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1           BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2                                   COMMISSION

3   In the Matter of the                 )  
4   Application of                         )  
5   KITSAP FERRY COMPANY, LLC             ) Docket No. TS-040794  
6   d/b/a KITSAP FERRY CO.               ) Volume I  
7   ) Pages 1 - 53  
8   For a Temporary Certificate         )  
9   of Public Convenience and             )  
10   Necessity to Operate                 )  
11   Commercial Ferry Service.             )  
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13                   A prehearing conference in the above matter  
14                   was held on June 25, 2004, at 11:03 a.m., at 1300 South  
15                   Evergreen Park Drive Southwest, Olympia, Washington,  
16                   before Administrative Law Judge C. ROBERT WALLIS.

17                   The parties were present as follows:

18                   KITSAP FERRY CO., by MATTHEW C. CRANE,  
19                   Attorney at Law, Bauer, Moynihan & Johnson, 2101 Fourth  
20                   Avenue, Suite 2400, Seattle, Washington 98121;  
21                   telephone, (206) 905-3223.

22                   INLANDBOATMEN'S UNION OF THE PACIFIC, by  
23                   DMITRI IGLITZIN, Attorney at Law, Schwerin, Campbell,  
24                   Barnard, LLP, 18 West Mercer Street, Suite 400,  
25                   Seattle, Washington 98119-3971; telephone, (206)  
                 285-2828.

                 WASHINGTON UTILITIES AND TRANSPORTATION  
                 COMMISSION, by LISA WATSON, Assistant Attorney General,  
                 1400 South Evergreen Park Drive Southwest, Post Office  
                 Box 40128, Olympia, Washington 98504; telephone, (360)  
                 664-1186.  
                 Kathryn T. Wilson, CCR

                 Court Reporter

0002

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

2 JUDGE WALLIS: The hearing will please come  
3 to order. This is a prehearing conference in the  
4 matter of Application No. TS-040794 of Kitsap Ferry  
5 Company. This conference is being held on Friday, June  
6 25, 2004, in the Commission offices at Olympia,  
7 Washington, before Administrative Law Judge C. Robert  
8 Wallis.

9 Let's begin by taking the appearances of  
10 counsel. Let's begin with the Applicant.

11 MR. CRANE: I'm Matthew Crane with Bauer,  
12 Moynihan and Johnson representing Kitsap Ferry Company.

13 JUDGE WALLIS: Could you state your contact  
14 information?

15 MR. CRANE: My address is 2101 Fourth Avenue,  
16 Suite 2400, Seattle, Washington, 98121. Telephone,  
17 (206) 443-3400.

18 JUDGE WALLIS: For the Protestant?

19 MR. IGLITZIN: Dmitri Iglitzin and Judy  
20 Krebs.

21 JUDGE WALLIS: Could you spell the last name,  
22 please, for the record?

23 MR. IGLITZIN: The last name,  
24 I-g-l-i-t-z-i-n; first name, D-m-i-t-r-i, and Judy  
25 Krebs, last name is K-r-e-b-s.

0003

1 JUDGE WALLIS: For Commission staff?

2 MS. WATSON: Good morning. My name is Lisa  
3 Watson. I'm an assistant attorney general on behalf of  
4 the Commission staff. My address is 1400 South  
5 Evergreen Park Drive Southwest, PO Box 40128, Olympia,  
6 Washington, 98504-0128. My telephone number is  
7 (360) 664-1186. My fax number is (360) 586-5522,  
8 e-mail is lwatson@wutc.wa.gov.

9 JUDGE WALLIS: Is there anyone here in the  
10 hearing room or on the bridge line that wishes to  
11 participate in this matter as an intervenor? Let the  
12 record show there is no response.

13 I would like to begin by considering the  
14 validity and the scope of the protest and whether the  
15 parties agree that the scope should be deemed  
16 consistent with the Commission's Order No. 2 in  
17 Application B-079273 of Aqua Express. Perhaps we  
18 should begin with Mr. Iglitzin.

19 MR. IGLITZIN: The IBU believes that the  
20 scope of our participation is appropriately consistent  
21 with the Commission's order that you just referred to.

22 JUDGE WALLIS: For the Company, Mr. Crane?

23 MR. CRANE: Actually, we have two positions  
24 on this. One is the same as we submitted in our answer  
25 to the protest, which is that there should be no

0004

1 involvement by the IBU in this matter given the nature  
2 of the proceeding, particularly given that the  
3 temporary certificate has been issued and there is an  
4 application pending for permanent certificate of  
5 convenience and necessity.

6           Secondly, if there is any involvement, we  
7 would argue very similar to the Commission staff  
8 argument, and Ms. Watson, I think, would like to  
9 address that as she put it in her brief much better  
10 than I can say verbally, but the protest, if it is  
11 allowed in this proceeding, should be much more  
12 restrictive than it was in the Aqua Express matter, and  
13 that would be the backup argument if Your Honor was  
14 willing to accept the involvement of Protestant IBU in  
15 this proceeding.

16           JUDGE WALLIS: Very well. I think that the  
17 dye is somewhat cast by the Commission's decision, and  
18 while there are differences between the temporary  
19 authority situation and the situation of a permanent  
20 application or application for permanent authority,  
21 because the Commission has ruled that the IBU does have  
22 a right to protest under the rule, I would be loathe to  
23 disagree with the commissioners at this point, so I  
24 think we can dispense with that argument and move on to  
25 the question of whether it should be a more restrictive

0005

1 participation than the Commission order would indicate.

2 MR. CRANE: May I follow up on that point for  
3 just a moment, please?

4 JUDGE WALLIS: Yes.

5 MR. CRANE: I think there is a distinction  
6 not only between Aqua Express and the matter of Kitsap  
7 Ferry Company relevant between temporary certificate  
8 application and permanent application. That  
9 distinction is valid, as Ms. Watson has briefed for  
10 this commission, but in addition to that, there is one  
11 issue that has not been fully articulated, and it was  
12 briefed in part by Ms. Watson, and that is, is there  
13 any interest that the IBU is serving that is competent  
14 in this proceeding.

15 Given the legislative public policy  
16 statements from Chapter 373 and 303 of the laws of  
17 2003, which identify that the public agency involved  
18 for purposes of passenger-only ferry is not the  
19 Washington State Ferries, but it is actually Kitsap  
20 Transit, the public transit benefit area, which is the  
21 party with which Kitsap Ferry is joined in providing  
22 the service.

23 And the IBU's position really is derivative  
24 of the Washington State Ferries insofar as Washington  
25 State Ferries is not the proper public agency to be

0006

1 involved in any protest and neither should the IBU, and  
2 that has not been fully briefed, in which Kitsap Ferry  
3 Company plans to do in a posthearing brief should Your  
4 Honor request one or allow one.

5 JUDGE WALLIS: Thank you. Does that conclude  
6 your statement?

7 MR. CRANE: Yes.

8 MS. WATSON: Let me make sure I'm on the same  
9 page. We have decided that IBU has standing in this  
10 proceeding and we are addressing the scope?

11 JUDGE WALLIS: Yes.

12 MS. WATSON: The scope should be more  
13 restricted, but a lot of that has to do with the  
14 different inquiries being made in both of the  
15 proceedings. Here, we are looking at a temporary  
16 certificate, and the inquiry is whether the certificate  
17 was issued pursuant to an immediate and urgent need and  
18 whether it was granted consistent with the public  
19 interest, so the inquiry here is fairly discreet.

20 In Aqua Express, IBU was allowed to address  
21 three different issues, one of which was the effect on  
22 the ferry system, Aqua Express's financial fitness and  
23 the need for the service, and in this case, it really  
24 should be limited to addressing whether an immediate  
25 and urgent need exists.

