

0080

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

2

3 JUDGE SCHAER: Let's be on the record. This
4 is a hearing in Docket No. TC-010273 involving an
5 application by Centralia-SeaTac Airport Express. Our
6 nine o'clock hearing this morning was established in
7 order to exchange exhibits and allow exhibits to be
8 marked and numbered, and we have learned this morning
9 through discussion off the record that there is a
10 different path that we will more likely be following,
11 and so there are some documents related to that that
12 have been distributed.

13 I have suggested to the parties that we take
14 the time between now and 9:30 when our hearing would
15 start to review those, and at 9:30 we will reconvene
16 the hearing and decide what to do with the current
17 application and decide whether there is anything else
18 that needs to be done in this forum by the Commission.
19 Is there anything else anyone wants to add to the
20 record at this point? We are off the record, and our
21 next hearing will convene at 9:30.

22 (Recess.)

23 JUDGE SCHAER: We are continuing the hearing
24 that was scheduled for today in Docket No. TC-010273,
25 which is an application by Pearson-Zepp partnership

0081

1 that owns the Centralia-SeaTac certificate to transfer
2 that certificate to Centralia-SeaTac, LLC. As
3 originally contemplated, this was going to be the
4 substantive hearing about that application.

5 In discussions with the parties at our nine
6 o'clock phase of the hearing for exchange of exhibits
7 and in discussions off the record, it appears to be
8 indicated that the parties are going to seek to have a
9 default on that application but do want to outline some
10 other matters that are continuing with this permit,
11 including looking at the amendment to the management
12 agreement that's currently in effect. That was done, I
13 believe, at the request of the Commission during the
14 time of the hearing because we weren't sure who was
15 managing the permit, and we got that time down.

16 We are going to need to talk briefly about
17 insurance because that was one of the things we did at
18 the beginning of this hearing was to make sure a
19 responsible person or entity that was operating
20 vehicles for this business did have the proper
21 insurance to protect its customers, and I'm now going
22 to call on the parties to make a statement of where we
23 are and what they see as being things that we need to
24 deal with at this point in the process.

25 We do not have Ms. Pearson or counsel for

0082

1 Ms. Pearson with us. She was the original applicant,
2 so I think it might make sense to start out with the
3 statement by counsel for Ms. Zepp, if you are ready to
4 do that, Mr. Palmer.

5 MR. PALMER: Thank you, Your Honor. The plan
6 of action that I believe that the parties agreed to is
7 to withdraw the pending application. In its place,
8 Black Hills Transportation and Airport Services, Inc.,
9 has today filed a new application for transfer of this
10 authority from Pearson and Zepp to Black Hills
11 Transportation and Airport Services, Inc. Ms. Zepp is
12 or will be the sole shareholder of Black Hills.

13 Just for point of information, the plan is
14 that the Company, which is currently operating as
15 Centralia-SeaTac, would change its name to operate
16 under Black Hills Transportation and Airport Services,
17 and I understand there was some concern by one of the
18 protestants about the name.

19 In the interim, we would propose a first
20 amendment to the management agreement, which was dated
21 May 2. The only change in the current management
22 agreement would be an extension. The current
23 management agreement technically terminates when the
24 pending application is withdrawn. This would extend
25 the management agreement until the application filed

0083

1 today is acted upon, essentially. We believe that
2 under the revised Uniform Partnership Act, Ms. Zepp is
3 one of the partners that has authority to sign it for
4 the partnership of Pearson and Zepp.

5 On the insurance issue, I guess we would be
6 willing to do what the Commission considers -- there is
7 one new entity involved, and that is the Black Hills
8 Corporation, which I guess wouldn't be operating until
9 the application is approved, but I don't see any
10 problem with adding that name to it.

11 JUDGE SCHAER: So you mentioned that you are
12 going to have a new doing business as, d/b/a name put
13 on the Company's equipment now before the transfer is
14 complete.

