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1 Court Reporter

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

2 JUDGE MACE: Let's be on the record. In the  
3 application of Bertin Koala doing business as Green Ride  
4 Transportation for certificate of public convenience and  
5 necessity to operate motor vehicles in furnishing  
6 passenger and express service as an auto transportation  
7 company. This is Docket No. TC-041820.

8 My name is Theo Mace. I'm an Administrative Law  
9 Judge who's been assigned to conduct the proceedings in  
10 this case. We are convened at the offices of the  
11 Washington Utilities and Transportation Commission in  
12 Olympia, Washington on April 21, 2005, for a prehearing  
13 conference on this application.

14 What I need to have now, for those who are  
15 participating today, is an oral appearance. And I think I  
16 indicated to you before we went on the record that I need  
17 to have your name, who you represent, your address, your  
18 Email address, and fax and phone numbers.

19 Mr. Koala, I'm going to begin with you since  
20 you're the applicant, and I need to have you make sure  
21 that you speak clearly and speak up so that the reporter,  
22 who's making a transcript of this hearing, can capture  
23 everything that you say. Would you please make your  
24 appearance now?

25 MR. KOALA: My name is Bertin Koala, and I

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1 represent Green Ride Corporation. My address is 12021,  
2 23rd Avenue Northeast, and that's Seattle, 98125. My  
3 phone number is (206) 696-6555, and my Email address is  
4 BKoala --

5 JUDGE MACE: That's B, as in boy?

6 MR. KOALA: B, like in boy, Koala at qwest.net.

7 JUDGE MACE: Do you have a fax, Mr. Koala?

8 MR. KOALA: No, I don't. I do all my  
9 communication through Email.

10 JUDGE MACE: Okay. Thank you. Mr. Wiley.

11 MR. WILEY: Yes, your Honor.

12 JUDGE MACE: Would you go ahead?

13 MR. WILEY: David W. Wiley, with the law firm of  
14 Williams, Kastner & Gibbs, Two Union Square, 601 Union  
15 Street, Suite 4100, Seattle, Washington 98101-2380, my  
16 phone number is (206) 233-2895. My fax number is (206)  
17 628-6611. My Email address is DWiley, W-I-L-E-Y,  
18 @wkg.com. And I'm appearing today on behalf of  
19 protestant, Lake Stevens Airporter, Inc.

20 JUDGE MACE: Thank you. Mr. Rice.

21 MR. RICE: Thank you, your Honor. I am David  
22 Rice, and I'm with the law firm of Miller Nash, LLP, 4400  
23 Two Union Square, 601 Union Street, Seattle, Washington  
24 98101-1367. My phone number is (206) 777-7424. My fax is  
25 (206) 622-7485. My Email is David.Rice@millernash.Com.

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1 I'm appearing on behalf of the following  
2 protestants, Evergreen Trails Inc., d/b/a Gray Line of  
3 Seattle, 4500 West Marginal Way Southwest, Seattle,  
4 Washington 98106 --

5 JUDGE MACE: You don't need to give the full  
6 information for the people you represent. Just as long as  
7 I know who it is.

8 MR. RICE: Just the name?

9 JUDGE MACE: The name is sufficient.

10 MR. RICE: I also am here on behalf of Shuttle  
11 Express, and Wickkiser International Companies.

12 MR. FRICKE: James N. Fricke, F-R-I-C-K-E,  
13 President, Pacific Northwest Transportation Services,  
14 Inc., doing business as Capital, C-A-P-I-T-A-L,  
15 Aeroporter, A-E-R-O-P-O-R-T-E-R, Post Office Box 2163,  
16 Olympia, Washington 98507-2163. My phone number is (360)  
17 754-7113, extension 103. My fax number is (360)  
18 754-7118. My Email is JimF@CapAir, C-A-P-A-I-R, .com.  
19 And I'm representing my company, as a protestant.

20 JUDGE MACE: Thank you. And for Staff.

21 MS. WATSON: Good afternoon, my name is Lisa  
22 Watson, I'm an Assistant Attorney General appearing on  
23 behalf of Commission Staff. My address is PO Box 40128,  
24 Olympia, Washington 98504-0128. My telephone number is  
25 (360) 664-1186. My fax is (360) 586-5522. My Email

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1 address is LWatson@wutc.wa.gov.

2 JUDGE MACE: Thank you. Just so the record is  
3 clear, Mr. Koala and Mr. Fricke, you are not represented  
4 by counsel today; is that correct?

5 MR. KOALA: Yes.

6 MR. FRICKE: That is correct.

7 JUDGE MACE: Thank you. The primary purpose of a  
8 prehearing conference is to set a schedule of proceedings,  
9 but there are several other types of procedural and  
10 housekeeping items we need to address as well. The first  
11 one of these today is the question of the protestants. I  
12 have received, and we have heard the appearances entered,  
13 for protestants, Lake Stevens Airporter, Capitol  
14 Aeroporter, Wickkiser International, Shuttle Express,  
15 Evergreen Trails d/b/a Gray Line of Seattle.