0007

1           With regard to the state ferry system and  
2 whether the effect on the ferry system should be  
3 considered in this proceeding, we have to look at the  
4 differences in the statutes. They were recently  
5 amended in 2003, and under the permanent certificate  
6 application, the Commission must consider whether the  
7 effects of their decision on a public agency that's  
8 operating or eligible to operate a passenger-only ferry  
9 system, that requirement was not added to the temporary  
10 certificate, so the Commission doesn't need to make  
11 that consideration in this case. The legislature has  
12 expressly stated that they want to remove the barriers  
13 of entry for passenger-only service, and I did describe  
14 this in my submittal yesterday.

15           The harmonization between RCW 47.60.120,  
16 Subsection 5, and RCW 81.84.020, Subsection 4. The  
17 first one, the RCW 47.60.120, Subsection 5, that's the  
18 ten-mile rule, and it doesn't apply to this case, and  
19 it doesn't apply to the Aqua Express case because this  
20 case and that case as well will deal with  
21 passenger-only ferry service, and the legislature said  
22 that the ten-mile rule doesn't apply. So this  
23 commission under that rule, if it did apply, would have  
24 considered the overall impact on the ferry system.  
25 Because it doesn't apply, the Commission wouldn't make

0008

1 that inquiry.

2 RCW 81.84.020, Subsection 4, was also a new  
3 amendment in the 2003 session, and that's the one that  
4 says the Commission should consider the effect on  
5 public agencies operating or eligible to operate  
6 passenger-only ferry systems. It would be phenomenal  
7 to read that section to require the Commission to look  
8 at the impact on the Washington State Ferry system and  
9 DOT as a whole when the legislature has said that they  
10 don't need to consider that under RCW 47.60.120,  
11 Subsection 5.

12 That doesn't render RCW 81.84.020, Subsection  
13 4 invalid or moot or somehow inoperative because there  
14 are other public agencies that that section would apply  
15 to. For example, public transportation benefit area  
16 authorities, counties, cities, but not DOT and not the  
17 Washington State Ferries. So in this case, the scope  
18 should really be limited to whether the immediate and  
19 urgent need exists.

20 JUDGE WALLIS: Has Staff raised that  
21 argument, your latter argument, before the Commission  
22 in the Aqua Express matter?

23 MS. WATSON: It's a different attorney on  
24 that case, but Staff did file a position for  
25 interlocutory review. I believe responses to that



0009

1 petition are due today at noon, so it hasn't been  
2 decided yet in that case.

3 JUDGE WALLIS: Do you have anything further?

4 MS. WATSON: Not at this time.

5 JUDGE WALLIS: Mr. Iglitzin?

6 MR. IGLITZIN: Yes. I guess my initial  
7 reaction is this matter is, in fact, pending before the  
8 Commission now. My inclination has been to think that  
9 we shouldn't try to reinvent the wheel in the current  
10 matter when it's already pending. Our position before  
11 the Commission has been filed this morning. We don't  
12 disagree with the Staff's interpretation of  
13 RCW 81.84.020, Subsection 4, says in granting a  
14 certificate for passenger-only ferries and determining  
15 what conditions to place on the certificate, the  
16 Commission shall consider and give substantial weight  
17 to the effects of its decisions on public agencies  
18 operating or eligible to operate passenger-only ferry  
19 service.

20 That language is not limited to permanent  
21 certificates as opposed to temporary certificates, and  
22 it's not limited to any particular public agency that  
23 might be involved or connected with a particular  
24 operation of a particular passenger-only ferry service,  
25 so we respectfully disagree with that position.

0010

1           JUDGE WALLIS: Ms. Watson, why would the  
2 factors that you suggest deleting not be elements in  
3 the Commission's consideration of what is the public  
4 interest in granting or denying a temporary authority?

5           MS. WATSON: Sorry, I wasn't clear on your  
6 question.

7           JUDGE WALLIS: You suggest that two of the  
8 elements of the Aqua Express authorization, that is,  
9 the effect on the ferry system and financial fitness,  
10 should not be allowed in this docket. The Commission's  
11 rule on temporary authority identifies consistency with  
12 the public interest as a factor to consider and further  
13 identifies some subsets of that, which could or should  
14 be inquired into, and my question is as to the two  
15 items that you suggest for closing participation by the  
16 IBU, why are they not included within the public  
17 interest inquiry?

18           MS. WATSON: The Commission probably could  
19 exercise its discretion and include those in that  
20 inquiry. It's Staff's position it's not necessary to  
21 do so. I've already expounded on the argument about  
22 the Washington State Ferry system. I didn't address  
23 the financial fitness aspect, and I can do that now.

24           The factors that are listed, and they are  
25 listed in WAC 480-51-060, that the Commission will

0011

1 consider, and I don't believe it's an exclusive list,  
2 but they did look at those factors in determining  
3 whether to grant a temporary certificate, includes  
4 fitness of the applicant, and Staff reads that to mean  
5 more of a general fitness inquiry, because under a  
6 permanent certificate, the inquiry would be more  
7 extensive. You would be looking at whether they could  
8 sustain operations for 12 months. You would be looking  
9 at financial statements. It's a lot more in-depth.

10 For a temporary permit, a temporary permit is  
11 granted for 180 days. If they file a permanent  
12 application, then it could be extended past that until  
13 the Commission resolves the permanent certificate. I  
14 know when Staff looks at a temporary certificate, they  
15 look at whether the applicant has the proper insurance,  
16 the coast guard certification, and these are things  
17 that are mentioned in the WAC as well, whether they  
18 have a boat available to provide the service.

19 So I guess inquiry is along those lines and  
20 not so much the in-depth look at their financial  
21 statements and circumstances at this point, because  
22 when they do file a permanent certificate, that inquiry  
23 is made at that point, so I believe that's why the  
24 financial aspect shouldn't be addressed in this  
25 proceeding.

0012

1                   JUDGE WALLIS: Mr. Iglitzin, Mr. Crane, do  
2 you wish to be heard further?

3                   MR. CRANE: Go ahead, Dmitri.

4                   MR. IGLITZIN: I don't have anything to add,  
5 other than I'm not sure I follow the Staff's argument.  
6 If the fitness of the applicant is a factor that has to  
7 be weighed by the Commission on the issue of the  
8 temporary certificate under the Commission's ruling in  
9 the Aqua Express case, there is no reason to limit and  
10 prevent the IBU from participating and commenting on  
11 that issue as well.

12                   MR. CRANE: Your Honor, on following up on  
13 the comments from Ms. Watson and Mr. Iglitzin, I think  
14 that the issues of fitness and consistency with public  
15 interest was identified in WAC 480.51.060, Section 3,  
16 all should be kept in mind that it's consistent with  
17 the temporary authority as opposed to consistent with  
18 the permanent authority, and I think the inquiry should  
19 be much narrower.

20                   What bothers me about the IBU's protest is  
21 that it seems that IBU is taking pot shots at a  
22 certificate that's already been granted and using  
23 speculation and conjecture to raise issues of which  
24 there is no factual basis. In other words, they are  
25 simply saying we don't think and we don't agree, where

0013

1 in fact, I don't think that's the test. If, in fact,  
2 IBU had true facts that could identify a lack of  
3 fitness with Kitsap Ferry Company or a lack of public  
4 interest that would be consistent with this temporary  
5 authority. In other words, authority because there is  
6 an immediate and urgent need, then there may be  
7 something for them to talk about, but I don't think  
8 that's been established other than the say so of the  
9 IBU, which I think is insufficient for purposes of a  
10 protest.

11 JUDGE WALLIS: Very well. My ruling is that  
12 the scope of the protest will be as indicated in the  
13 Aqua Express order. We recognize that there is a  
14 petition for interlocutory review on the issue of  
15 effect on the ferry system. If a decision is entered  
16 on that prior to the decision in this matter, then we  
17 will follow that decision.

