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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of)
)
MCNAMARA, SEAN d/b/a BELLINGHAM)DOCKET TS-121253
WATER TAXI)(Consolidated)
)
For Extension of Authority Under)
Certificate BC-64619)
)
In the Matter of the Application of)
)
PACIFIC CRUISES NORTHWEST, INC.)DOCKET TS-121395
d/b/a SAN JUAN CRUISES)(Consolidated)
)
For a Certificate of Public)
Convenience and Necessity to Operate)
Vessels in Furnishing Passenger)
Ferry Service)

HEARING, VOLUME III

Pages 271 - 439

ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

9:46 A.M.

FEBRUARY 1, 2013

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22				

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1 OLYMPIA, WASHINGTON; FEBRUARY 1, 2013

2 9:46 A.M.

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

6

7 JUDGE TOREM: We will be on the record
8 now. It is a little after 9:45. We took a few extra
9 minutes this morning for counsel to run down a couple
10 of issues. We now have Mr. Drew Schmidt ready to be
11 sworn in and resume this case for Pacific Cruises
12 Northwest.

13 Sir, if you will stand and raise your right
14 hand.

15

16 DREW M. SCHMIDT, witness herein, having been
17 first duly sworn on oath,
18 was examined and testified
19 as follows:

20

21 D I R E C T E X A M I N A T I O N

22 BY MR. WILEY:

23 Q Good morning, Captain Schmidt. Could you
24 please state and spell your last name for the record
25 and provide your business address?

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1 A Drew Schmidt, S-C-H-M-I-D-T. My address is
2 355 Harris Avenue, Suite 104, Bellingham, Washington
3 98225.

4 Q By whom are you employed, please?

5 A Pacific Cruises Northwest, Inc.

6 Q And are you a shareholder in Pacific Cruises
7 Northwest, Inc.?

8 A I'm the sole shareholder.

9 Q Are you also an officer and director?

10 A I am.

11 Q And what is your title?

12 A President.

13 Q How long have you been with Pacific Cruises
14 Northwest, Inc., please?

15 A Since -- well, via name changes, 1987.

16 Q And before --

17 A We started out as Gray Line Cruises.

18 Q Thank you.

19 A Gray Line Water Sightseeing, but still the
20 same corporation.

21 Q And could you please provide us just -- I note
22 that there is Exhibit 8, which you have there, which
23 is your CV, curriculum vitae. Could you -- without
24 going into detail, could you just give us a little
25 background on your operational experience in the

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1 maritime industry, please?

2 A Sure. It's been since the '70s. I've worked
3 as a captain for years, starting on Seattle Harbor
4 Tours and Viking Charters and Hat Island Ferry,
5 numerous others, before coming to Blaine in 1987, and
6 starting up a Gray Line operation there, offering
7 tours through the San Juan Islands, and then a
8 regulated service from Blaine to Roche Harbor. I ran
9 that for them for about five years, before moving into
10 Bellingham, and then purchasing the interest from the
11 other shareholders, which I've run that since 1993.

12 Q How many years have you been in the maritime
13 industry?

14 A Since the mid '70s.

15 Q Do you hold a Coast Guard captain's license?

16 A I do, I hold a 500-ton master's license for
17 near costal and inland waters.

18 Q Has your company been involved in regulated
19 operations under the jurisdiction of the Washington
20 Utilities and Transportation Commission, and if so,
21 could you give us a little background?

22 A Yes, we've been involved for years, starting
23 back in, I think, in '88, and continuing in different
24 levels, mostly all in the San Juan Islands, Bellingham
25 to Friday Harbor. I then had a 50 percent interest in

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1 Island Commuter Service, service throughout the San
2 Juan Islands to a number of the islands.

3 Q Calling your attention to Exhibit 9 that's
4 been admitted into the record at this proceeding.
5 Could you tell us what those documents are, please,
6 just generally?

7 A Those are different -- our UTC certificate
8 BC 10. Obviously, it changed forms over the years,
9 from when it first started, just between Blaine and
10 Roche Harbor. Gained some stops, lost some stops,
11 changed some locations. That's been our certificate
12 since about 1987 or 1988, I think.