15 MR. PALMER: I wouldn't say that.
16 Ultimately, it would be the name, the Black Hills name,
17 because that is the corporation's name, so technically,
18 it would not be a d/b/a.

19 JUDGE SCHAER: I misheard what you said. I
20 thought you just told me that until the application is
21 done with, you were going to change the name.

22 MR. PALMER: I may have misspoke. We don't
23 know for sure the timing of that. Probably makes sense
24 to wait until the application is approved because then
25 it's not a d/b/a. It's the name of the applicant

0084

1 holder.

2 We may use the name Centralia-SeaTac after
3 it's approved for a short period of time just to make a
4 name-change transition that makes sense, but
5 ultimately, the name would be changed to Black Hills,
6 so if there is a d/b/a, it would be Black Hills doing
7 business as Centralia-SeaTac, but I don't see that as
8 occurring for a long period of time.

9 JUDGE SCHAER: If after the transfer you are
10 still using the Centralia-SeaTac name, I might need to
11 have a d/b/a for that until you get your transition
12 done. I just want you to know the kind of details that
13 the Commission has rules about so that you don't trip
14 over one of them between here and your next hearing on
15 a different application.

16 MR. PALMER: Thank you. We did file a d/b/a
17 with the master application, and it's also listed on
18 the application.

19 JUDGE SCHAER: What would you suggest we do
20 in this proceeding from here forward, Mr. Palmer? I
21 think you told me some of that, but you mentioned
22 withdrawing the pending application. Do you think
23 that's something that people in the room can do? I'm
24 just wondering whether that needs to happen or whether
25 it would make more sense to default it or what it would

0085

1 make sense to do, because I'm not sure...

2 Ms. Pearson is the one that filed the
3 application. She is the applicant, and that's why I'm
4 not sure anyone else can withdraw it. I'm glad to hear
5 that someone else can or if Staff knows or the other
6 parties know, but certainly, we can't default the
7 applicant because the applicant is not here, and to get
8 to the same place, I'm just trying to figure out what
9 will work best for the parties.

10 MR. TRAUTMAN: I believe your initial
11 application was a joint application, but it was Pearson
12 and Zepp on the one hand and the LLC on the other. I
13 don't believe it was Sharyn Pearson for herself.

14 JUDGE SCHAER: No, it wasn't, but she filed
15 the application, and Ms. Zepp protested the
16 application, which I thought gave us a record that she
17 at that point saw herself in a different role than as
18 an applicant, so I'm not trying to cause problems. I'm
19 just trying to figure out a smooth path going forward
20 so there aren't things we haven't thought ahead about.

21 MR. TRAUTMAN: If a default, so to speak,
22 would be technically simpler, I suppose that can be
23 done too.

24 MR. DITLEVSON: I would have no objection to
25 that on behalf of Centralia-SeaTac, LLC. My

0086

1 understanding was that Ms. Pearson signed the
2 application but that it was intended to be a joint
3 application between her partnership and the LLC. We
4 would concur with its withdrawal if Your Honor thinks
5 that's possible. We wouldn't object to it being
6 defaulted if you would prefer that.

7 JUDGE SCHAER: I'm really trying to raise the
8 question to the parties. If you look in the file, you
9 will see that -- something I had never seen before,
10 actually -- you had one partner applying for a transfer
11 and the second partner protesting the application. So
12 I would be less inclined to view Ms. Zepp as one of the
13 applicants in that circumstance. Is there anything
14 else, Mr. Palmer?

15 MR. PALMER: No. I guess kind of in summary,
16 the main result that we would like to get to today is
17 to continue operating under the management agreement as
18 amended and then to begin processing the application
19 which we filed today.

20 JUDGE SCHAER: Mr. Ditlevson?

21 MR. DITLEVSON: My client concurs with the
22 approach Mr. Palmer suggests and approves the general
23 direction that he's suggesting and would ask that Your
24 Honor approve that.

