

1           BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
  COMMISSION

2

3   In RE: APPLICATION No. D-078959 of )  
 4   PEARSON, SHARYN & ZEPP, LINDA,         )Docket No. TC 010273  
 5   D/B/A CENTRALIA SEA-TAC AIRPORT         )  
 6   EXPRESS, for Authority to Transfer )volume III  
 all rights under Certificate                )  
 No. C993 to CENTRALIA SEA-TAC            )Pages 49-68  
 AIRPORT EXPRESS, LLC,                    )  
 Protestants.                                )

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9           A prehearing conference in the above matter was held  
10 on February 12, 2002, at 9:30 a.m., at 1300 South Evergreen  
11 Park Drive Southwest, Room 108, Olympia, Washington, before  
12 Administrative Law Judge MARJORIE SCHAER.

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          The parties were present as follows:  
15           PROTESTANT, LINDA ZEPP, by DAVID K. PALMER  
Attorney at Law, 626 Columbia Street, NW, Suite 1-A,  
16 Olympia, Washington 98501, Telephone (360) 786-5000,  
Fax (360) 943-7707.

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          CENTRALIA SEA-TAC AIRPORT EXPRESS, by ARTHUR C.  
18 DAVENPORT, Manager, PO Box 14881, Tumwater, Washington,  
98511, Telephone, (360) 786-0641.

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          PACIFIC NORTHWEST TRANSPORTATION SERVICES, INC.,  
20 by JAMES W. FRICKE, President, PO Box 2163, Olympia,  
Washington, 98507, Telephone, (360) 754-7113.

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          COMMISSION STAFF, by GREGORY J. TRAUTMAN,  
22 Assistant Attorney General, 1400 S. Evergreen Park  
Drive, SW, Olympia, Washington 98504, Telephone,  
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25 DEBORAH L. COOK  
COURT REPORTER

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

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3 JUDGE SCHAER: Let's be on the record this  
4 morning.

5 We're taking up the prehearing conference in  
6 this matter that was continued from July 18, 2001.  
7 We're in the Commission's hearing room 108, and the  
8 Commission's headquarters building in Olympia,  
9 Washington.

10 Today is February 12, 2002. I am Marjorie  
11 Schaer, the Administrative Law Judge assigned to this  
12 proceeding. I would like to start this morning by  
13 taking appearances from all the parties.

14 And I have, since the last hearing, received a  
15 notice from Rick Hafner, who had been counsel for Sharyn  
16 Pearson, indicating that he was withdrawing as counsel.  
17 So when I get to Sharyn Pearson's representative, I will  
18 have questions for you.

19 I think the other parties who have appeared  
20 before can give your name, and the name of your client.  
21 But let's go ahead and start with the representative  
22 from Ms. Pearson.

23 MR. DAVENPORT: I am Arthur Davenport.

24 JUDGE SCHAER: Mr. Davenport, are you an  
25 attorney?

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1 MR. DAVENPORT: No, I am not.

2 JUDGE SCHAER: What is your relationship with  
3 Ms. Pearson?

4 MR. DAVENPORT: I am the manager of Centralia-  
5 SEA-TAC Transport Express, LLC.

6 JUDGE SCHAER: And what is -- go ahead and give  
7 us your business address, business phone, your e-mail,  
8 if you have one, and your fax number, if you have one,  
9 please.

10 MR. DAVENPORT: Post Office Box 14881,  
11 Tumwater, Washington, 98511. Our telephone number --  
12 we do not have an e-mail number or fax number -- is  
13 (360) 786-0641.

14 JUDGE SCHAER: Okay. When the Notice of  
15 Withdrawal came in from Mr. Hafner, I was contacted by  
16 the Commission's Record Center, who said that the  
17 address that is provided in this form is different from  
18 the address that is on file in the Commission's Record  
19 Center for your business. So what address is your  
20 formal address?