16 Is there any objection to the granting of the  
17 protests in this case that have been filed so far?

18 Okay. I hear no objection, and I'll be taking  
19 all these matters under advisement, and will be indicating  
20 in a preconference order that will be entered after this  
21 hearing today, whether or not those protests are granted.  
22 And you should know that it is likely that they would be  
23 granted.

24 The next thing I want to address, is the question  
25 of discovery, and whether or not the parties anticipate

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1 that they will need to conduct discovery in this case.

2 Mr. Koala, for your benefit, I just wanted to  
3 explain --

4 MR. KOALA: Yes.

5 JUDGE MACE: -- discovery has to do with the  
6 ability of the parties to a proceeding to ask questions of  
7 one another about information that one or another party  
8 may feel is important to making a record in the case.  
9 Oftentimes in a case such as this, discovery is not  
10 necessary, sometimes the discovery rules are invoked, and  
11 discovery does take place.

12 I know that may not answer all your questions  
13 about what discovery is, but let me ask right now whether  
14 there's anyone who wants to conduct discovery in this  
15 case.

16 MS. WATSON: The only thing that staff would note  
17 is that the application is incomplete at this point, so  
18 there is additional information that's needed. If we can  
19 build into the schedule a time by which the applicant  
20 needs to submit that information before the hearing, Staff  
21 doesn't feel that there is a need for discovery.

22 MR. KOALA: What additional information are you  
23 requesting for the completion of the application? I've  
24 stated all the information requested. I don't feel -- I  
25 don't want to provide financial information that -- I feel

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1 like until I know if I even have a chance to get to the  
2 point where I could even provide it.

3 JUDGE MACE: Well, Mr. Koala, you should be aware  
4 that part of the consideration the Commission has to make  
5 in this case is to consider your financial fitness.

6 MR. KOALA: I mean, is that a requirement as to  
7 how much money you have to have before you even apply to  
8 start a business?

9 JUDGE MACE: I don't think there is a specific  
10 requirement, but the Commission is charged with examining  
11 your financial fitness.

12 MR. KOALA: Okay. And what are the -- I need  
13 some guidelines as to how much you can require.

14 JUDGE MACE: Well, I can't give you further  
15 guidelines at this point. What I think I would ask in  
16 view of this exchange that Staff submit to Mr. Koala what  
17 requests you have for information from him by two weeks  
18 from now, which would be May 5th, and -- go ahead.

19 MS. WATSON: Should we classify this as to  
20 discovery then, or something less normal?

21 JUDGE MACE: I think in view of this exchange,  
22 I'm going to just indicate that the discovery rules should  
23 be invoked, to be on the safe side. But that is specific  
24 to your request for information to complete the  
25 application form.

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1           Mr. Koala, I've indicated to Staff that they have  
2 to serve on you copies of their request for information by  
3 May 5th. I'm going to ask that you look at that  
4 information and submit responses by May 19th.

5           MR. KOALA: Okay.

6           JUDGE MACE: And I have to leave it up to you,  
7 how you want to respond. I want to suggest to you that  
8 although an attorney is not required in a proceeding of  
9 this sort, you may want to consult with an attorney about  
10 this issue. I can't give you advice about how to respond  
11 and how to present your case. And so I just want to make  
12 clear though that the Commission does need to look at your  
13 financial fitness.

14          MR. KOALA: I'm willing to give my financial  
15 fitness to the Commission, but I'm just not willing to  
16 share that with other parties.

17          JUDGE MACE: Well, okay, so this gets us to the  
18 next question, and that is the question of a protective  
19 order, although typically a protective order in these  
20 cases is not entered. It may well be that in order to  
21 submit your information you may feel that you need to have  
22 a protective order that covers that.

23          MR. WILEY: Your Honor --

24          JUDGE MACE: Whether, you know, Mr. Koala you --  
25 never mind -- yes, Mr. Wiley.

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1           MR. WILEY: Yes, your Honor, if you're speaking  
2 of a protective order as to the statutory requirements of  
3 a financial fitness showing, I certainly would object  
4 because that has to be a part of the record.

5           JUDGE MACE: Yes, there is no question that it  
6 could become a part of the record. Under a protective  
7 order, what happens is simply the parties submit, or sign  
8 an agreement, that they will hold confidential the  
9 information that the applicant provides. And then the  
10 applicant, or whoever is at issue with regard to the  
11 protective order, then submits the information pursuant to  
12 the protective order. The information -- it's possible  
13 the information can come into the record under seal, so  
14 there are provisions for that.