13 Q And Page 4 of Exhibit 9, could you tell us
14 what the service date of April 20, 2005 -- can you
15 tell us what that -- what the relevance of that
16 certificate is, please?

17 A That certificate had two things on it. One
18 was a sightseeing route between north and south
19 Bellingham and the other is a Friday Harbor express
20 route with no flag stops.

21 Q You no longer hold BC 10; is that correct?

22 A I do not.

23 Q And there was an exhibit in Mr. McNamara's
24 case that showed an order cancelling your certificate;
25 is that correct?

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1 A That's correct.

2 Q And that happened in July of 2012?

3 A Yes.

4 Q Could you please tell us why that certificate
5 was cancelled and the events leading up to the
6 relinquishment of that certificate?

7 A Do you have a few minutes?

8 Q Yes.

9 A All right. Well, it began last spring, 2012,
10 when we -- so we had Island Commuter Service that
11 Pacific Cruises owned half of and Island Mariner
12 Cruises owned half of. We each had UTC certificates
13 that were leased into Island Commuter Service that it
14 was operating. We disbanded Island Commuter Service
15 and withdrew the two certificates to their individual
16 owners.

17 Q And you cancelled the lease of authority; is
18 that correct?

19 MR. McNAMARA: Sorry, could I interrupt
20 for just one second. Is Terry here yet?

21 MR. WILEY: He's on the phone.

22 MR. McNAMARA: Okay, I didn't hear him
23 chime in.

24 MR. WILEY: Yeah.

25 MR. McNAMARA: Go ahead. I'm sorry.

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1 Q So you leased authority to Island Commuter,
2 and then you dissolved Island Commuter, and then what
3 happened?

4 A So we withdrew the certificates back out of
5 Island Commuter and gave them back to their respective
6 owners.

7 Q And then what happened?

8 A So then in that process we sold --

9 JUDGE TOREM: Which certificates were
10 they? Your BC 10.

11 THE WITNESS: Mine is BC 10 and Island
12 Mariner's is BC 95.

13 JUDGE TOREM: All right. Thanks.

14 A So as an aside, I understand normally when you
15 lease certificates into another company, that a new
16 certificate is created for that entity. That never
17 happened in this instance. Both of our certificates
18 got operated under BC 95.

19 So in this process -- so now I made an
20 agreement with Sean to sell several of the stops. We
21 also had Bellingham to Orcas Island and a number of
22 flag stops. We came to an agreement and he
23 purchased --

24 Q If I could interrupt. When you said we made
25 an agreement to -- are you talking about BC 10?

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1 A BC 10, BC 10 only, and that was an agreement
2 between Sean and myself.

3 Q And by that agreement, you submitted an
4 application for transfer of authority that
5 Mr. McNamara now holds; that is correct?

6 A That's correct.

7 Q And the Commission approved that transfer?

8 A Yes.

9 Q What happened next, please?

10 A So then after that happened, BC 95 was left
11 with our tariff that we had been operating Island
12 Commuter under, BC 10. They told me since they had
13 incorrectly put both of these into the same -- into
14 BC 95, they reverted BC 10 back to its 2005 tariff.

15 Q Was that your original tariff that you
16 operated, the rates and prices of the original tariff?

17 A That was the last one that I operated under my
18 name.

19 Q Under Pacific Cruises Northwest?

20 A Under Pacific Cruises.

21 Q So that then meant you had to go to base rates
22 in 2005 for the 2012 season; is that correct?

23 A Correct, so I had to file a rate case to try
24 to go from 2005 up to 2012.

25 Q And by you "had to file a rate case," do you

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1 mean in order to adjust your rates to current cost
2 levels?