21 MR. DAVENPORT: That is our mailing address.  
22 The physical address is 6200 Capital Boulevard, South.

23 JUDGE SCHAER: I am going to ask you to check  
24 in with the Records Center before you leave this  
25 building today -- they are located in the middle of the

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1 building right by the main doors -- and make sure they  
2 have correct contact information for you, so we can keep  
3 track.

4 MR. DAVENPORT: We have been receiving our  
5 correspondence from the PUC.

6 JUDGE SCHAER: I had them send to both  
7 addresses, but we usually keep one address that we mail  
8 to.

9 And then for Ms. Zepp?

10 MR. PALMER: I am David Palmer. I am the  
11 attorney for protestant Linda Zepp. And Linda Zepp is  
12 on my left.

13 JUDGE SCHAER: And then for the protestant, Mr.  
14 Fricke?

15 MR. FRICKE: I am also a protestant, James M.  
16 Fricke, President, Pacific Northwest Transportation  
17 Services, Inc.

18 JUDGE SCHAER: And Commission Staff,  
19 Mr. Trautman?

20 MR. TRAUTMAN: Gregory J. Trautman, assistant  
21 attorney general for Commission Staff.

22 JUDGE SCHAER: I have two major issues on my  
23 list of things that we should deal with today. The  
24 first one is I would like confirmation that we received  
25 permanent insurance. On the last hearing on the 28th,

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1 we had just a temporary certificate that had been filed  
2 that day.

3 So Mr. Trautman, can you represent that the  
4 Commission has permanent proof of insurance now?

5 MR. TRAUTMAN: Yes, we do, Your Honor.

6 JUDGE SCHAER: And then my second area that is  
7 going to require a little more discussion is the  
8 question of where we go from here.

9 You may recall that we had a hearing last June  
10 in which we would, in normal circumstances, have put  
11 together a schedule for the completion of the  
12 proceeding. That was continued to July so that the  
13 parties could try to figure out where we were going, and  
14 try to make sure that certain issues that needed to be  
15 covered in the interim, like making sure that there was  
16 adequate insurance, was taken care of.

17 And the notes that I have from the transcript  
18 indicate that there was to be a January 2002 trial date  
19 to resolve some differences between Ms. Pearson and  
20 Ms. Zepp, and their businesses. And if that didn't get  
21 bumped, that would be happening.

22 So we have scheduled this date as a status  
23 conference or check-back date to see if we need to do  
24 anything further, and if we are going to do anything  
25 further to set up a schedule for getting that done.

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1                   So I don't know. Who would like to go first?  
2 I am hoping you have talked to each other, and you have  
3 a nice plan for me. And if that hasn't happened, but  
4 you think it might be something you can do, we can have  
5 some time off the record to talk to each other.

6                   But give me a quick status report,  
7 Mr. Trautman.

8                   MR. TRAUTMAN: Thank you, Your Honor. I have  
9 spoken briefly with Mr. Palmer, and he can give more  
10 details. But my understanding is that the court matter  
11 was settled, and they are attempting to finalize that  
12 settlement in terms of handling Ms. Zepp's interest.  
13 And I believe they are also intending to apply to the  
14 Commission for approval. And we, of course, would be  
15 interested in that.

16                   In addition, at this point Staff has some  
17 concerns that we believe can probably be addressed by  
18 updating the filings. Most of our concerns through this  
19 process have involved the ownership, and the ownership  
20 changes, and who is part of the corporation and who  
21 isn't, and who's the manager. Because we have a number  
22 of documents, and they do not always reflect the same  
23 thing in terms of who is running the company.

24                   So the first thing we would want, we would want  
25 to update the application as to who is the purchaser,

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1 who are the members -- if it's an LLC, who are the  
2 members, and what is their percentage of interest today.

3 We would want an updated LLC Partnership  
4 Agreement that, again, reflects the current members.  
5 Because we have seen conflicting versions of the same  
6 agreement over time with various signatures, and  
7 members, the status of the LLC.

8 And that appears to have been clarified  
9 somewhat today. I believe Ms. Pearson used to be the  
10 manager, but I believe Mr. Davenport indicated he is the  
11 manager now.