15           MR. WILEY: Yes, my concern is that threshold  
16 financial fitness evidence should not be subject to a  
17 protective order, and that allowing it in this case would  
18 be bad precedent in all sorts of transportation cases.

19           I'm not aware that financial fitness data, as  
20 required by the Commission on its application form, has  
21 ever been allowed to be subject to a protective order, at  
22 least in my 25 years of experience.

23           I would object to the threshold financial fitness  
24 evidence that the Commission requires all applicants to  
25 complete being subject to a protective order.

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1           JUDGE MACE:  Yes, if you are speaking of the  
2 information that comes in the application form  
3 typically --

4           MR. WILEY:  Right.

5           JUDGE MACE:  It may well be that that would not  
6 be subject to protection.  And you are right, I have not  
7 in my experience here at the Commission, had any occasion  
8 for a protective order in a case such as this.  I'm not  
9 indicating here on the record that I would even recommend  
10 that such an order be granted, I'm just trying to get a  
11 feel for where we are in this case in terms of submission  
12 of information.

13           So that leaves with us with the question at hand,  
14 and that is, Mr. Koala, by May 19th you need to be ready  
15 to submit, and to submit, your financial information.  I  
16 will make this schedule apparent to you in the prehearing  
17 conference order, and the prehearing conference order will  
18 also indicate whether or not a protective order will be  
19 entered.  It's possible that there will be no protective  
20 order entered with regard to that information.  At that  
21 point you need to determine what you want to do, but it is  
22 possible that it may prejudice your case if you don't  
23 submit the information.

24           MR. KOALA:  Okay.

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

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1 JUDGE MACE: Go ahead.

2 MR. RICE: A moment ago you mentioned that you  
3 would be invoking the discovery rule, and I just wanted a  
4 little more clarification. Is that only with respect to  
5 the issues that Staff is seeking supplementation on --

6 JUDGE MACE: (shakes head)

7 MR. RICE: -- okay. So we can conduct discovery  
8 as well.

9 JUDGE MACE: Correct, yes.

10 MR. RICE: Thank you, your Honor.

11 MR. FRICKE: Your Honor, Jim Fricke, I note that  
12 the discussion so far has been pretty much directed toward  
13 15 regarding the financial statement, is it necessarily  
14 limiting to that, or --

15 JUDGE MACE: I'm not sure. On the record we  
16 don't know what you're referring you at this point. So if  
17 you could explain --

18 MR. FRICKE: I'm talking about 15 on the  
19 application, which is a financial statement information.

20 JUDGE MACE: Oh, yes.

21 MR. FRICKE: However, the following question, 16,  
22 which deals with the equipment proposed for the service is  
23 also blank, and is also footnoted in almost the same  
24 manner about not wanting to submit information.

25 JUDGE MACE: Ms. Watson.

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1           MS. WATSON: I may be able to address this. What  
2 Staff is going to want to ask the applicant is, of course,  
3 about 15, financials, but also about what he intends to  
4 use as far as his assets, in other words, we don't believe  
5 that he actually needs to go out and purchase vehicles at  
6 this point, but we do need to know what he intends to use  
7 if he is granted this permit. So those are the sorts of  
8 questions that Staff will be asking Mr. Koala.

9           JUDGE MACE: Very well. All right, I think that  
10 that addresses both discovery and this question of  
11 protective order. Let's turn next to the question of  
12 schedule.

13           Usually in a proceeding of this type, we schedule  
14 a hearing date or dates, as may be appropriate. We need  
15 to have a hearing time to accommodate all the witnesses  
16 that would be presented during a hearing. We need to  
17 determine the location of the hearing. I also want to  
18 include in our schedule a date -- prior to the evidentiary  
19 hearing date -- a date on which all the parties would  
20 serve on me and on each other, their exhibit lists and  
21 their witness lists, so that I can be sure what's going to  
22 be presented, and who's going to be presented during the  
23 hearing. So those are some things you need to take into  
24 consideration when you're talking about schedule.

25           Is there anything else we need to address before

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1 we adjourn to talk about scheduling?

2 MR. WILEY: One thing, your Honor, one of the  
3 functions, as I understand it, of a prehearing conference  
4 is to talk about the possibility of settlement, and I  
5 wondered if the applicant, who isn't represented by  
6 counsel I understand, had considered making what are known  
7 as restrictive amendments to satisfy the interests of the  
8 protestants. In other words, in my case, my client, Lake  
9 Stevens Airporter, has very limited authority, and if the  
10 applicant were to consider excluding that area, which I'm  
11 not even sure it wants to serve, we would get out of the  
12 case.

13 JUDGE MACE: Very well, we can talk about that  
14 for a moment right now. I usually address that after we  
15 talk about scheduling, but it might be beneficial to  
16 mention it now.