18 As to both the effect on the ferry system and  
19 the financial fitness, as Mr. Crane indicated and as  
20 Ms. Watson alluded to, the scope of a temporary  
21 authority is much different from that of permanent  
22 authority, and we are not looking, for example, at the  
23 applicant's ability to carry on an ongoing service but  
24 to provide the financial wherewithal to pursue the  
25 service for a very limited period.

0014

1           Consequently, we expect that the  
2 presentations will not require extensive documentation  
3 nor extensive cross-examination on either the effect on  
4 the ferry system or the financial fitness because of  
5 the limited nature of the temporary authority.

6           MR. CRANE: Very well, Your Honor.

7           JUDGE WALLIS: We have already touched on  
8 what issues should be addressed in the brief  
9 adjudication, but I would like to make sure that we are  
10 all pretty much on the same page and looking at the  
11 same music as we walk through this presentation.

12           Mr. Iglitzin, because your protest is the  
13 document that to some extent defines the issues in  
14 addition to the statute and the rule, perhaps we should  
15 begin with you.

16           MR. IGLITZIN: What would you like me to  
17 address?

18           JUDGE WALLIS: Well, for one thing, I would  
19 like to hear the parties' comments on what the ultimate  
20 issue is in this inquiry. Is it was the Commission  
21 correct in issuing the temporary authority, or is the  
22 issue should temporary authority be issued to the  
23 Applicant?

24           MR. IGLITZIN: I guess from the point of view  
25 of the IBU, it's our position that the temporary

0015

1 certificate was issued in error, as I understand it,  
2 and I'm the first to admit this is not an area of  
3 administrative procedure I have extensive experience  
4 in, but I'm getting it pretty fast, that the Commission  
5 has, in fact, issued the temporary certificate, and our  
6 protest is essentially saying the temporary certificate  
7 was issued erroneously, and it was issued erroneously  
8 because first, there is demonstrably no urgent and  
9 immediate need for additional Bremerton to Seattle  
10 service because, in fact, any individual wanting to  
11 walk on as a passenger and go from Bremerton to Seattle  
12 can do so at exactly the time that this proposed  
13 service would be providing service by walking onto a  
14 Washington State Ferry. So we think that's a clear  
15 error that the Commission made in issuing the temporary  
16 certificate, and the Commission in this proceeding  
17 should recognize that and vacate the issuance of the  
18 temporary certificate.

19           The second issue is that the Commission needs  
20 to, in fact, consider and review the evidence of the  
21 three factors that we've been talking about, the effect  
22 on Washington State Ferries, the financial fitness of  
23 the Applicant, and the need for the service, and  
24 determine that, in fact, the issuance of the temporary  
25 certificate was in error because the granting of that

0016

1 temporary authority was not consistent with the public  
2 interest.

3 JUDGE WALLIS: Mr. Crane?

4 MR. CRANE: I think the problem with the IBU  
5 argument is they have the standard backwards, actually.  
6 I think this standard, as I understand it, and  
7 temporary certificates issued by the Washington  
8 Utilities and Transportation Commission is one of prima  
9 facie validity, not ultimate proof at the time of the  
10 issuance of the temporary certificate.

11 If the Applicant on a prima facie basis  
12 demonstrates the relevant factors set forth in the  
13 regulation as to urgent and immediate need, no other  
14 available service meeting that need, fitness of the  
15 Applicant, and consistency with the public interest, on  
16 a prima facie basis, that should be consistent to issue  
17 a temporary certificate, and the Staff had researched  
18 that. Ms. Allen prepared a memorandum. The Commission  
19 considered it. The Commission issued its order  
20 consistent with all information before it, and  
21 therefore, the prima facie test was met.

22 Thereafter, if the Protestant feels it was  
23 issued in error, that is something that shouldn't be  
24 addressed in the temporary proceeding because there is  
25 no demonstrable error. There is only allegations of



0017

1 error. All those issues should be raised in the  
2 permanent hearing as opposed to the temporary. So for  
3 purposes of the hearing, Kitsap Ferry Company's  
4 position would be that there is no evidence sufficient  
5 established by the IBU which would in any way  
6 invalidate the prima facie case that was established by  
7 the Applicant and validated and confirmed by the  
8 Commission on the issuance of the temporary  
9 certificate.

10 JUDGE WALLIS: Mr. Crane, if that were the  
11 case, why would the Commission rule authorize protests  
12 to an application for temporary authority? As a matter  
13 of law in the rule regarding temporary authority, the  
14 permanent is issued and then protests are received.

15 MR. CRANE: I think the answer to that  
16 question is if there is, in fact, an error on a prima  
17 facie level, then that is what the purpose of a protest  
18 can do for purposes of reevaluation whether a temporary  
19 certificate was properly issued.

20 So for example, if on a prima facie basis  
21 there was no statement or evidence, backup facts for  
22 urgent immediate need for service, then that would be a  
23 violation of the prima facie rule. If, in fact, there  
24 was not disclosed to the Commission but there was  
25 available service of meeting the need and it wasn't

0018

1 disclosed by the Applicant, that would form the basis  
2 of a violation of the prima facie rule. If, in fact,  
3 the Applicant did not identify financial debt, for  
4 example, and simply said it had assets but didn't  
5 bother to identify that it had large amounts of debt,  
6 that would be another basis, or so on. On all the  
7 issues, if there is a showing that on a prima facie  
8 basis the elements were not met, then a protest could  
9 stand.

10 Here, the opposite is true. The prima facie  
11 case has overwhelmingly been met, and the Protestant is  
12 simply taking exception on an allegation level that  
13 there is no urgent immediate need, there is no fitness  
14 of the Applicant, and it's not consistent with the  
15 public interest, simply allegations, and I don't think  
16 those substantiate a protest under the circumstances,  
17 Your Honor.

18 JUDGE WALLIS: Ms. Watson?

19 MS. WATSON: The ultimate issue in this case  
20 starts with whether the Commission issued a temporary  
21 certificate properly. In order to decide that issue,  
22 the Commission has to look at whether there was the  
23 urgent and immediate need, and those factors, whether  
24 the factors were met in deciding the issue of the  
25 certificate in the first instance, so I think it's sort

0019

1 of a two-tiered inquiry. Were they correct, but then  
2 you have to look to see what the decision was.

3 JUDGE WALLIS: I'm not sure I understand the  
4 argument. Could you restate it for me?

5 MS. WATSON: I'm sorry. The first question  
6 is whether the Commission issued the certificate  
7 properly, and that is the ultimate issue because it has  
8 been issued. The company has their temporary  
9 certificate, so the question becomes should the  
10 Commission reverse that and take away the certificate.  
11 If there has been established to be an urgent and  
12 immediate need, then the answer is yes, and if it was  
13 granted in the public interest, then the answer is yes,  
14 the company retains its temporary certificate and we  
15 proceed on to the permanent proceeding.

16 JUDGE WALLIS: Thank you. Mr. Iglitzin?

17 MR. IGLITZIN: At the risk of beating a dead  
18 horse, I think Your Honor summed up the point of the  
19 law in the Applicant's argument. I think there is a  
20 procedure for protesting the granting of the temporary  
21 certificate, and I think it's interesting that you look  
22 at the regulations. In some ways, it is easier to get  
23 a temporary certificate than a permanent certificate  
24 because the standard, for example, for that fitness of  
25 the applicant, is an easier standard to meet. In other

0020

1 ways, it is harder to get a temporary certificate  
2 because the showing of the immediate and urgent need is  
3 a greater requirement that would apply to the permanent  
4 certificate.

5           For the protest procedure to be meaningful, a  
6 protestant has to have the opportunity to show that the  
7 Commission erred and issued the certificate  
8 erroneously, and I don't really understand the argument  
9 that the only issue is was there a prima facie case.  
10 Presumably, the Commission would not have granted the  
11 certificate in the first place had there not been a  
12 prima facie showing of allegations that would meet the  
13 standards. The point of the protest procedure and sort  
14 of a fundamental due-process issue involves parties and  
15 parties with interest an opportunity to say, Wait a  
16 minute. The Commission erred, because if you look a  
17 little more closely at the evidence, it does not meet  
18 the statutory threshold.