12 MR. DAVENPORT: I am now.

13 MR. TRAUTMAN: So we wanted that updated. And  
14 it may be that the certificate filed with the Secretary  
15 of State's office would have to be updated as well to  
16 reflect the current managers.

17 Fourth, we would want current vehicle  
18 registrations. I believe our Staff, about approximately  
19 four months ago -- I believe four or five months ago  
20 looked into the matter, and it appears two of the four  
21 vehicles are registered in the name of the LLC, and two  
22 are not. And that would have to be updated.

23 One was registered to Linda Zepp, and one was  
24 registered to Centralia Sea-Tac, Inc., rather than the  
25 LLC, which is not the correct entity. So they would

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1 have to be all in the LLC.

2           And one other matter which is of very great  
3 significance to Staff is the regulatory fees. And the  
4 LLC has filed the 2000 Annual Report. It was filed  
5 January 10 of 2002, and I believe that report indicates  
6 that there are regulatory fees owing of \$2,701. And  
7 those fees would have to be paid up.

8           And finally, the question of whether there are  
9 any liens or any other encumbrances on the LLC. And  
10 that might include any -- to my understanding, there may  
11 be a security interest for Ms. Zepp's interest. And  
12 that would have to be clarified.

13           So if the application is updated, the vehicle  
14 registrations are updated, any Secretary of State  
15 certificates are updated, and the regulatory fees are  
16 paid, and any liens are noted, when that is done,  
17 at this point Staff does not anticipate opposing the  
18 merger once the ownership aspects are taken care of.

19           JUDGE SCHAER: Okay. I want to hear from all  
20 of you, and then I have a couple of questions. But I  
21 want to hear from you, Mr. Palmer, because it seems you  
22 might be more familiar with what is going on in the  
23 court case, and what is happening in that world.

24           MR. PALMER: Thank you, Your Honor.

25           What happened is we went to mediation, and



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1 through the mediation we reached a settlement agreement  
2 which was then formalized.

3           Where it stands, I spoke with the counsel  
4 representing the civil litigation. And I believe we're  
5 missing one signature of someone who -- it's my  
6 understanding is not involved in ownership now, but has  
7 been in the past. And we may have a couple of details  
8 which will dovetail with the concerns of the Staff  
9 concerning the titles.

10           But, essentially, once we get all of the  
11 signatures, the deal is that Ms. Zepp and Ms. Pearson  
12 will transfer their interests to the LLC, the limited  
13 liability company.

14           And this permit -- the LLC would give to the  
15 Zepps a security interest in the permit under the  
16 Washington Uniform Commercial Code Secured Transactions.

17           Then the LLC would amend its application. The  
18 amendment would specifically request that the Commission  
19 approve a security interest retained by Mr. and  
20 Ms. Zepp. And that when these things were done, that  
21 Ms. Zepp would withdraw her protest and would cooperate  
22 in the amended application. As part of this, Ms. Zepp  
23 and Ms. Pearson would be assigning their interest in the  
24 partnership to the LLC.

25           And also, when I talk about dovetailing, in

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1 addition to the security interest in the permits,  
2 we would also be retaining a security interest in the  
3 vehicles. So that allows us to address the concerns, I  
4 believe, of the Commission, because we can make the  
5 limited liability company the registered owner, and  
6 Ms. Zepp the legal owner, which is how it would reflect  
7 a security interest on a vehicle.

8 I would hope to have the paperwork signed --  
9 also, as part of this, the civil suit would obviously be  
10 dismissed for prejudice. I don't believe there's  
11 anything holding it up, other than getting someone into  
12 a lawyer's office to sign the papers.

13 JUDGE SCHAER: Mr. Davenport, would you like to  
14 add anything?

15 MR. DAVENPORT: Mr. Palmer has pretty much  
16 succinctly put it. The LLC is purchasing the assets of  
17 Ms. Zepp, and also of Ms. Pearson.