17 Mr. Koala, typically in a case like this, the  
18 parties discuss with the applicant -- the parties discuss  
19 amongst themselves, the possibility that the application  
20 could be limited in some way, and that would eliminate a  
21 protest, or all the protests. This happens frequently, so  
22 if you haven't been before the Commission before, you  
23 should be aware of that.

24 MR. KOALA: Okay.

25 JUDGE MACE: And so during the time that we are

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1 adjourned, if you want to, you may also want to bring up  
2 with the protestants the question of whether or not there  
3 would be a way that you could satisfy their interests by  
4 restricting your application. Staff is here to help, I  
5 think, with language of restrictive amendments, and they  
6 could give some advice on that.

7 MR. KOALA: Okay.

8 JUDGE MACE: So I just want to have you be aware  
9 that that may be something that could possibly eliminate a  
10 hearing, but we'll have to see.

11 MR. KOALA: Thank you. I don't know who I should  
12 be talking to.

13 JUDGE MACE: All right. Anything else? Okay,  
14 then I'll give you -- well, let me just put it this way,  
15 we'll adjourn for approximately 20 minutes, my office is  
16 right across the hall, if you're done before then, come  
17 and get me. I'll show up at 10 after two, and if you need  
18 more time, I'll give you more time.

19 All right. Thank you.

20 (Proceeding adjourned from 1:50 p.m. to  
21 2:10 p.m.)

22 JUDGE MACE: The parties have discussed  
23 scheduling, and they have indicated to me they will need  
24 two days for a hearing. They prefer a Seattle location,  
25 they're looking for hearing dates in the third week of

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1 July, and I have suggested July 18th and 19th. That is  
2 acceptable to all of the parties except Mr. Rice, whose  
3 clients he needs to consult with and find out if those  
4 dates are acceptable. As soon as I hear back from  
5 Mr. Rice, I will be entering a prehearing conference order  
6 that will indicate, and confirm what the dates will be,  
7 and where it will be -- where the hearing will be, and so  
8 on.

9 I was advised off the record that Mr. Rice's  
10 clients would intend to present a maximum of six  
11 witnesses, direct examination would require approximately  
12 30 minutes each; Mr. Fricke, one witness, 20 to 30 minutes  
13 direct examination; Mr. Wiley, one witness with 20 minutes  
14 of cross-examination approximately; Staff does not intend  
15 to bring a witness; and Mr. Koala thinks three witnesses,  
16 himself and two others.

17 Staff also requested that I append a list of  
18 statutory requirements covering a case such as this to the  
19 prehearing conference order, and I agreed to do that.

20 I will require the parties to provide me with a  
21 copy of the exact names of the witnesses they intend to  
22 present, and all of the exhibits, and a list of all of the  
23 exhibits they intend to present. And that will need to be  
24 supplied more than likely on July 12 with service to all  
25 the other parties, but that date is somewhat flexible

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1 depending on the actual dates of hearing we end up with.

2           Finally, I've been advised that both Mr. Wiley  
3 and Mr. Rice may approach the applicant with some type of  
4 proposal, or settlement, or restrictive application that  
5 will satisfy their client's interest, and I want to  
6 encourage that take place, Mr. Fricke, as well. If that's  
7 possible, I really would appreciate it if you and  
8 Mr. Koala can resolve the issues without a hearing.

9           I understand that Staff will be involved in that  
10 process, and, actually, offer your comments again for the  
11 record. I don't think I can --

12           MS. WATSON: Staff has Committed to seeing  
13 whether we can draw up a GIS map of at least Lake Stevens  
14 service area. That was fairly specific as one of the  
15 things that we had talked about.

16           JUDGE MACE: Very well. In the preconference  
17 notice for hearing -- let me try this again -- in the  
18 preconference order, you will all receive instructions for  
19 how many copies of documents you have to submit to the  
20 Commission when and if you are submitting documents. And  
21 I would ask you to follow those instructions. There will  
22 also be instructions about format and about electronic  
23 accompaniment to that to a hard copy filing. Please make  
24 sure that you read that carefully so that you can provide  
25 enough copies for the Commission of any documents that you

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1 intend to submit.

2           Please remember that anything that you submit to  
3 me or to the Commission must be also be sent to the other  
4 parties. The prehearing conference order will have a list  
5 of the names and addresses of all the parties, and you are  
6 obligated to make sure that service of any document is on  
7 all the parties.

8           I can't think of anything else. Is there  
9 anything else that the parties think should be addressed  
10 on the record?

11           MS. WATSON: Staff has nothing further.

12           JUDGE MACE: Anything from the conference  
13 bridge?

14           MR. KOALA: Nothing further.

15           MR. WILEY: We have nothing further, your Honor.

16           JUDGE MACE: Very well, then we are adjourned,  
17 Thank you very much.

18           (Hearing adjourned at 2:30 p.m.)

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