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5 **BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

6 **In the Matter of the Application No. B-079240 of**

DOCKET NO. TS-031996

7  
8 PACIFIC CRUISES NORTHWEST, INC.  
D/B/A VICTORIA SAN JUAN CRUISES

PROTEST OF SAN JUAN ISLAND  
SHUTTLE EXPRESS, INC. D/B/A  
SAN JUAN ISLAND SHUTTLE  
EXPRESS

9 **For a Certificate of Public Convenience and**  
10 **Necessity to Operate Vessels in Furnishing**  
11 **Passenger-Freight-Excursion Commercial Ferry**  
12 **Service**

13 COMES NOW San Juan Island Shuttle Express, Inc., d/b/a San Juan Island Shuttle Express  
14 (“Protestant”) by and through its attorney, Polly L. McNeill of Summit Law Group, and respectfully  
15 protests the granting of the authority for the territory requested in the above-numbered application  
16 as set forth below

17  
18 **1. Name and address of Protestant:**

19 SAN JUAN ISLAND SHUTTLE EXPRESS, INC., d/b/a  
20 SAN JUAN ISLAND SHUTTLE EXPRESS  
510 E. Myrtle St.  
Bellingham, WA 98104  
Phone: (360) 671-5829

21  
22 Represented by:  
Polly L. McNeill  
Summit Law Group, LLC  
23 315 5<sup>th</sup> Avenue S., Suite 1000  
Seattle, WA 98104  
24 Phone: (206)676-7000

25 **2. Legislation brought into issue by this pleading:**

26 RCW Ch. 81.84, WAC Chs. 480-07 and 480-51  
27

1 **3. The Protestant has the following interest in this proceeding:**

2 Protestant operates commercial ferry services pursuant to its certificate of public  
3 convenience and necessity BC-120, a copy of which is attached as Exhibit A. As is evidenced  
4 by this certificate, Protestant currently holds authority in conflict with the applied-for authority.

5 Protestant operates annually from April to October providing commercial ferry service  
6 between Friday Harbor and Bellingham, and between Obstruction Pass and Bellingham, with the  
7 carrying vessel touching at Obstruction Pass on voyages to and from Friday Harbor. Also in  
8 conjunction with its authority, the vessel makes flag stops at Eliza Island, Sinclair Island,  
9 Blakely Island, Lopez Island, Orcas Landing on Orcas Island, and Brandt's Landing on Orcas  
10 Island.

11 Protestant's authority is fully effective and includes the right to provide ferry service  
12 between the Bellingham and Friday Harbor, which is the route requested by the Applicant.  
13 Protestant therefore has an interest in the application.

14 Protestant's service is currently suspended, but pursuant to the Commission's approval.  
15 The Commission granted Protestant the authority to temporarily discontinue service following  
16 Protestant's petition under WAC 480-51-130, which allows certificate holders to seek permission  
17 from the Commission for temporary discontinuance of service. The Commission granted  
18 Protestant's petition for a temporary discontinuance of service from April 2003 to April 2004 in  
19 Docket No. TS-030574, by order dated April 30, 2003, a copy of which is attached hereto as  
20 Exhibit B.

21 Protestant remains ready, willing and able to provide the services which its operating  
22 certificate authorizes to any of Applicant's supporting shippers, to the satisfaction of the  
23 Commission.

1 **4. Specific grounds for opposing this application:**

2 The Commission may not grant a certificate to operate in territory already served by an  
3 existing certificate holder, unless the certificate holder has failed or refused to furnish reasonable  
4 and adequate service. RCW 81.84.020(1). Protestant has neither failed nor refused to furnish  
5 reasonable and adequate service, and therefore the application must be denied for this reason  
6 alone.

7  
8 The fact that Protestant has secured Commission approval to suspend operations is not  
9 evidence of Protestant's failure or refusal to furnish service. The order granting temporary  
10 discontinuance found that the discontinuance was reasonable and did not find that Protestant had  
11 failed or refused to provide adequate service. An authorized suspension cannot be deemed  
12 waiver or cancellation by the Protestant of its authority rights. The Commission may not cancel,  
13 and Protestant is not deemed to have waived its interest in its certificate unless and until  
14 Protestant violates the Commission's order by refusing or being unable to resume service. RCW  
15 81.84.060(7).