18 JUDGE SCHAER: Mr. Fricke, would you like to  
19 address any concerns about how this goes forward?

20 MR. FRICKE: I do have some concerns related to  
21 the ownership, the operating authority, and the company  
22 operating authority.

23 I had brought the question up before. The  
24 certificate is owned by two people: Ms. Pearson and  
25 Ms. Zepp. The LLC, to my knowledge, has no agreement

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1 with those two in terms of operating that certificate.

2 As indicated in our previous conference, there  
3 was going to be an effort to make some sort of  
4 agreement, whether it be a lease agreement, or Staff  
5 here talked in terms of some sort of management  
6 agreement.

7 One of the indications, I understand from  
8 Staff, was that because Ms. Pearson had essentially been  
9 the manager through all of this ownership, up to that  
10 point in time, that they considered that to be kind of a  
11 continuous management -- managing partner, I guess, at  
12 that point in time.

13 That apparently has significantly changed now  
14 that Mr. Davenport is the manager. And it seems to me  
15 that it raises the question again of the LLC as being  
16 a company operating without authority, which is in  
17 violation of the rules of the Commission, and, I  
18 believe, the laws of the State of Washington.

19 JUDGE SCHAER: Thank you. Is there anything  
20 further you wanted to say at this time?

21 MR. FRICKE: I think that issue needs to be  
22 dealt with, because there has been a signature change,  
23 and I think that question needs to be addressed today.

24 JUDGE SCHAER: Mr. Davenport?

25 MR. DAVENPORT: Is it possible -- maybe I have

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1 misspoken my exact position.

2           Ms. Pearson remains as the -- as of right now,  
3 as the -- okay, general overall manager. I manage the  
4 day-to-day activities of the operation. But she does  
5 the financials. I think she does the reports, and all  
6 of the reporting. So it's kind of a joint between the  
7 two of us at this point.

8           JUDGE SCHAER: Well, I have been asking myself  
9 a question, I think, at each hearing that we have had  
10 together: Does it make sense to continue doing what  
11 we're doing in this forum, or should this application be  
12 dismissed, and get the new application in, and let Staff  
13 evaluate that, and work with the company to get what  
14 they need, and then decide whether or not to go forward.  
15 And I would like to hear what thoughts would be on that.

16           MR. TRAUTMAN: Your Honor, maybe it would serve  
17 the same purpose, but we thought it might be quicker,  
18 rather than to dismiss and redocket -- rather than to do  
19 that, to simply update the current application with --  
20 file an updated application within the same docket.

21           MR. DAVENPORT: That would be our preference,  
22 also.

23           JUDGE SCHAER: Mr. Palmer?

24           MR. PALMER: That's what we had agreed to.

25           JUDGE SCHAER: Mr. Fricke, it sounds like that

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1 would meet your concerns about having the forum for  
2 addressing your issues?

3 MR. FRICKE: I agree that's probably the more  
4 expeditious way to deal with the whole matter.

5 I would still hope that Your Honor would  
6 recognize the fact that the law and the rules are being  
7 violated here, and that either -- that there should be  
8 some sort of operating agreement. It was talked about  
9 months ago. That was said right here by counsel -- was  
10 going to be worked out.

11 JUDGE SCHAER: Well, Mr. Fricke, I am not going  
12 to consider that issue today, or rule on it in any way.  
13 You will have a forum to raise those concerns when we  
14 get to a hearing, and they will be dealt with.

15 What I am trying to figure out right now is  
16 simply how we should go forward, whether we keep this  
17 alive or whether we let all of the new information come  
18 in and treat that as a new transfer application.

19 Now, I have heard from Staff, and from the  
20 other representatives, that they think it would be  
21 better to continue in this case so that they have the  
22 benefit of what they have worked out so far in this, and  
23 are able to go forward.

24 And so I think that's what I am going to decide  
25 to do is to keep this case alive. But I want a fairly

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1 tight schedule. You have had several months to gather  
2 information and put it together.