19           The statute says the Commission shall only  
20 issue temporary certificates upon certain findings, and  
21 for the protest process to be meaningful, there has to  
22 be an opportunity for the protestant to show that that  
23 statutory requirement was not met, even if the issue  
24 was only whether the Applicant had met prima facie  
25 showing. As I understand the Applicant to be arguing,

0021

1    however, there are two things that are important to  
2    look at.  First of all, the IBU's position is that  
3    there is not even a prima facie showing of an urgent  
4    and immediate need because the precise service because  
5    being offered by the Applicant, which is transportation  
6    of passengers across the Sound from Bremerton to  
7    Seattle, is already being offered at exactly the same  
8    time by Washington State Ferries, so there is no urgent  
9    and immediate need, and the fact that there has been no  
10   such service in September of 2003, Kitsap County did  
11   not take any action until November of 2003, and the  
12   Applicant did not apply for the certificate until April  
13   30th of 2004 all indicate that on it's face, while this  
14   might be a useful service, it might be a valuable  
15   service, there is no urgent and immediate need for the  
16   service because there is not going to be any one person  
17   in the state of Washington who will able to say,  
18   Without this service, I can't take the ferry from  
19   Bremerton to Seattle or Seattle to Bremerton without my  
20   car.

21                    Secondly, as to the fitness of the Applicant,  
22   the application itself says that the Applicant's  
23   fitness consists of cash on hand or \$22,500 and other  
24   assets of \$4,500, which, generally based on the  
25   documents provided by Aqua Express in this proceeding,

0022

1 is about as much money as it would take to run the  
2 ferry service for a day. So even on its face, there is  
3 no showing that this applicant with total financial  
4 assets of cash on hand of \$22,500, even on its face,  
5 there is to evidence that the Applicant is fit to run  
6 this service. Thank you.

7 JUDGE WALLIS: Any other comments? I think  
8 the parties agree that the proper inquiry for the  
9 Commission in this proceeding is whether the temporary  
10 authority was properly issued. I do think that the  
11 existence of the authority to file a protest recognizes  
12 that the inquiry may go beyond a superficial and prima  
13 facie level so that I do not accept the arguments of  
14 the Applicant on that matter.

15 However, in the context of this application  
16 and in the context of the process that the Commission  
17 has set forth for granting and testing temporary  
18 authority, as I indicated earlier, I do believe that  
19 the level of proof that's needed on some matters  
20 involving the public interest is lower than it is on a  
21 permanent authority.

22 For example, permanent authority would  
23 require a somewhat greater showing of financial ability  
24 to carry on, and I don't believe that a full-blown  
25 can-you-do-this-forever hearing is appropriate nor is

0023

1 required. Another indication is the Commission's  
2 selection of a brief adjudication to resolve the issues  
3 on temporary. A brief adjudication is designed for  
4 matters that are, in fact, brief, that do not involve  
5 terribly complex issues, and can be conducted with a  
6 hearing that is somewhat more summary in nature than a  
7 hearing on a full application. So I reject the  
8 position that the Applicant was arguing that it should  
9 be limited to whether the permit was prima facie  
10 correct. However, I believe that considering the  
11 nature of the authority that's been granted and the  
12 nature of the process for resolving the issue that the  
13 inquiry should be of a somewhat summary nature.

14           Now, that somewhat anticipates next item on  
15 the list that I have, and that is the process for the  
16 brief adjudication. My reason for identifying that is  
17 to make sure parties are comfortable with the process,  
18 that the process gives the parties the opportunity to  
19 make the case you believe entitled to make so that we  
20 are satisfying the requisites sits of due process, and  
21 that we do it with the greatest efficiency possible  
22 recognizing the fact that the temporary has been  
23 issued, that the Applicant may be wishing to commence  
24 service very shortly, and that a relatively swift  
25 answer is required to avoid allowing bells to ring that

0024

1 it would be difficult to unring. My perception is that  
2 Mr. Crane and Mr. Iglitzin, both your clients have an  
3 interest in a relatively speedy decision on this  
4 matter. Am I correct in that?

5 MR. CRANE: Yes.

6 MR. IGLITZIN: That's correct.

7 JUDGE WALLIS: I would like to discuss at this  
8 juncture what you would like to prove in the hearing  
9 and how you would like to go about it; that is, in  
10 terms of the cross-examination of witnesses, in terms  
11 of the direct evidence by witnesses, and how we can  
12 manage to allow you every opportunity to present your  
13 case and to argue it, yet do it in a relatively compact  
14 process. Mr. Crane, because you have the possession at  
15 this point of the temporary authority, I would like you  
16 to hear you first on that question.

17 MR. CRANE: Your Honor, given your ruling, it  
18 is a little bit difficult to know exactly how fast we  
19 need to prove our case. One of my concerns early on in  
20 this proceeding was that we are faced with a protest by  
21 the IBU that essentially making allegations only that  
22 certain statements of facts are not true without  
23 demonstrating any facts on its own which contradict any  
24 of the findings of the Commission for purposes of  
25 issuing the permit.



0025

1           So I have a concern if the IBU is allowed to  
2     dominate in terms of time the hearing, we will be very  
3     much against what Your Honor has previously ruled,  
4     which is we are going to have a limited hearing for  
5     purposes of establishing whether the Commission's order  
6     was correct. To do so, in a sense, the burden is right  
7     back on Kitsap Ferry Company to establish on a  
8     comprehensive basis all four elements of granting a  
9     temporary certificate, and therefore, at least for a  
10    timing purpose, we would like to have at least  
11    two-thirds of the total time available at the hearing,  
12    or as necessary, to insure all the testimony that we  
13    need to get out in fact comes out, because in a sense,  
14    we've got the burden of proof here, and the reason I  
15    say that is otherwise, we don't know really what we are  
16    up against.

17           So what we are prepared to do is to submit  
18    written evidence, the application, for example, and all  
19    of its components. We are going to submit declarations  
20    from individuals, a woman by the name of Alice  
21    Tawresey. A Representative Rockefeller has offered to  
22    submit an affidavit as well. There are documents that  
23    were prepared in conjunction with the Kitsap Transit,  
24    including a joint development agreement that lays out  
25    how the service is to be provided in conjunction with

0026

1 Kitsap Transit.

2           In addition, we have oral testimony that we  
3 would like to submit. Mr. Dronkert, the president of  
4 Kitsap Ferry Service who is here today, will be  
5 testifying at length on all of the issues, the urgent  
6 and immediate need, available service capable of  
7 meeting that need, fitness of the Applicant, and  
8 consistent with the public interest. In addition to  
9 that, we are going to have Mr. Richard Hayes, the  
10 executive director of Kitsap Transit, testify.  
11 Mr. Cary Bozeman, the mayor of Bremerton will testify,  
12 and we would like to submit the oral testimony given at  
13 the Aqua Express matter by Representative Doug Ericksen  
14 and Senator Betty Sheldon.

15           All of that, unfortunately is going to take  
16 some time, and given the nature of the protest which is  
17 challenging all of the elements, whether they've been  
18 met, the Applicant Kitsap Ferry Company would like a  
19 sufficient amount of time. However it shakes out, I'm  
20 not really sure, Your Honor, but a sufficient amount of  
21 time so the evidence can come out and there won't be a  
22 limitation by virtue of cross-examination that  
23 Mr. Iglitzin would like to do.