25 JUDGE SCHAER: Mr. Fricke?

0087

1 MR. FRICKE: Your Honor, I would have no
2 objection since it's actually following the rules and
3 regulations of the Commission at this point and
4 certainly does satisfy what's been my concern
5 throughout this prehearing when the management
6 agreement was put in place that it did tie the
7 certificate to the operating company, which had not
8 been the case before, which therefore puts them in
9 compliance with an authority to do the operations.

10 JUDGE SCHAER: Mr. Trautman?

11 MR. TRAUTMAN: Staff is agreeable to the
12 proposal that Mr. Palmer had, and I have nothing
13 additional to add. We were checking the insurance, and
14 it appears that it may be sufficient to keep the
15 insurance as it is now.

16 JUDGE SCHAER: I had raised the insurance
17 question because I had misunderstood what Mr. Palmer
18 was saying and had heard him I thought say that the
19 Company might start operating as a d/b/a under the new
20 name before the transfer was complete, and at that
21 point, I would have wanted that name included in the
22 insurance so that we were certain that customers were
23 protected, but it appears I misheard what he said and
24 that actually, they aren't going to change the name
25 until they have a completed successful transfer, if

0088

1 they are able to do so. I'm not sure that's an issue
2 any longer. In terms of management agreement, have you
3 looked at the amendment?

4 MR. TRAUTMAN: I have.

5 JUDGE SCHAER: Do you think that's something
6 that the Commission can approve in the setting of a
7 withdrawn application?

8 MR. TRAUTMAN: I believe they can. It's
9 acceptable to Staff, and it seems to be a sensible way
10 of dealing with the interim period pending the
11 processing of the new application.

12 JUDGE SCHAER: Mr. Palmer, you had written a
13 letter to the Commission on June 16th, and I would like
14 you to explain to me again on the record what concerns
15 are about the security agreement and what you would
16 like the Commission to do, if anything, in an order
17 coming out of today.

18 MR. PALMER: The WAC section 480-30-030,
19 subsection 8, first sentence says: No certificate nor
20 any right thereunder shall be sold, assigned a lease to
21 transfer, or mortgaged except upon authorization by the
22 Commission, and we have under Uniform Commercial Code a
23 perfected security interest in the permit.

24 What I was asking here, and I believe it can
25 be done one of two ways or both ways. What I was

0089

1 asking in my letter was just for the Commission to
2 approve the security agreement and security interest
3 which is already in place on the permit.

4 The action that we will be taking by the new
5 application will have the same effect. That is, we are
6 filing that application based on a default under the
7 promissory note and security agreement. One of the
8 rights we have is immediate possession of the
9 collateral, which would include the permit, so the new
10 application upon its approval will, in effect, approve
11 the security interest also.

12 So in conclusion, we can do one of two
13 things. We can approve the security interest now --
14 all of the documents have been filed and were filed
15 back in March or April -- or we can approve it as part
16 of the new application.

17 JUDGE SCHAER: Mr. Trautman, on behalf of
18 staff, what do you think would be the more appropriate
19 way to handle that?

20 MR. TRAUTMAN: On the issue of whether to
21 handle it now or as part of the new application? I'm
22 not entirely sure, to be honest with you. I think you
23 could do it either way.

24 JUDGE SCHAER: Also with the filing of the
25 new application, that will have to be docketed; is that

0090

1 correct?

2 MR. TRAUTMAN: Yes.

3 JUDGE SCHAER: Then if there are protests,
4 that needs to be set for hearing.

5 MR. TRAUTMAN: I would think so, yes.

6 JUDGE SCHAER: So if no one protests, how
7 long would it take for this to go through, in rough
8 terms?

9 MR. TRAUTMAN: 30 days minimum.

10 JUDGE SCHAER: Is there anything else that
11 anyone would like to indicate at this point?

12 MR. DITLEVSON: I have nothing further, Your
13 Honor.

14 MR. FRICKE: When you were talking about
15 timing here, was that for the purpose of trying to get
16 this in as short of a time frame as possible?