3 Now, Mr. Trautman, I am going to want to hear  
4 what Staff's opinions are, even if you end up in a  
5 neutral position. I think there are enough questions  
6 raised about what kind of information needs to be filed,  
7 and what is filed, and how it's maintained that I want  
8 to be sure that the Commission can hear from its Staff  
9 about that.

10 So in order to put together a schedule --  
11 again, would you like some time on your own to talk that  
12 over, and put something together?

13 MR. TRAUTMAN: That might be helpful.

14 JUDGE SCHAER: Then I am going to suggest that  
15 we take our morning recess in order to give you time to  
16 have a break, and also to do this discussion. I am  
17 going to suggest we come back at 10:30 by the clock in  
18 this room.

19 We're off the record.

20 (Brief recess.)

21 JUDGE SCHAER: Let's go back on the record  
22 after our morning recess.

23 During the time of the recess, the parties were  
24 speaking together to work out a schedule for the  
25 remainder of the proceeding.

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1           And has a schedule been worked out? Anyone?

2           MR. TRAUTMAN: Yes, Your Honor. Well, I  
3 believe, as Staff indicated, we had had a list of items  
4 that we would like to have updated and filed with the  
5 Commission.

6           And at first we had chosen March 15 for that  
7 date, but then we decided that it might be best simply  
8 to schedule the date for the hearing. But you had  
9 indicated you would be gone April 15, so it should be  
10 sometime after that. I have hearings before that time.

11           But once we establish the date of the hearing,  
12 which could be either the -- perhaps the fourth week in  
13 April, a day during the fourth week of April, or that --  
14 the carryover week that goes from April into May, we  
15 could then have the documents, the updated application,  
16 updated business documents, updated vehicle  
17 registrations, as Staff discussed earlier, we could have  
18 that date set 30 days prior to the hearing.

19           JUDGE SCHAER: So you are looking at a date in  
20 the week of April 21st or 28th?

21           MR. TRAUTMAN: Correct.

22           JUDGE SCHAER: Let's go off the record for  
23 another moment, because I need to check any hearing  
24 dates with our hearings scheduler. And the Commission  
25 has such a horrible schedule getting through the rest of

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1 the year. I have to make sure there's a room available  
2 for us. I will double-check my calendar to make sure I  
3 don't have something else set.

4 So let's go off the record for a five-minute  
5 break, and hopefully I will be able to find out that  
6 information during the break.

7 (Brief recess.)

8 JUDGE SCHAER: Let's be back on the record.

9 During the break I was able to check calendars,  
10 and the Commission's calendar, and two dates that are  
11 equally available would be either April 23rd or April  
12 25th. I wanted to check and see if, on anybody's  
13 calendar, one of those dates was better than the other?

14 MR. PALMER: 25th?

15 MR. TRAUTMAN: 25th. I like Thursday better.

16 JUDGE SCHAER: Well, it seems we have consensus  
17 that the 25th would be the better day.

18 Is that a day that will work on your calendar,  
19 Mr. Fricke?

20 MR. FRICKE: Yeah, either one will work.

21 JUDGE SCHAER: And how about you,  
22 Mr. Davenport?

23 MR. DAVENPORT: Yes.

24 JUDGE SCHAER: And both of you,  
25 Mr. Trautman and Mr. Palmer, have indicated that will



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1 work?

2 MR. PALMER: Yes, Your Honor.

3 MR. PALMER: Yes.

4 JUDGE SCHAER: So that's the plan, that we will  
5 have a hearing on the 25th.

6 And you were indicating, Mr. Trautman, that you  
7 are going to have updated documents filed a month before  
8 that.

9 Do you contemplate doing that in some closed  
10 format, so they would be available to me as well, so I  
11 can review them before the hearing?

12 MR. TRAUTMAN: We can have it so it's filed  
13 with the Commission, and served on the other parties  
14 as well.

15 JUDGE SCHAER: I think that would allow me to  
16 feel better prepared, and perhaps keep things running  
17 better.

18 I am going to want a list of witnesses, and of  
19 areas that they are going to cover. In addition to the  
20 documents that are filed, which we just discussed that  
21 I will receive a copy of, if there are other documents  
22 that any party is planning to use as an exhibit in the  
23 matter, I want you to have sufficient copies of those  
24 made and with you so you can distribute those in the  
25 hearing room first thing in the morning.

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1           Mr. Trautman.

2           MR. TRAUTMAN:  You indicated a list of  
3 witnesses.  When would that be due by?

4           JUDGE SCHAER:  Well, I was thinking maybe a  
5 week ahead, but I am open to other suggestions.  That  
6 would be April 18.

7           MR. PALMER:  Your Honor --

8           JUDGE SCHAER:  Yes, Mr. Palmer.

9           MR. PALMER:  Could we make that two weeks  
10 before.  I will be gone the week before.

11          JUDGE SCHAER:  And you don't want to file yours  
12 early?

13          MR. PALMER:  Actually, I want to see what  
14 everyone else is going to do.

15          JUDGE SCHAER:  Actually, it would be better for  
16 me, because I am going to be gone the week of the 15th,  
17 and I could take some time with them before I go.

18          So let's say those are going to be due April  
19 10.  Only if you get them there at 5:00, I could still  
20 look at them on the 11th.

21          I am going to suggest that on the 25th we have  
22 an additional prehearing conference from about 8:30 to  
23 9:00 for the exchange of -- marking of exhibits.  And  
24 then, hopefully, we will have all of that done and be  
25 ready to go forward with the hearing at 9:30.

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1 MR. FRICKE: Clarification, Your Honor.

2 Are you saying immediately preceding that  
3 hearing that day?

4 JUDGE SCHAER: Yes, Mr. Fricke. And I am not  
5 sure I got my times contiguous, but I would say the  
6 prehearing conference from 9:00 until 9:30, and then  
7 starting the hearing at 9:30.

8 MR. PALMER: Your Honor --

9 JUDGE SCHAER: Yes, Mr. Palmer.

10 MR. PALMER: Are you -- are the updated  
11 documents, are they due March 25th, then?

12 JUDGE SCHAER: I was going to ask you that.  
13 You indicated a month ahead. Is that what you would  
14 like to do? That is a Monday.

15 MR. TRAUTMAN: That would work for us.

16 JUDGE SCHAER: And are you, Mr. Palmer, going  
17 to be responsible for making sure those get filed, or  
18 you, Mr. Trautman, or you, Mr. Davenport?

19 Mr. Fricke, I am sure you don't have to.

20 MR. TRAUTMAN: I anticipate some will be from  
21 Mr. Davenport, and some from Mr. Palmer.

22 MR. PALMER: Yeah, I can file some.

23 MR. DAVENPORT: And, yeah, I will, of course,  
24 have the updated application and lessee agreements.

25 JUDGE SCHAER: Okay. We're probably -- I am

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1 probably going to call for briefs at the end of this,  
2 depending on how complicated it gets. If it stays  
3 pretty simple, we may not need to do that. But I don't  
4 know if you want to talk about a briefing date now, or  
5 at the end of the hearing.

6 MR. TRAUTMAN: Let's wait until the end of the  
7 hearing, and see how the issues pan out.

8 JUDGE SCHAER: Okay. So is there anything else  
9 we need to discuss this morning?

10 (NO RESPONSE.)

11 JUDGE SCHAER: Thank you all for working  
12 together to get these planning steps taken. Our  
13 Prehearing Conference Order will be issued.

14 I will be checking to see if one of the earlier  
15 orders included all of the filing information for  
16 documents that come in. If it did not, I will attach  
17 that and tell you how many copies of everything.  
18 Exhibits need to be three-hole punched.

19 And so if there's nothing further to come  
20 before us this morning, then we will be adjourned until  
21 9:00 a.m. on April 25th. And we will be in this room,  
22 it looks like, at this point.

23 Thank you all, and we're off the record.

24 (Hearing adjourned at 10:40 a.m.)

25