16  
17 The order granting temporary discontinuance of service was conditioned on Protestant  
18 resuming service should an immediate need arise for commercial ferry service, and required that  
19 Protestant be prepared to resume services to meet those needs. The order did not find that there  
20 was an unmet need for commercial ferry service in Protestant's certificated territory, nor has the  
21 Commission since advised Protestant that such a need has arisen.

22  
23 Indeed, Protestant does not believe a current need exists that would warrant approval of  
24 the authority sought by Applicant. Protestant is unaware of an immediate demand for  
25 commercial ferry service between Bellingham and Friday Harbor. However, should the  
26 Commission find that such a need exists, Protestant is prepared to resume services to meet those  
27

1 needs, and is ready, willing and able to respond to any such need that might arise. Because  
2 Protestant holds a valid certificate for the territory requested and is in compliance with the  
3 Commission's order, Applicant's application for authority should be denied under RCW  
4 81.84.020(1).<sup>1</sup>

5  
6 Furthermore, Applicant's application should be denied because Applicant is not fit,  
7 willing and able to provide the sought-after service, and because it has failed to meet the  
8 minimum requirements for an application, the Applicant has failed to even meet its burden of  
9 establishing a prima facie case. The application does not include even the most basic pro forma,  
10 as required by WAC 480-51-030(1)(a). Also, Applicant's ridership forecasts do not indicate a  
11 need, immediate or otherwise, for its commercial ferry service. Applicant merely asserts its own  
12 beliefs and future reasons for granting a certificate. Specifically, Applicant asserts "(i)ncreasing"  
13 (but not current) "passenger demand," a belief that its service will "enhance tourist gateway  
14 opportunities," and that Applicant expects that "additional incentives for providing commercial  
15 ferry service between popular destination points will increase." None of the conditions  
16 perceived by Applicant show a need for commercial ferry service that would justify granting  
17 Applicant a certificate when Protestant has not waived its certificate for that territory and  
18 Protestant's certificate.

19  
20 Protestant therefore believes and alleges that the Applicant is not qualified to receive a  
21 grant of commercial ferry authority, and that the applicant is not fit, willing and able to properly  
22 perform the services proposed and unable to conform to the provisions of Ch. 81.84 RCW and  
23 the requirements, rules and regulations of this Commission thereunder. Protestant denies each  
24

25 <sup>1</sup> In answering Item 14 on its application, the existence of Island Mariner Corp. is noted by Applicant. On  
26 information and belief, Protestant understands that company to hold BC-95, which also authorizes passenger ferry  
27 services similar to what it sought by Applicant. Therefore, presumably Applicant must also demonstrate that Island  
Mariner Corp. has failed or refused to furnish reasonable and adequate service or has failed to provide the service  
described in its certificate.

1 and every material allegation and statement of fact contained in the application and requests that  
2 the Applicant be required to submit strict proof in support thereof and to produce competent  
3 witnesses at a hearing for cross-examination on all material and relevant facts bearing on the  
4 protested application.

5 **5. The Protestant intends to raise the following issue in this proceeding:**

6 Should the Application of Pacific Cruise Northwest, Inc. be denied because Protestant  
7 currently holds a certificate of convenience and necessity for the territory for which Applicant  
8 has applied, and there is no evidence that the Applicant has failed or refused to furnish  
9 reasonable and adequate service?

10 Should the Application of Pacific Cruise Northwest, Inc. be denied because the Applicant  
11 has failed to demonstrate a prima facie case under RCW 81.84.020?

12 **6. The Protestant requests a hearing regarding the Application and this Protest.**  
13 **The Protestant intends to:**

14  **a. Submit written testimony and exhibits of the following people:**

15 One or more representatives of San Juan Island Shuttle Express including  
16 but not limited to Mark Goodman. Others have not yet been identified;  
17 Protestant reserves the right to submit additional written testimony and  
18 exhibits.