24           JUDGE WALLIS: Mr. Iglitzin?

25           MR. IGLITZIN: I'm a little confused by what

0027

1 the Applicant is saying because I have no objection to  
2 the Applicant taking as much time as it wants to take  
3 to put on its case. I think it's clearly entitled to  
4 do that, and one thing that the counsel of Applicant  
5 did not say, but I'm assuming because the burden of  
6 proof is on the Applicant that the Applicant would go  
7 first, and given the nature of the test, the IBU is not  
8 contemplating putting on a substantial number of  
9 witnesses itself. In fact, it's quite possible,  
10 assuming that Applicant's witnesses make certain  
11 concessions, like the existence of cross-sound service  
12 on the Washington State Ferries and it takes more than  
13 \$22,000 in cash to run passenger-only ferry service, we  
14 may not need to put on any witnesses at all.

15           The only challenge for the IBU is I could  
16 tell you what our case was going to be if the Applicant  
17 was going to rely on the evidence it provided the  
18 Commission in support of a temporary certificate. The  
19 argument can be made that the hearing should be limited  
20 to whether the evidence that was presented to the  
21 Commission, in fact, supports the decision that was  
22 already made, but assuming that the Applicant is going  
23 to be allowed to provide supplemental and additional  
24 information, then obviously if the Protestant didn't  
25 hear of that until the day of the hearing, that becomes

0028

1 a challenge for us in responding appropriately.

2 JUDGE WALLIS: Ms. Watson?

3 MS. WATSON: There has been some discussion  
4 about the burden of proof, and from Staff's  
5 perspective, it seems that it's IBU's burden to prove  
6 that the entry of the order was in error, so they  
7 brought the protest. It seems like the burden is on  
8 them in that aspect. Kitsap Ferry had the burden of  
9 proof when they were obtaining the certificate, so in  
10 their application, they had the burden to show that  
11 they were entitled to the certificate.

12 In this proceeding, it seems to me, and maybe  
13 defense isn't quite the right term for it, but it seems  
14 like they are in the position of defending that  
15 certificate, defending their proof, I guess, and that  
16 may involve bringing in additional information, but it  
17 seems like the information that's before the Commission  
18 is what's the most important key. The additional  
19 information could show that the information the  
20 Commission had was invalid.

21 Staff's position in this case I see akin to a  
22 defense rule sort of defending the order in a sense,  
23 and so it's a little hard to know at this point exactly  
24 what the Staff's presentation is going to be. We did  
25 file a couple of declarations from Bonnie Allen and

0029

1 Gene Eckhardt, and they will both be available for  
2 questioning and perhaps further oral testimony as well.  
3 I don't anticipate further written evidence. I can't  
4 say for certain though at this point, and in your draft  
5 agenda, you also mentioned the potential for oral  
6 argument, and perhaps that would be, if time permits  
7 and you would think that's helpful, that might be a  
8 good way to summarize things, for the attorneys to  
9 stand up and succinctly display their case afterwards.  
10 For that, I wouldn't anticipate more than 10 or 15  
11 minutes though. But as far as Staff's presentation, I  
12 can't give you a concrete answer on that. My witnesses  
13 will be available, the two that submitted declarations.

14 JUDGE WALLIS: Mr. Crane, if the question is  
15 whether or not the Commission was correct in issuing  
16 the authority, and it's not should the authority be  
17 issued, why would you require the extensive nature of a  
18 presentation that you've indicated you believe you  
19 need?

20 MR. CRANE: The nature of the protest, Your  
21 Honor. The nature of the protest here is to question  
22 all assumptions and simply to take the position their  
23 information is wrong, and if the Protestant is simply  
24 allowed to challenge conclusions based on, essentially,  
25 it's a summary application, then I can conceive a very

0030

1 low level of proof required by the Protestant to upset  
2 a temporary certificate, and I don't think that's the  
3 proper standard.

4 I think the proper standard should be if its  
5 challenged, the Applicant needs an opportunity to fully  
6 and adequately demonstrate that all information, in  
7 fact, was correct. If, for example, there was known to  
8 be an issue that the Inlandboatmen's Union would be  
9 surprisingly challenged as an urgent and immediate  
10 need, of which it has zero evidence right now, as I can  
11 see it, then what is the Applicant supposed to do in  
12 the beginning? Is the Applicant supposed to take  
13 affidavits, testimony? How much of a case does it have  
14 to prove? I can imagine an application that becomes so  
15 burdensome that it defeats the purpose of issuing a  
16 temporary certificate based on a prima facie need.

17 So my concern is that if the Protestant is  
18 allowed to take the amount of time which it feels it  
19 needs to challenge without putting any evidence on  
20 itself, of which I've heard none, then the Applicant is  
21 put in a very difficult situation, and that is, how do  
22 we defend ourselves? We can't really defend ourselves  
23 unless we are able to show through testimony and  
24 evidence that everything that went into the application  
25 is fully supported on lots of fronts, the knowledge of

0031

1 the Applicant, Mr. Dronkert, the Kitsap Ferry director,  
2 the representatives who wrote the legislation that can  
3 identify what the purpose of passenger-only ferry  
4 statutes are. It's extremely broad, and if the  
5 Protestant is allowed to in the amount of time in the  
6 hearing dominate the hearing, then I think what happens  
7 is it puts the Protestant in the driver's seat in terms  
8 of being able to upset a temporary certificate by  
9 virtue of preventing the Applicant from proving its  
10 case, and that's my concern.

11 JUDGE WALLIS: I would like to address one  
12 question first, and that is that I do not believe that  
13 the length of time consumed in a hearing by any party  
14 has any necessary relationship with the result of that  
15 hearing. I think the quality of presentations and the  
16 nature of presentations is much more important than is  
17 the length of time that's consumed.

18 I frankly do not see the process as requiring  
19 the kind of presentation that you are requesting,  
20 Mr. Crane. Looking at the context and the nature of a  
21 brief adjudication, what I envision is that  
22 Mr. Iglitzin and his client would have the opportunity  
23 to make an oral statement at the hearing and that the  
24 oral statement would identify all of the challenges  
25 that the IBU has to support its contention that the

0032

1 Commission granted the authority in error based upon  
2 the information that the Commission had at the time.

3           If the IBU wishes to present witnesses, then  
4 we will consider the presentation of witnesses to  
5 support its contentions as identified in the protest  
6 and as limited in the Commission's ruling as to the  
7 scope of the protest. So it is not a matter that  
8 requires the Applicant to provide extensive evidence on  
9 every line of the application, but only such sufficient  
10 response that will overcome the challenge that the  
11 Protestant has made on the specific issues that the  
12 Protestant has addressed and is entitled to address.

13           MR. CRANE: May I respond?

14           JUDGE WALLIS: Then after the Protestant has  
15 the opportunity as the party with the burden in this  
16 matter, the Applicant would have an opportunity to  
17 respond with a statement which could include the  
18 presentation of direct evidence, and the Commission  
19 staff respond to that. Mr. Crane?

20           MR. CRANE: I think this is a somewhat  
21 difficult procedure. My concern is given the brief  
22 adjudicative nature of the proceeding, I'm worried  
23 about a time problem that we may run into, and what I'm  
24 concerned about is that Mr. Iglitzin on behalf of his  
25 client could spend the majority of time available in



0033

1 the hearing that has been set aside by the Commission  
2 for this hearing for purposes of cross-examination, for  
3 example, and if that, in fact, takes up most the time,  
4 it's going to be very difficult for the Applicant to  
5 respond with sufficient time in order to rebut that.

6 I think what happens is that puts me in the  
7 situation that I was worried about in the beginning  
8 which is the reality is the burden is going to be on  
9 the Applicant to prove it was right in the first place.  
10 I know that's not what you envision, but I'm worried it  
11 may turn into that. So what I would like to propose is  
12 that the Protestant identify today its witnesses and  
13 what exhibits it's going to be introducing.

14 If I don't know today, then it will be  
15 impossible for me to know how to respond, and that's  
16 the reason I identified the written evidence we are  
17 going to be submitting and the oral testimony we are  
18 going to be submitting through the witnesses, and I  
19 would think if the IBU has some way today it can  
20 identify, then that would be appropriate to limit the  
21 IBU to go as witnesses and that evidence it's prepared  
22 to identify today so we can properly respond on Monday.

23 JUDGE WALLIS: Ms. Watson, what are your  
24 views on process?

25 MS. WATSON: Well, the process that you had

0034

1 identified earlier, the oral statement followed by  
2 potential witnesses, that's consistent with what I've  
3 seen in brief adjudicative proceedings. I think there  
4 is also involved a bit of cross-examination as well if  
5 there is a witness presented. I just want to put that  
6 out there because I didn't hear that in what you said.

7           The time issue, we see that in every  
8 proceeding, so I think it's a matter of being able to  
9 limit the parties to a reasonable amount of time. If  
10 it starts to get late in the day, then that party,  
11 whoever is presenting at that particular time, needs to  
12 move on and wrap up. I think you have a lot of leeway  
13 in controlling that. I've never seen a case where a  
14 party hasn't been able to say everything they need to  
15 say, and perhaps an oral statement at the beginning and  
16 the end would be appropriate from each of the parties  
17 to present their case and then to wrap up their case.

18           JUDGE WALLIS: Mr. Iglitzin?

19           MR. IGLITZIN: I'm a little bit at a loss. I  
20 guess I'm waiting. Once Your Honor makes a ruling as  
21 to how you want the hearing to proceed, it will be  
22 easier for me to know what I want to put in the  
23 hearing. We have no objection to IBU explaining and  
24 elaborating on its protest. Frankly, this is not  
25 nuclear physics. Our protest speaks for itself, and I

0035

1 guess based on a very few facts which I think are not  
2 likely to be controverted by the Applicant, such as the  
3 existence of the simultaneous service being provided by  
4 the state ferry, such as the fact that it takes more  
5 than \$22,500 to run a passenger-only ferry for any  
6 length of time.

7 I guess I feel like I have elaborated on our  
8 protest even now to give the Applicant more insight  
9 what position the IBU is going to be at the brief  
10 adjudicative hearing. I'm not in a position to  
11 identify what witnesses, if any, the IBU is prepared to  
12 put on at the hearing, because frankly, I was waiting  
13 until the phone conference today to find out what the  
14 scope of the hearing would be and what the procedures  
15 we were going to deal with.

16 I don't know whether it's my reputation  
17 preceding me or just a general concern on behalf of  
18 counsel for the Applicant, but IBU has no intention of  
19 trying to filibuster a brief adjudicative hearing, and  
20 we do not have any kind of extensive case to put on,  
21 and we understand a temporary certificate is a very  
22 straightforward one, but there are certain things the  
23 Applicant has to show. We think it's their burden to  
24 show it.

25 Whether they are properly entitled to a

0036

1 temporary certificate is really a question of whether  
2 they can persuade this Commission that there is, in  
3 fact, an urgent and immediate need and whether they can  
4 persuade the Commission they are fit to try to meet  
5 that need. It doesn't seem like that complicated or  
6 that lengthy a hearing.

7 JUDGE WALLIS: As the party with the burden  
8 in this docket, I need to get a read from you on what  
9 you believe you need to do to carry that burden, and by  
10 that, you've indicated you have made some points in  
11 writing, which the Commission will consider. You have  
12 made some points today which, if carried through to the  
13 hearing, the Commission will consider in the context of  
14 the hearing, and I simply would like to know, in order  
15 to carry your case, do you have any witnesses to  
16 present, and if so, who would they be and what would  
17 the nature of their testimony be?

18 MR. IGLITZIN: The IBU's case will be  
19 presented, assuming this is how you want to proceed, I  
20 would make an oral statement of our protest, and I  
21 would potentially put on one witness who would testify  
22 to the current existence of precisely the service that  
23 the Applicant is proposing and claiming there is an  
24 urgent and immediate need for and the apparent  
25 unfitness of the Applicant to provide the service based

0037

1 on the financial statement provided by the Applicant in  
2 the temporary application, and I imagine that would  
3 likely be the same witness.

4 JUDGE WALLIS: In terms of the existence of  
5 comparable service, I take it you are referring to the  
6 present service provided by Washington State Ferries?

7 MR. IGLITZIN: That's correct.

8 JUDGE WALLIS: Mr. Crane, given the limited  
9 nature of the Protestant's presentation, does that  
10 cause you to reconsider your earlier proposal as to the  
11 presentation that the Applicant would like to make?

12 MR. CRANE: It does, Your Honor. It  
13 alleviates some of my concerns. I would like to find  
14 out what is the name of the witness that will be  
15 testifying for the IBU? Dmitri, can you identify that,  
16 please?

17 MR. IGLITZIN: I'm not prepared to identify  
18 that today.

19 MR. CRANE: Why not?

20 MR. IGLITZIN: Because I don't know.

21 MR. CRANE: Isn't that a problem, Your Honor?

22 JUDGE WALLIS: Mr. Iglitzin, can you identify  
23 the nature of the witness; that is, the kind of witness  
24 that you expect would be testifying?

25 MR. IGLITZIN: I have not yet identified what

0038

1 witness I will have testify. As I say, in terms of  
2 this expedited proceeding and not having any idea what  
3 rulings we would have today at this conference call,  
4 I'm scrambling to do. That's why I'm concerned about  
5 whether indeed I will have a witness to testify to  
6 these things.

7 JUDGE WALLIS: Very well.

8 MS. WATSON: Your Honor, could I make a  
9 suggestion? Would it be possible for that information  
10 to be provided by the close of the business day? That  
11 would at least give --

12 JUDGE WALLIS: Mr. Iglitzin, can you do that?

13 MR. IGLITZIN: I can't commit to being able  
14 to do that by the close of the business day. If Your  
15 Honor makes a ruling that there is some cutoff for  
16 identifying witnesses, then obviously, the IBU has to  
17 deal with that ruling, but we have a prehearing  
18 conference today on Friday and a hearing scheduled for  
19 Monday. Given what I have described as to the  
20 substance of the testimony, I don't see that there is  
21 any great prejudice to either the Applicant or the  
22 Staff, and certainly I will provide everyone notice as  
23 soon as I know who my witness will be, but I would like  
24 to be able to come to that hearing at 1:30 with a  
25 witness who is going to say what I've just described.

0039

1                   JUDGE WALLIS: Mr. Crane, would you be  
2 prejudiced by not having the identity of a witness?

3                   MR. CRANE: Well, if it's the director of the  
4 ferry system, then I would. If it's Mike Thorne, then  
5 we need to know if we are going to have to provide the  
6 sort of witnesses to rebut what Mike Thorne would have  
7 because his knowledge is so extensive, so it would be  
8 prejudiced in that respect. If it's a union member,  
9 such as a deck hand or somebody involved with one of  
10 the union members that works in the ferry, to me, I  
11 would not be as concerned about that, and I would say  
12 there is no prejudice in that respect.

13                   So I really need to know what kind of person  
14 we are talking about, and I endorse Ms. Watson's  
15 request that we be provided something by the end of the  
16 day, and five o'clock is fine with me. We need to be  
17 able to work this weekend with our witnesses so we can  
18 adequately rebut who is going to be testifying on  
19 Monday. It sounds like the IBU's case is going to be  
20 extremely limited, and this hearing could be over in as  
21 short as an hour if it's limited to the two issues,  
22 one, existence of service, and two, apparent unfitness  
23 of the Applicant. Those can be, I am confident, can be  
24 resolved probably within an hour, if that's all it is.

25                   So I'm certainly not as concerned about the

0040

1 time issue as I was before, but I think a cutoff time  
2 today for identification of a witness or at least the  
3 position that witness has on the ferry system, if  
4 nothing else, so I know what sort of witness to deal  
5 with on our end in order to rebut it.

6 JUDGE WALLIS: Mr. Iglitzin, are you able to  
7 respond about the identity of the witness within the  
8 limited parameters that Mr. Crane has identified?

9 MR. IGLITZIN: No, not necessarily, and I'm  
10 wondering whether, in fact, a continuance of the  
11 hearing is appropriate, because the problem is, and I  
12 actually think that this has gotten turned around  
13 somehow, the Applicant made its temporary application,  
14 presented certain evidence. The IBU made a protest.  
15 The Applicant, apparently, plans on producing  
16 additional evidence. I wouldn't be surprised if the  
17 Applicant provides additional financial statement  
18 information. It's not clear to me that the IBU is in a  
19 position to respond to new evidence that may be  
20 provided by the Applicant in the time frame we are  
21 doing this, and I would say if the Applicant has agreed  
22 to not go beyond their application, then I can tell the  
23 parties and Your Honor by the end of today what  
24 witnesses the IBU will have. Thinking out loud as we  
25 are having this hearing, I need to see what additional



0041

1 evidence the Applicant is going to be presenting, if  
2 the Applicant is presenting additional evidence, before  
3 I can even know what witnesses I'm going to put on.

4           Let me give you an example. What we have  
5 seen from the Applicant so far as to its fitness is  
6 entirely the financial statement in the application,  
7 \$22,500. At least with the Aqua Express proceeding  
8 when they came to hearing, they had a completely  
9 different financial information, new company owning the  
10 vessel, completely new information, assets, bank loans,  
11 property. If, in fact, the Kitsap Ferry is going to  
12 come to the hearing on Monday with completely different  
13 financial information indicating fitness, then if we  
14 don't receive that information ahead of time, we might  
15 be in a position of having to move for a continuance at  
16 that point to find someone to take a look at that.

17           I don't think I need a huge financial or  
18 maritime expert to persuade the commission that cash on  
19 hand of \$22,500 is not adequate to run this service. I  
20 might need that type of expert, a Mr. Thorne or some  
21 someone else in the industry, to testify if there is  
22 going to be completely different documentation appended  
23 after the fact to support the temporary application.

24           I also want to say that I may have been  
25 misleading before. In our protest, we did assert that

0042

1 the effect of this service on public agencies is a  
2 factor indicating that granting of the emergency  
3 application is not in the public interest, and the IBU  
4 will very likely address that in its opening statement  
5 and could potentially put on evidence with that as well  
6 with the permission of the administrative law judge.

7 MR. CRANE: Your Honor, if I could speak to  
8 that?

9 JUDGE WALLIS: Mr. Crane?

10 MR. CRANE: I feel there is now a moving  
11 target where I don't really know what to do anymore.  
12 First I was hearing they were simply going to be  
13 protesting on an oral statement, one witness to  
14 identify that the existing service is the same as being  
15 proposed and the apparent unfitness of the Applicant,  
16 and now I'm hearing something much different than that.

17 I think the IBU has had plenty of time to  
18 identify its case. I protested this weeks ago. If it  
19 didn't have anybody who could testify to rebut the  
20 statements of facts that were in the application, then  
21 it really doesn't have a case and it should admit that,  
22 and it should wait for the permanent application to  
23 marshall its facts, witnesses. Standards are a little  
24 more extensive. It's familiar with that procedure, and  
25 address it at that point.

0043

1           If they are going to be saying, We don't know  
2 who we are going to call, and we may need to call  
3 someone like Mike Thorne in order to rebut information  
4 we don't know today, then I don't what we are dealing  
5 with on Monday, and there would be no way for me to  
6 adequately prepare the witnesses we need to be able to  
7 rebut that case if, in fact, we have to defend the  
8 permanent.

9           So I think the earlier statement by  
10 Mr. Iglitzin should be the statement that the IBU is  
11 bound to for purposes of the scope of this case at the  
12 hearing. They will present an oral statement, one  
13 witness to identify the existence of a competing  
14 service, I guess they would call it, or service that's  
15 being provided, and apparent unfitness of the  
16 Applicant. Therefore, we will respond to that by  
17 Mr. Dronkert, who is the president, as well as  
18 individuals who have -- Cary Bozeman, the mayor of  
19 Bremerton; Mr. Richard Hayes, who is the executive  
20 director of Kitsap Transit, would be the minimum that I  
21 would call, and maybe that will be all I would need at  
22 that point.

23           I think it's going to be very important today  
24 to establish that, Your Honor. I think we really need  
25 to know what evidence we are going to have to deal with

0044

1 today, and I would like Your Honor to limit the  
2 witnesses and the issues.

3 JUDGE WALLIS: Ms. Watson?

4 MS. WATSON: I think there are two different  
5 things that are being discussed. One is the case that  
6 each party needs to present, and it seems reasonable to  
7 me to know before Monday sort of the parameters of what  
8 IBU will be presenting, given that they are the party  
9 with the burden.

10 The other thing we've been discussing is sort  
11 of the rebuttal case that each of the parties need to  
12 make, and in a live proceeding, there is bound to be  
13 things that come up that parties aren't prepared for,  
14 but that's different than preparing your initial  
15 presentation, and if issues do come up that need  
16 further addressing, we can deal with that sort of thing  
17 at that time, but I think that it's fair to require the  
18 parties to at least give a parameter of what type of  
19 witness they are going to call. That seems to be a  
20 proper way to do this.

21 JUDGE WALLIS: The parties have all had the  
22 opportunity to make written statements, present those  
23 to the Commission. The Protestant in the protest has  
24 identified the areas that the Protestant will address.  
25 The Applicant did not present an additional written

0045

1 statement. I presume that the Applicant is resting on  
2 the application. Is that correct, Mr. Crane?

3 MR. CRANE: No. Actually, I don't think that  
4 is correct, and we would certainly introduce additional  
5 evidence. For example, financial fitness at the time  
6 of the application, whatever dollars were in the  
7 account, was factually accurate. There wasn't any more  
8 money. There is a lot more money now because they want  
9 to run the operation now, so we can rely on that. The  
10 Applicant has a vessel. It's under charter. There are  
11 charter-hire payments of about \$20,000 a month that are  
12 being made right now. He's got \$150,000 in the bank  
13 account. He's got a lot more money as the service is  
14 started, but until it does start, he's not going to  
15 spend the money or commit the money, so we couldn't  
16 rely on the application solely.

17 In terms of the scope of the information  
18 supporting the application, for example, urgent and  
19 immediate need for service, we certainly have plenty of  
20 information on the application on that issue. I would  
21 like to have Mr. Hayes elaborate on that. He's  
22 executive director of Kitsap Transit. He could speak  
23 from a public perspective the urgency and necessity of  
24 having the service, as well as Mr. Bozeman, who did  
25 submit a letter. So Mr. Bozeman's name was in the

0046

1 application, although Mr. Hayes' was not. Mr. Hayes  
2 would be needed to testify, and he's prepared to do so.  
3 We spoke with him today, and Mr. Dronkert who prepared  
4 the application.

5 So if you mean the persons who prepared the  
6 application or whose information is in the application,  
7 I would say yes, with the exception of Mr. Hayes to  
8 testify. Although, I would like to have Mr. Dronkert  
9 testify on issues that have come up since then, such as  
10 money, finances. So in that respect, the answer is we  
11 are not resting on the application solely, no.

12 JUDGE WALLIS: Ms. Watson, you've presented  
13 statements from Staff and a statement of position and  
14 would be presenting no more than the two witnesses and  
15 the information in the statement; is that correct?

16 MS. WATSON: That's correct, and we would  
17 probably also make mention of the public letters that  
18 the Commission has received since the protest was  
19 filed, and there is a WAC that says that those letters  
20 would also be made part of the record.