3 A Correct.

4 Q So you filed -- you were told you had to file
5 a general rate case?

6 A Yes. So I filed, yes.

7 Q Which you did. And what were you trying to
8 raise your rates to?

9 A I was trying to raise my rates up to current
10 market levels. Basically, \$49 -- 49.50 one way.

11 Q That was from what rate level?

12 A I believe my 2005 rate was \$49 round trip.

13 Q So you were in effect going to double your
14 rates?

15 A That's correct.

16 Q Now, what happened after you filed the rate
17 case?

18 A After I filed the rate case, and I filed with
19 a new tariff, new time schedule, and I was -- my plan
20 was -- we have an excursion service that operates
21 between Bellingham and San Juan Islands. It goes out
22 and does whale watching and tours through the islands.

23 Q Have you always had that service?

24 A We've had that for a couple years now.

25 Q Okay.

1 A And made a stop in Friday Harbor, as a shore
2 excursion, and then come back.

3 So our plan was -- we were having demand --
4 people asking, Can I buy a one-way ticket to ride to
5 Friday Harbor since you're going there anyway? We
6 filed to include those regulated passengers on a boat
7 that's already going, so killing two birds with one
8 stone and making it economical for people to actually
9 travel.

10 Q So you were offering regulated and unregulated
11 service in the same vessel?

12 A That was our plan, was to put them on the same
13 vessel. I was informed by Staff that I could not do
14 that.

15 Q And what was -- was there any reason given?

16 A They sent me a -- I have an e-mail and a
17 letter saying -- basically saying that we could not
18 combine regulated and nonregulated passengers in the
19 same vessel.

20 Q What was the effect of that advice to you in
21 terms of your ability to provide viable service?

22 A Well, it was devastating. One of the reasons
23 I withdrew from Island Commuter Service, I was tired
24 of losing money on it. I had to subsidize that
25 service personally. This was a viable way to serve

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1 the traveling public in a profitable manner.

2 MR. FASSIO: Your Honor, just a moment,
3 if I may interject an objection to this, and to simply
4 reserve the right. I know he is discussing
5 information that he received from Staff, that Staff
6 would like to reserve the right to call a rebuttal
7 witness regarding the issues of communications between
8 Staff and the company, depending on what the testimony
9 that is provided.

10 JUDGE TOREM: So is there an objection
11 or you are telling me --

12 MR. FASSIO: The objection is on the
13 basis of relevance, Your Honor. That the
14 relinquishment and technical assistance that would
15 have been provided, and the relinquishment, is not --
16 that is not at issue in this proceeding. The
17 proceeding today is to discuss whether the company has
18 the -- meets the statutory requirements for a new
19 application.

20 JUDGE TOREM: That's what the marquee
21 would say, but I think when we get behind the curtain
22 here, because we have had two different applications
23 competing for what traditionally would only be one
24 certificate to be issued, I think that this background
25 issue -- when I made my list of what I wanted to know

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1 out of these two days, Mr. Fassio, smack dab in the
2 middle was why did Pacific Cruises relinquish in 2012,
3 July. Since Mr. Wiley has anticipated that and sees
4 it as a central issue, I think it is relevant for me
5 to understand the background. It may not go into the
6 statutory analysis, but it is going to help me
7 understand the motivation for what would appear. If I
8 just read these Commission's orders as to what was
9 granted and what was relinquished, those I don't think
10 tell the whole story as to why someone would
11 relinquish and then be right back asking for it 30
12 days later. I just need to understand the why.

13 MR. FASSIO: Thank you, Your Honor.
14 Staff would simply reserve its right, to the extent
15 that there is testimony regarding what Staff told
16 Mr. Schmidt during the course of this, that they have
17 the opportunity to respond to that by rebuttal
18 testimony.

19 JUDGE TOREM: And I would agree, you
20 have an opportunity to inquire by cross-examination,
21 and if necessary to present a rebuttal witness if the
22 cross-examination is not sufficient in your mind. Let
23 me know, when Mr. Schmidt's case is done, if that's
24 going to be required.

25 Is that witness going to be available today?

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1 MR. FASSIO: Yes, that witness is not
2 present at the moment due to an unforeseen emergency.