19  **b. Submit written arguments and/or motions.**

20 **If a hearing is held regarding the Application and this Protest, the Protestant also intends**  
21 **to:**

22  **c. Call the following witnesses to testify:**

23 One or more representatives of San Juan Island Shuttle Express. Others  
24 have not yet been identified; Protestant reserves the right to call additional  
25 witnesses.

26  **d. Cross-examine the witness called by other parties.**

1 **7. Conclusion; Request to Commission**

2 Protestant requests that the Commission deny Pacific Cruise Northwest's application for  
3 certificate of authority on the grounds that Protestant holds a certificate for that authority and that  
4 there is no immediate need for service that would require granting Applicant a certificate of  
5 authority to engage in a commercial ferry operation between Bellingham and Friday Harbor.  
6 Alternatively, Protestant requests that the Commission schedule a hearing regarding Docket No.  
7 so that the issues raised by said Application may be subject to a full and open examination and  
8 discussion before the Commission makes any determination regarding whether a certificate  
9 should be issued to the Applicant for the territory requested.  
10

11 DATED this 30th day of March, 2004.

12 Respectfully submitted,

13 SUMMIT LAW GROUP PLLC

14 By: 

15 Polly L. McNeill, WSBA

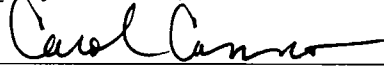
16 Attorneys for Protestant San Juan Island Shuttle  
17 Express, Inc.  
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Protest upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed with postage prepaid, to the Applicant through its counsel, David Wiley of Williams, Kastner, and Gibbs at P.O. Box 2196, Seattle, WA 98111.

DATED at Seattle, Washington, this 30<sup>TH</sup> day of March, 2004.



\_\_\_\_\_  
Carol Cannon

# ***Exhibit A***



WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**For the Operation of Motor Propelled Vehicles**

pursuant to the provisions of Chapter 81 RCW

THIS IS TO CERTIFY that authority is granted to operate as a MOTOR CARRIER in the transportation of the commodities and in the territory described herein to

SAN JUAN ISLAND SHUTTLE EXPRESS, INC.  
d/b/a San Juan Island Shuttle Express  
355 HARRIS AVENUE, SUITE 105  
BELLINGHAM, WA 98225

CERT NO.  
BC-00120

PASSENGER AND FREIGHT SERVICE

Between Friday Harbor and Bellingham, and between Obstruction Pass and Bellingham, with the carrying vessel touching at Obstruction Pass on voyages to and from Friday Harbor.

In conjunction with the above authority, flag stops at Eliza Island, Sinclair Island, Blakely Island, and Lopez Island. This authority to make flag stops will terminate automatically upon termination of the certificate holder's authority to provide the above service between Friday Harbor and Bellingham and between Obstruction Pass and Bellingham.

The above statements of authority exclude freight service between Obstruction Pass-Friday Harbor, Obstruction Pass-Lopez Island, and Lopez Island-Friday Harbor.

Pursuant to RCW 47.60.010(3), the waiver of the ten-mile restriction granted in this certificate is effective until August 8, 2001. This waiver shall become permanent if not appealed within 30 days after this date.

In conjunction with existing authority, flag stop service at Orcas Landing (Harney Channel, Orcas Island).

Excluding freight service between Orcas Island - San Juan Island, Orcas Island - Lopez Island, and Lopez Island - San Juan Island.

Pursuant to RCW 47.60.120 (3), waiver of the ten mile restriction granted in this certificate is effective until May 21, 2003. This waiver shall become permanent if not appealed within 30 days after May 21, 2003.

(CONTINUED)

WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION



By *Carole Washburn*  
for Carole Washburn, Secretary

EXHIBIT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Continuation

In conjunction with the existing authority, flag stop service at Brandt's Landing (Orcas Island).

Excluding freight service between Orcas Island - San Juan Island, Orcas Island - Lopez Island and Lopez Island - San Juan Island.