21 JUDGE WALLIS: Very well.

22 MR. CRANE: If I could make a correction.  
23 Mr. Dronkert has just identified that Mr. Hayes' name  
24 was submitted in the application itself. That's  
25 Exhibit F to the application where the executive

0047

1 director of Kitsap Transit has been identified for  
2 purposes of this application, and he would expand on  
3 the urgency and necessity of the service.

4 JUDGE WALLIS: Very well. I think it would  
5 be appropriate to say, based on the information that  
6 the parties have provided so far and the discussions  
7 here at the hearing, that the IBU may begin its  
8 presentation in the brief adjudication with a  
9 statement, an oral statement for the record, its  
10 position, and with the presentation of one witness.

11 The Applicant may respond by presenting  
12 information from the Applicant and an additional  
13 witness in support of the application, and the  
14 Commission staff may also respond with the witnesses  
15 that they have previously identified. So the Applicant  
16 may present Mr. Dronkert and may identify one witness  
17 to respond to the challenge that the IBU is making on  
18 the issue of urgency.

19 MR. CRANE: Your Honor, I also would like one  
20 further request, which is the nature of the witness on  
21 the IBU's part. Are we dealing with someone like Mike  
22 Thorne, or are we dealing with a deck hand or a  
23 ticket-taker? I think that would be important as well  
24 if I could get that at the end of the today. I would  
25 prefer the name of the witness so we know what we are

0048

1 dealing with.

2 JUDGE WALLIS: We understand the tight time  
3 frame and the pressure that this puts on all of the  
4 parties. Mr. Iglitzin has indicated that he will  
5 supply the information as soon as it's available. Is  
6 that right, Mr. Iglitzin?

7 MR. IGLITZIN: That is correct.

8 JUDGE WALLIS: And we would request if at all  
9 possible that at least the nature of the witness and  
10 his background or her background and experience, and if  
11 possible, the name of that witness be provided today,  
12 if that's available.

13 MR. IGLITZIN: As soon as I know, I will  
14 contact the other parties.

15 JUDGE WALLIS: Very well. Are the parties  
16 satisfied that this process would give them the  
17 opportunity to support the positions they have in this  
18 docket?

19 MR. IGLITZIN: I have a corresponding  
20 request, which is if the Applicant is planning on  
21 providing additional documentation relating to the  
22 fitness of the Applicant that that documentation be  
23 e-mailed or faxed to me by the end of the business day  
24 today.

25 JUDGE WALLIS: Mr. Crane, can you do that?



0049

1 MR. CRANE: Yes, Your Honor, I can do that.

2 JUDGE WALLIS: Thank you.

3 MR. CRANE: What's your fax number, Dmitri?

4 MR. IGLITZIN: (206) 378-4132.

5 MR. CRANE: Your Honor, Mr. Dronkert is  
6 requesting clarification, and I think I know the  
7 answer, but I want to make sure I'm correct. He wants  
8 to make sure he can testify on issues in the  
9 application such as financial fitness. He has the  
10 ability to testify as to how much is in the account --

11 JUDGE WALLIS: To the extent that it responds  
12 to the challenges identified by the Protestant.

13 MR. DRONKERT: With current information.

14 JUDGE WALLIS: Yes.

15 MR. CRANE: To answer your question are we  
16 satisfied, I would say at this point Your Honor has  
17 done the best you can to accommodate the needs of the  
18 parties. I would like to believe that the procedure  
19 you've identified and prepared will be adequate. At  
20 this point, I don't see any reason to believe that  
21 won't be true. I think what sounds like with a limited  
22 number of witnesses and issues, then we should be able  
23 to be completed within the three-and-a-half hour time  
24 frame, 1:30 until five.

25 JUDGE WALLIS: Yes. However, we've been

0050

1 known to go to 5:15 on occasion. Actually, we will be  
2 prepared to stay later if necessary. However, we are  
3 optimistic that it will not be necessary.

4 MR. CRANE: In terms of a hearing brief, in  
5 past proceedings with this commission, I have been  
6 involved with preparing a posthearing brief. Does Your  
7 Honor wish to have further briefing?

8 JUDGE WALLIS: I would prefer to have oral  
9 statements in the nature of argument at the conclusion  
10 of the session, and the reason for that is we are on a  
11 very tight time frame here, both in terms of the  
12 commissioners' schedules and my own, and we have some  
13 fairly aggressive deadlines that must be met.

14 I always prefer to have briefs than oral  
15 argument because they are often more studied and have  
16 more extensive citations, but in the absence of the  
17 opportunity, I would like the parties to sum up what  
18 they have proved during the hearing and offer whatever  
19 authority they are aware of that would support their  
20 positions so that we can begin to prepare an order  
21 immediately after the conclusion of the hearing.

22 MS. WATSON: Will the commissioners be  
23 sitting?

24 JUDGE WALLIS: The commissioners will not be  
25 sitting, which means the parties will have the

0051

1 opportunity to seek review of the initial order, and  
2 that does remind me, given the limited nature of the  
3 process, would the parties be willing to provide any  
4 objections to the initial order within seven days after  
5 its entry?

6 MR. CRANE: Yes, Your Honor.

7 JUDGE WALLIS: Would that work for you,  
8 Mr. Iglitzin?

9 MR. IGLITZIN: I'm looking for the WAC. The  
10 normal scope for objections is 21 days?

11 JUDGE WALLIS: Yes, that's correct.

12 MR. IGLITZIN: We are not willing at this  
13 point to waive that WAC and the 21-day objection.

14 JUDGE WALLIS: Very well. Would you commit  
15 to filing your objections at the earliest time that  
16 they are available?

17 MR. IGLITZIN: Yes.

18 MR. CRANE: Your Honor, that creates an  
19 enormous problem for my client. He would like to start  
20 service.

21 JUDGE WALLIS: As of now, he has temporary  
22 authority, and he would have that authority until the  
23 Commission acted to rescind that authority. At least  
24 that's my understanding of the law. Mr. Iglitzin, do  
25 you dispute that?

0052

1                   MR. IGLITZIN: No. That is my understanding  
2 of the law.

3                   MR. CRANE: I don't doubt that that's  
4 correct. The practical problem is if there is a risk  
5 of rescinding the initial order, sometime, three to  
6 four to five weeks down the line after the hearing on  
7 Monday, I'm quite confident that Kitsap Ferry Service  
8 is going to be blocked from starting because it's going  
9 to be putting so much money at risk.

10                   I would like to believe there is a procedure  
11 in place to supplement the brief adjudicative  
12 proceeding in order to reach any level, expedited  
13 appeal, for example. I would expect there is a  
14 procedure in place in order to do that, so if there is  
15 a financial commitment going to be made by my client,  
16 they need to know whether, in fact, to spend the money.  
17 Otherwise, they are not going to be able to start a  
18 service that is urgently and immediately needed, and  
19 that thwarts the purpose of the Commission's  
20 certificate. So I would like an opportunity to ask  
21 Your Honor if there is procedure that you are aware of  
22 in order to expedite an appeal.

23                   JUDGE WALLIS: My understanding is that the  
24 21 days that's specified in the rule is a statutory  
25 provision, and the Commission has limited authority

0053

1 under the Administrative Procedure Act to change any  
2 date, any time frame that's identified in the statute.

3           Based on my understanding, and you are  
4 welcome to brief this and speak to it on Monday, based  
5 on my understanding of the Administrative Procedure  
6 Act, it would not be possible to change that statutory  
7 period. Mr. Iglitzin has indicated that he will not  
8 delay the submission of his objections, if any -- and  
9 of course, you are in the same situation. We do not  
10 know what the result of hearing will be -- at the  
11 earliest time, and we ask all of the parties to do  
12 that.

13           MR. CRANE: Very well, Your Honor.

14           JUDGE WALLIS: Is there anything further to  
15 come before the Commission?

16           MR. CRANE: No, Your Honor.

17           JUDGE WALLIS: Thank you all very much.

18           (Prehearing adjourned at 12:35 p.m.)

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