17 JUDGE SCHAER: It will really just an attempt
18 to get information on record that this is not something
19 that's going to be filed today and dealt with by next
20 Friday. There is a process to go through, because I
21 wanted everybody in the room to be aware of that.
22 There was no purpose beyond that, Mr. Fricke.

23 MR. FRICKE: Because we will be filing a
24 protest on the new application, and we will be out of
25 state as far as the end of July and the first part of

0091

1 August is concerned.

2 JUDGE SCHAER: We will have to deal with the
3 timing at the point where this gets set for hearing.
4 If you do file a protest, you might want to include
5 with it the information and the dates you are not
6 available.

7 MR. FRICKE: Okay.

8 JUDGE SCHAER: One more question for all
9 concerned. I can write an initial order today
10 reflecting what we've talked about and then that will
11 trigger a period of 20 days for any party who does not
12 like part of what I write to petition for
13 administrative review, 10 days for the party to answer,
14 and then procedure on review before the Commission is
15 before this goes into effect.

16 At times when all of the parties are in
17 agreement on the appropriate result, parties will ask
18 the Bench to waive the initial order and just write
19 this as a final order so that the processing of this
20 particular application can be finished sooner, and I'm
21 going to suggest perhaps that Counsel and Mr. Fricke
22 talk about that for a few minutes and see if people
23 would like to do that. If anyone of you doesn't want
24 to proceed that way, we will not.

25 So I'm going to call just a brief recess.

0092

1 We'll be back on the record at five minutes after 10,
2 and while you are having that conversation, I would
3 like you to consider whether it would be useful to have
4 some kind of a proposed order or some kind of other
5 statement supplied by the parties or some kind of
6 stipulation of facts. We don't have any facts in the
7 record on this matter now. I'm not sure we need a lot
8 if we keep this on a very low basis and say hearing was
9 set and applicant is not here and this is defaulted,
10 but we want to get into other things that it sounds
11 like you want to get into, and I think it's worth you
12 guys talking it over for a few minutes and then letting
13 me know so that what I write serves the needs that are
14 before the Commission right now. We are going to go
15 off the record, and we will be back at five minutes
16 after 10.

17 (Recess.)

18 JUDGE SCHAER: Let's be back on the record
19 after a brief recess. During the recess, the parties
20 were asked to discuss the detail of how we go forward
21 from here, including whether there are any factual
22 matters that need to be put into this record in order
23 to make rulings that we would like to have made or
24 whether they would like to waive an initial order,
25 whether they would like to prepare a draft final order

0093

1 and a stipulation to go with it so that once they've
2 looked at the order, they realize what facts might be
3 in the record to support it, and I am going to ask each
4 of you again to listen to the other's comments and make
5 any additional comments you think would be appropriate,
6 and I'm going to start with you, Mr. Palmer. I will
7 note that Mr. Ditlevson has had to leave us and is no
8 longer in the hearing room. Go ahead.

9 MR. PALMER: Thank you, Your Honor. I
10 believe that what we have discussed is an order which
11 would approve the security interest and the permits in
12 favor of the Zepps. That would be Point 1. Point 2
13 would be to default the remainder of the application,
14 and Point 3 would be to approve the first amendment to
15 the management agreement.

16 The only documents, I believe, that would be
17 needed to support the order would be the promissory
18 note that guarantees and security agreement which were
19 filed earlier, which will show that there is indeed a
20 security interest, and I believe that with that type of
21 order, we could waive the initial.

22 JUDGE SCHAER: Tell me again the verb that
23 you used? Was it "dismissed"? Was it "defaulted"?

24 MR. PALMER: Defaulted, and if you would
25 like, I would be willing to draft a proposed order.

0094

1 JUDGE SCHAER: Mr. Fricke?

2 MR. FRICKE: I would concur. I think maybe
3 you might want to include the amendment to the
4 management agreement too.

5 JUDGE SCHAER: I did make a note that that
6 would be one of the three things included, but thank
7 you for making sure that was covered. Anything else?

8 MR. FRICKE: I would concur to waive the
9 initial order so that the process to the new
10 application can be expedited.

11 JUDGE SCHAER: Mr. Trautman?

12 MR. TRAUTMAN: Staff is agreeable to those
13 three items, and Staff would also waive the initial
14 order.

15 JUDGE SCHAER: I am going to ask you then,
16 Mr. Palmer, to draft a proposed final order. I am not
17 as familiar as I believe you are with Uniform
18 Commercial Code. I have bad memories of it from 23
19 years ago but haven't used it since, and I do want to
20 have things appropriately addressed.

21 I would ask you when you get that order
22 drafted to look at it carefully to see what kind of
23 factual information the Commission would want to have
24 in the record in order to make the statements in the
25 order, and then if its something like the management

0095

1 agreement, the amendment to the management agreement,
2 the note and other things you had mentioned, make sure
3 that those are attached and incorporated into the
4 order, and I'm going to use this draft to go over and
5 put it in Commission format, and so I could include the
6 references to those, but I do want to have some kind of
7 factual basis in the record for anything that we are
8 doing beyond the default. How long do you think it
9 will take you to come up with that realistically?

10 MR. PALMER: Within two weeks. I would hope
11 to have it sooner.

12 JUDGE SCHAER: So looking at the calendar,
13 today is June 21st, and two weeks from today is July
14 5th. I'm going to ask you if you want to have
15 something due on July 5th. Many of us will not be
16 working that day.

17 MR. PALMER: I will have it to you by July
18 2nd.

19 JUDGE SCHAER: I want to ask the other two
20 parties, do you want this to be something that's
21 circulated to you before it's filed with me, or sent to
22 you at the same time?

23 MR. TRAUTMAN: I was thinking that I would
24 see it ahead of the time that it would be circulated.
25 I'll be out of the office until June 27th of next week,

0096

1 but that should give me sufficient time if it's just
2 circulated past me.

3 JUDGE SCHAER: Do you want to circulate
4 before this and file by July 2nd, or do you want to
5 circulate by July 2nd and then file it the following
6 week?

7 MR. PALMER: Why don't I have the draft to
8 the other parties by next Friday, June 28th, and then I
9 can file July 2.

10 JUDGE SCHAER: That sounds very workable to
11 me. Is that going to conflict with your schedule,
12 Mr. Fricke?

13 MR. FRICKE: That would be fine.

14 JUDGE SCHAER: I believe that would go well
15 with what you've indicated, Mr. Trautman.

16 MR. TRAUTMAN: Yes.

17 JUDGE SCHAER: If going through this you see
18 facts that we've talked about that are not in the
19 record, if not a document you could attach, you may
20 want to put together a stipulation of facts and talk to
21 other counsel to see if they are able to go along with
22 that.

23 MR. PALMER: Your Honor, it's probably going
24 to be my intention to attach the relevant documents
25 that have been signed.

0097

1 JUDGE SCHAER: Certainly. I'm just saying if
2 there is something beyond that that you would like to
3 have reflected, then go ahead and check with the other
4 counsel and make sure, or circulate that with what you
5 circulate as a stipulation and see if we can get
6 everything put in there.

7 MR. PALMER: Okay.

8 JUDGE SCHAER: Is there anything further that
9 needs to come before the Commission this morning?
10 Hearing nothing, I want to thank all of you for your
11 participation in this matter. It's been an interesting
12 process, but I think we've come to a good resolution
13 that will protect the rights of people who have
14 invested in this company, and I will look then to
15 receive the proposed order from the parties by July
16 2nd. Given that, we are off the record.

17 (Hearing concluded at 10:18 a.m.)

18

19

20

21

22

23

24

25