S. B. C. NO. 555

07-06-99



# ***Exhibit B***

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In The Matter of a Petition of	)	DOCKET NO. TS-030574
	)	
SAN JUAN ISLAND SHUTTLE	)	ORDER NO. 01
EXPRESS, INC., BC-120	)	
	)	
For Commission Permission	)	ORDER GRANTING
Allowing Temporary	)	TEMPORARY
Discontinuance of Commercial	)	DISCONTINUANCE
Ferry Service.	)	OF SERVICE
.....	)	

**BACKGROUND**

- 1 On April 24, 2003, San Juan Island Shuttle Express, Inc., (Company) holder of commercial ferry certificate of public convenience and necessity BC-120, filed with the Washington Utilities and Transportation Commission a petition requesting permission from the Commission to temporarily discontinue service authorized under the company's certificate.
  
- 2 The Company operates annually from April through October providing commercial ferry service between Friday Harbor and Bellingham, and between Obstruction Pass and Bellingham, with the carrying vessel touching at Obstruction Pass on voyages to and from Friday Harbor. Further, in conjunction with this authority, the vessel makes flag stops at Eliza Island, Sinclair Island, Blakely Island, Lopez Island, and Orcas Landing & Brandt's Landing on Orcas Island.
  
- 3 The Company operates its certificate using leased vessels. In its petition the Company reports it has been unable to locate vessels and negotiate agreements for use of those vessels for the 2003 sailing season.

**EXHIBIT**     B

- 4 The Company requests that the Commission grant permission to temporarily discontinue service for a period of twelve months, returning to service in April, 2004. The Company believes that temporary suspension of service will allow it to locate a suitable vessel and negotiate a fair operating contract.
- 5 WAC 480-51-130 provides:

No certificate holder shall discontinue the service authorized under its certificate and set forth in its filed time schedule without first having given to the commission and to the public, at least fifteen days' notice, in writing, of its intention to discontinue such service, and without having secured the commission's permission. The commission shall not grant permission for discontinuance of service for periods exceeding twelve months.

#### FINDINGS AND CONCLUSIONS

- 6 (1) San Juan Island Shuttle Express, Inc., BC-120, is engaged in the business of providing commercial ferry service within the state of Washington as a public service company, and is subject to the jurisdiction of the Commission. *Chapter 81.84 RCW and WAC 480-51.*
- 7 (2) On April 24, 2003, San Juan Island Shuttle Express, Inc., filed with the Commission a petition requesting Commission permission to discontinue service authorized by the Company's certificate of public convenience and necessity, BC-120. The discontinuance requested by the company encompasses the period of April 25, 2003, to April 24, 2004.

- 8 (3) The proposed discontinuance petition by San Juan Island Shuttle Express, Inc., BC-120, is reasonable because the boats the Company normally leases to provide this service are not available this year. The Commission will impose a condition that provides for passenger service should an immediate and emergent need arise. Under this condition, should an immediate need arise for commercial ferry service, San Juan Island Shuttle Express, Inc., must be prepared to resume service to meet those needs. If San Juan Island Shuttle Express, Inc., cannot, or will not, resume service the Commission will deem that it has waived interest in its commercial ferry certificate. The Commission will then institute proceedings to cancel the Company's certificate and to grant authority to another carrier who is prepared to meet the needs of the traveling public.
- 9 (4) This matter was brought before the Commission at its regularly scheduled open meeting on April 30, 2003.

#### ORDER

- 10 (1) Permission is given to San Juan Island Shuttle Express, Inc., BC-120, to temporarily discontinue service authorized under its certificate of public convenience and necessity for the period April 25, 2003, to April 24, 2004.
- 11 (2) This authorization is conditioned on San Juan Island Shuttle Express, Inc., resuming service should an immediate need arise for commercial ferry service. San Juan Island Shuttle Express, Inc., BC-120 must be prepared to resume service to meet those needs. If San Juan Island Shuttle Express, Inc., BC-120 cannot, or will not, resume service the Commission will deem that the Company has waived interest in its commercial ferry certificate. The Commission will then institute

proceedings to cancel the Company's certificate and to grant authority to another carrier who is prepared to meet the needs of the traveling public.

The Commissioners, having determined this Order to be consistent with the public interest, directed the Secretary to enter this Order.

DATED at Olympia, Washington, and effective this 30th day of April, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary