, Ellensburg, and Cle Elum, according to my
16 understanding of the application.

17 We're conducting the pre-hearing conferences
18 on these two applications at the same time today
19 because the applications were filed contemporaneously
20 and are for overlapping authority.

21 Under the Commission's Rule WAC 480-30-032,
22 the Commission may consolidate overlapping
23 applications for joint consideration. These
24 applications have not yet been consolidated, and I
25 will hear from the parties about that as we go

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1 through the items that need to be addressed during
2 the pre-hearing conference.

3 So with that long introduction, let me
4 introduce myself. Theodora Mace. I'm the
5 Administrative Law Judge who's been assigned to hold
6 hearings in this case. And I'd like to take oral
7 appearances from the parties present in the hearing
8 room and possibly present on the conference bridge at
9 this time.

10 Since this is the first time you'll be
11 entering an appearance, I need to have you state your
12 full name, who you represent, your full address, your
13 phone number, fax number and e-mail address. Please
14 speak slowly and accurately, slowly and clearly so
15 that the reporter can record your contact information
16 accurately. I'll begin with you, Mr. Rice.

17 MR. RICE: Good morning, Your Honor. My
18 name is David Rice, and I'm with Miller Nash, LLP.
19 Our address is 4400 Two Union Square, 601 Union
20 Street, Seattle, Washington, 98101. My telephone
21 number is 206-777-7424; fax number is 206-622-7485;
22 my e-mail is david.rice@millernash.com, and I'm
23 appearing in Docket TC-401353 on behalf of Shuttle
24 Express and CWA.

25 Your Honor, would you like me to provide the

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1 addresses for those parties?

2 JUDGE MACE: So you're appearing on behalf
3 of Shuttle Express and CWA?

4 MR. RICE: That's right.

5 JUDGE MACE: I see.

6 MR. RICE: In the Diamond-West.

7 JUDGE MACE: Mr. Harlow had entered
8 appearances. I had noted him as the representative
9 for those two. Was I mistaken in that?

10 MR. RICE: Brooks and I work together at
11 Miller Nash.

12 JUDGE MACE: You work together, okay.

13 MR. RICE: We represent, in the CWA
14 application, CWA only.

15 JUDGE MACE: Okay. Is there anyone here on
16 behalf of Diamond-West?

17 MR. DAVIS: I'm Diamond-West.

18 JUDGE MACE: Okay. I'm sorry if I ignored
19 you, but I thought you were with Mr. Rice. Would you
20 please give us your full contact information? When
21 it's up on the speaker, it's on. I think you're
22 okay.

23 MR. DAVIS: All right. My name is William
24 J. Davis. I'm representing Diamond-West
25 Transportation. Address, 18225 N.E. 416th Street,

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1 Enumclaw, Washington, 98022.

2 JUDGE MACE: Hold on. Go ahead.

3 MR. DAVIS: Office phone, 360-802-1115; fax

4 number is 360-802-1119; e-mail

5 diawest@foxinternet.com, and I'm here for Docket

6 Number TC-041353.

7 JUDGE MACE: And you're representing the

8 applicant in that case; is that right?

9 MR. DAVIS: I'm representing myself, yes.

10 JUDGE MACE: What's your -- are you the

11 owner?

12 MR. DAVIS: Yes.

13 JUDGE MACE: Okay. Thank you.

14 MR. THOMPSON: And I'm Jonathan Thompson,

15 Assistant Attorney General, representing the

16 Commission Staff. My address is 1400 South Evergreen

17 Park Drive, S.W., Olympia, Washington, 98504. I

18 guess I should also say it's P.O. Box 40128. My

19 phone number is 360-664-1225; fax is 360-586-5522;

20 and my email is jthomps@wutc.wa.gov.

21 JUDGE MACE: Thank you. I think the first

22 thing I'd like to address is this question of

23 consolidation. I think the record would read a

24 little better if this were consolidated and I'm

25 wondering if anybody has any objection to that, if

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1 that would be something that would interfere with the
2 processing of these cases in some way?

3 MR. RICE: Your Honor, may I speak?

4 JUDGE MACE: Please.

5 MR. RICE: We believe that the applications
6 no longer overlap as a result of a restrictive
7 amendment filed by Diamond-West, and for that reason,
8 the applications probably don't need to be
9 consolidated, because they're no longer relevant to
10 each other.

11 And the restrictive amendment I'm referring
12 to is what Diamond-West filed on October 21st. And
13 to summarize what was done, Diamond-West originally
14 proposed serving an area running from Seattle to
15 Ellensburg, which would have overlapped with CWA's
16 proposed -- potentially overlap with CWA's proposed
17 intercity service application for Cle Elum and
18 Ellensburg.

19 But Diamond-West, in its October 21st
20 letter, removed Ellensburg from its proposed
21 authority, which now will run between Seattle and
22 Snoqualmie Pass.

23 And so now we have only CWA's application,
24 which is for the east side of the mountains, and the
25 Diamond-West application, which is for the west side,

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1 so they no longer seem to overlap.

2 JUDGE MACE: I'm noting in the amendment
3 that now it states, Including -- the amendment you
4 referred to, Including lodges and resorts within
5 three miles of Snoqualmie Pass. Is there any problem
6 with that, that it might be a broadening of that
7 particular application, or is that sufficiently
8 included in the original application that there
9 wouldn't be a problem?

10 MR. THOMPSON: I guess our view is that it's
11 not a broadening, because the way it was worded
12 previously, the applicant probably could have gone
13 there anyway, given the fact that it was --

14 JUDGE MACE: I don't want to raise an issue
15 that will cause a problem; I just -- it just occurred
16 to me that those -- that specific language was not in
17 the original application.

18 MR. THOMPSON: Yeah, I mean, he originally
19 had it as one mile of I-90, in any event, and the ski
20 resorts are on I-90, I think.

21 MR. DAVIS: They're all within one mile.

22 JUDGE MACE: All right. Okay. It appears
23 the consensus is this would not be a broadening of
24 the application. All right. Thank you. I will not
25 consolidate the cases, then.

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1 Let me just indicate for the record that two
2 protests were received to the Diamond-West
3 application -- three protests were received, one of
4 which was withdrawn. Mr. Rice, you represent --

5 MR. RICE: CWA and --

6 JUDGE MACE: -- CWA and Shuttle Express, the
7 two protestants, and that, as far as the CWA
8 application is concerned, there were no protests
9 filed.

10 The third protest to the Diamond-West
11 application, Wickheiser International Companies,
12 withdrew its protest prior to the hearing.

13 Since it appears that this case has settled
14 because of the amendment, I'm not sure that it's
15 necessary for us to go through the complete list of
16 formalities related to the pre-hearing conference,
17 but let me hear from Mr. Rice and Mr. Thompson about
18 that and see what you -- what comments you have about
19 what the appropriate process is for us to go forward
20 in these two applications.

21 MR. RICE: Your Honor, let me ask a
22 question. Are you referring only to the CWA
23 application?

24 JUDGE MACE: I'm referring to both
25 applications right now.

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1 MR. RICE: I see.

2 JUDGE MACE: Well, I'm referring to both
3 applications, although because CWA was not protested,
4 it could be processed slightly differently than the
5 Diamond-West -- well, it could -- strike that.

6 Both applications can be processed in a
7 similar fashion, but there's a slight technical
8 difference between them, because there was no protest
9 in the CWA application. Go ahead.

10 MR. RICE: Okay. We would -- our position
11 is that the CWA application no longer has an overlap,
12 and so there's nothing at issue, and we were hoping
13 that the Commission might consider allowing CWA, if
14 there is -- if there needs to be some kind of
15 hearing, to allow it to proceed on paper with paper
16 filings by witnesses.

17 The Commission has done that before, in
18 Docket TC-021402, which was another CWA proceeding,
19 and the Commission also might consider not holding a
20 hearing at all given that there are -- there is no
21 overlap and there is no protest of CWA.

22 As far as the Diamond-West application goes,
23 while the restrictive amendment filed on October 21st
24 resolved the CWA application, there are still a few
25 things that need to be sorted out. It would take a

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1 few minor further restrictions before Shuttle Express
2 and CWA would withdraw their protest of Diamond-West.

3 However, I'm very optimistic that that can
4 be done, based on my conversations this morning with
5 Mr. Davis, and it's something I just need to talk to
6 my clients about. And certainly, if that is -- if we
7 are able to resolve our issues with respect to
8 another further restrictive amendment, we're -- and
9 would have no protest, then whatever -- whatever
10 procedures are necessary to minimize the burden on
11 Mr. Davis, we're agreeable to that, whether it's a
12 paper proceeding or elimination of the hearing
13 altogether.

14 JUDGE MACE: Very well. Does Staff have any
15 input with regard to this?

16 MR. THOMPSON: Yes, Your Honor. The --
17 well, it sounds as if we would agree that there's no
18 reason to consolidate the cases if the Commission
19 accepts the restrictive amendment offered by
20 Diamond-West, so -- but we do believe that that
21 leaves a need for there to be hearings on the two
22 cases, although we're open to the possibility that
23 they could be, as was suggested, that they could be
24 on paper.

25 I think the trouble is that in RCW

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1 81.68.040, which governs certificates for bus
2 service, it says that the Commission shall have the
3 power after hearing, when the applicant requests a
4 certificate to operate in a territory already served
5 by a certificate holder under this chapter, only when
6 the existing auto transportation company or companies
7 serving such territory -- well, the idea being that
8 if there is any underlying existing authority, then
9 there has to be a hearing. And there is, in both
10 cases, as I understand it, underlying authority held
11 by, I believe, Greyhound, and also Northwestern Stage
12 Lines, Northwestern Trailways, who have not
13 protested.

14 But the way the statute had generally been
15 interpreted is there does need to be some kind of a
16 hearing, even if it's not protested, but we do think
17 that could probably be satisfied by just submitting
18 affidavits or declarations, so --

19 JUDGE MACE: I think in the past, also, the
20 pre-hearing conference is regarded as, in quotes, a
21 hearing, and so that may -- I think it's a gray area
22 what can satisfy that hearing requirement.

23 MR. THOMPSON: I agree.

24 JUDGE MACE: Well, I will not consolidate
25 the applications. I think, as I indicated before, it

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1 sounds like there's no necessity to do that.

2 With regard to the Diamond-West application,
3 what I'd like to do is set a date by which you will
4 either provide me with some sort of an indication
5 that this case has settled, be it an agreed amendment
6 -- I think that would probably be the thing that
7 would be appropriate, an agreed amendment that shows
8 that the interest of Shuttle Express is satisfied,
9 and then Shuttle Express's withdrawal of its protest.
10 When do you think you could have that accomplished?

11 MR. RICE: Well, I can talk to the clients
12 today. I suspect it will take maybe a few days of
13 emails back and forth, and then there would be a
14 preparation, I suppose, of some kind of maybe a joint
15 stipulation. So I don't have my calendar in front of
16 me. Perhaps we could have something on file a week
17 from today, and I don't know if that sounds
18 reasonable.

19 JUDGE MACE: Why don't we --

20 MR. RICE: If necessary --

21 JUDGE MACE: If you could make it the 16th.

22 MR. RICE: Sixteenth, sure.

23 JUDGE MACE: Preferably before, but -- Mr.
24 Davis, would that work for you?

25 MR. DAVIS: Yes.

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1 JUDGE MACE: That would give you a little
2 more than a week to get that to me so that I can
3 process it, with any luck, before the holiday, but --

4 MR. DAVIS: The sooner the better for me.

5 JUDGE MACE: Surely. I'll do the best I
6 can, but --

7 MR. DAVIS: We can work it out between us.

8 JUDGE MACE: I guess the other thing that
9 occurs to me is it might be helpful, if there is a
10 settlement of the Diamond-West matter, for you to
11 think about waiving an initial order in this case.
12 When I say waiving -- what happens is when there's an
13 Administrative Law Judge-only hearing, typically
14 there's an initial order from the Administrative Law
15 Judge, everybody gets a chance to file exceptions to
16 that initial order, and then the Commission looks at
17 the exceptions in the initial order and issues its
18 final order.

19 In a case where there's no protest and the
20 thing is being handled more or less on documentary
21 evidence, the initial order becomes an additional
22 step that you may not need to go through. If you
23 waive the initial order and there's a final order
24 issued immediately, you still have some opportunity,
25 if something should go wrong, and who knows what that

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1 might be, you would still have an opportunity to ask
2 for reconsideration of the final order, so you don't
3 lose an opportunity to file an exception, so to
4 speak, but it would be a little quicker.

5 So I'm just offering that to you. If you
6 can resolve the matter with Shuttle Express, you
7 might want to send in a letter, very short, just
8 saying that you waive the initial order. You could
9 maybe even include it with whatever settlement
10 document comes in.

11 MR. DAVIS: Yeah, I'm sure there will be
12 some changed wording that we'll have to send in.

13 JUDGE MACE: Sure. And -- okay. And Mr.
14 Rice, would CWA waive an initial order with regard to
15 its application?

16 MR. RICE: I would need to talk to my client
17 before I could commit to that, so --

18 JUDGE MACE: Very well. Why don't you write
19 me about that.

20 MR. RICE: I will do that.

21 JUDGE MACE: I guess I don't mean to ignore
22 Staff, but I'd like to hear from you, too.

23 MR. THOMPSON: Well, the only thing I wanted
24 to ask is that the parties would please include Staff
25 in discussions on working out the amendment, because

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1 we may have issues that we'd like to have addressed,
2 as well, so --

3 MR. RICE: We will do that.

4 JUDGE MACE: Well, naturally, if Staff did
5 not waive the initial order, the initial order would
6 not be waived, so --

7 MR. THOMPSON: We'd certainly do that, yeah.

8 JUDGE MACE: Okay.

9 MR. RICE: Your Honor?

10 JUDGE MACE: Let me just ask. So I'm going
11 to get the Shuttle Express' withdrawal by the 16th,
12 if that's going to happen. I would like to establish
13 a date for a further pre-hearing conference in the
14 event that this doesn't settle, so that we can set up
15 a schedule, and I don't know exactly when that would
16 be. It could be after the Christmas holiday at some
17 point, but I don't even -- I would have to consult
18 with the Commission's overall scheduling before I
19 could set up a date, but is there any constraint that
20 I need to be aware of from the parties if I'm going
21 to try to set up a date for the pre-hearing
22 conference? Mr. Davis? Mr. Rice?

23 MR. RICE: None occur to me.

24 JUDGE MACE: Okay. Well, so I'll choose a
25 date, conceivably we won't even need it, but -- and

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1 if there's a problem with it, it can be changed.
2 Okay. Is there anything else we need to address at
3 this point?

4 MR. RICE: Your Honor, I have a question.

5 JUDGE MACE: Yes, you did. Go ahead.

6 MR. RICE: This is in regards to the further
7 restricting -- further restrictive amendment and the
8 settlement with Mr. Davis and what we're going to --
9 I need to make sure I understand what you would like
10 from us on the 16th.

11 My original thought was we would go ahead
12 and file a stipulation signed by CWA and Shuttle and
13 Diamond-West that said, Okay, everybody is satisfied
14 with this -- with this language, and CWA and Shuttle
15 have -- if this is what's ultimately granted, we have
16 no problem with it.

17 One thing that I was planning on doing was
18 remaining a participant in the docket just to ensure
19 that that is the actual language that's adopted, and
20 for no further reason than that. So we would still
21 try to remain a participant for only that reason. I
22 don't know if that's something that is acceptable to
23 you, but it certainly wouldn't be to, later on, try
24 to further change language.

25 JUDGE MACE: I don't have any problem with

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1 it per se. It seems like it should be a typical way
2 of proceeding. Why don't you make that request in
3 the document that you file? If there is any problem
4 with it, we can address it. Mr. Thompson, did you
5 have anything that you wanted to add about that?

6 MR. THOMPSON: No. There doesn't seem to be
7 a problem with that, I don't think.

8 JUDGE MACE: Okay. All right. It looks
9 like we have a plan of action. Oh, actually, there's
10 one more thing we need to have in our plan of action,
11 and that is a date by which I will be receiving
12 documentary evidence with regard to both
13 applications. For CWA, when do you think you can
14 have your evidence provided?

15 MR. RICE: Well, before the holidays, I
16 think we can do that. I guess one thing I probably
17 should do is talk to CWA and confirm that, but that's
18 my impression. Just to tell you what we will be
19 doing is we have to talk to some witnesses that we've
20 sought out and get them to agree to a written
21 statement and then submit it.

22 And one concern I have is, as the holidays
23 get closer, is that people will be unavailable, so
24 that's one thing that I'm not certain about.

25 JUDGE MACE: What I'd like to do is set a

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1 date far enough in advance -- far enough out that you
2 can meet it.

3 MR. RICE: Okay.

4 JUDGE MACE: But you can submit your
5 evidence earlier than that.

6 MR. RICE: Okay.

7 JUDGE MACE: That way, I've got a date on
8 the schedule.

9 MR. RICE: I understand.

10 JUDGE MACE: So that we don't lose track of
11 the case. So I would suggest that we set a date
12 sometime in early January.

13 MR. RICE: Okay.

14 JUDGE MACE: And then, if you get your
15 witnesses together and you finalize what you want to
16 submit earlier than that, you can do that, but how
17 about January 12th?

18 MR. RICE: January 12th seems fine to me,
19 and I believe it will probably be fine with my
20 client. Maybe what I can do is, at the conclusion of
21 this hearing, I can contact the client. If, for some
22 reason, they can't meet that deadline, for example,
23 if he's out of the country for an extended period,
24 then I will inform you and all the other parties. So
25 -- but I think that that's probably just fine.

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1 JUDGE MACE: Actually, let's be off the
2 record.

3 (Discussion off the record.)

4 JUDGE MACE: Let's be back on the record.
5 I've talked with the parties, and we're going to
6 change the January 12th deadline for filing evidence
7 with regard to both applications to January 7th, and
8 I've advised the parties that they can submit their
9 documents sooner than that, but that at least gives
10 enough time, if there are witnesses away for some
11 reason, for them to be able to meet a deadline.

12 Can anyone think of anything else we need to
13 address while we're on the record today? All right.
14 Thank you very much.

15 MR. DAVIS: Thank you.

16 MR. THOMPSON: Thank you, Your Honor.

17 (Proceedings adjourned at 10:03 a.m.)

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