3 JUDGE TOREM: So long as she will be
4 available later today.

5 MR. FASSIO: I understand she will be
6 available later this morning.

7 JUDGE TOREM: All right. Thank you.

8 MR. FASSIO: Thank you.

9 JUDGE TOREM: Mr. Wiley, let's resume
10 with the questions here. We will go through again
11 the -- where we left off was this excursion service
12 and the proposal to operate it on the same vessel and
13 Staff's advice.

14 It might be helpful, I think, Mr. Schmidt is
15 ultimately the most familiar with this, to be clear as
16 to what the previous business arrangement was on the
17 operation of the excursion service, whether it was
18 operated simultaneously on the same vessel, and
19 whether it ever had a previous Staff endorsement in
20 whatever form it was operating.

21 Q Captain Schmidt, I think the question really
22 goes, at the time, in the previous few years, the
23 authority at issue had been under Island Commuter
24 Service via a lease; is that correct?

25 A That's correct.

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1 Q So you hadn't operated Pacific Cruises
2 Northwest with this dual whale watching --

3 A No, we had not.

4 Q -- commuter service --

5 A No, we have not.

6 Q -- ever?

7 A No.

8 Q When the authority reverted to you after the
9 lease was cancelled and the LLC dissolved, did you in
10 fact determine that you wanted to combine both your
11 unregulated and regulated service in the same vessel?

12 A Yes, that was my desire.

13 Q When did you come to that conclusion?

14 A When I sold the other portion of my
15 certificate to Sean.

16 Q And then is it -- is my understanding correct
17 that you then were told that you had to -- to adjust
18 your rates, you had to file a general rate case?

19 A Yes, because I had been reverted back to my
20 2005.

21 Q What about the rates that had been -- that had
22 been assessed by Island Commuter? Was Mr. McNamara,
23 as the transferee, required to assume those rates,
24 adopt those tariff rates?

25 A No, they did not make him follow tariff

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1 adoption.

2 Q So is it your understanding that as a
3 transferee, he wasn't required to adopt the
4 transferor's rates?

5 A That was my understanding. Although, that's
6 what they have always done to me in the past.

7 Q So that then takes us to June of 2006. And
8 you are -- you have filed a general rate case at the
9 request of the Staff in order to update your rates; is
10 that correct?

11 A 2012 you mean?

12 Q Excuse me, 2012. I saw your eyebrows go up
13 and I didn't know why. 2012.

14 And how do we get from June, the filing of the
15 rate case, to July 12th, when you write a letter to
16 the Commission, asking to relinquish your entire
17 certificate?

18 A Well, it's kind of twofold. One is, you know,
19 basically that -- my understanding from Staff -- and I
20 will say that everything they've written to me says
21 this is an informal opinion, so I can't throw them
22 that far under the bus -- but that we could not
23 combine the regulated and the unregulated passengers
24 in the same vessel. So then we contemplated -- trying
25 to figure out whether we should try to do this with a

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1 separate vessel, to maintain our certificate. That's
2 when we started working through the rate case with
3 Mr. Young.

4 That became very difficult, because now we
5 were doing a rate case with comparisons to
6 nonregulated service, to excursion service. We were
7 trying to come up with a way to raise rates on fares
8 that have never been part of the system. The
9 accounting process and everything is completely
10 different. It became a daunting task, at best.

11 Q Was it financially feasible?

12 A It was not financially feasible to run it
13 independently.

14 Q And was it thus your understanding that unless
15 you provided a separate vessel solely for regulated
16 passengers, you could not lawfully perform the
17 service?

18 A That was my understanding.

19 Q And as a result of that understanding, what
20 did you do?

21 A Well, as a result of that, I had some
22 discussions with Staff and ultimately filed to give
23 back my certificate.

24 Q How did you hear about the concept of
25 relinquishing a certificate in the first place?

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1 A From Staff.

2 Q They indicated that that had been done by
3 prior permit holders?

4 A I don't recall.

5 Q So you did that on July 12th, you sent a
6 letter to the Commission seeking to relinquish your
7 certificate; is that correct?

8 A I did.

9 Q And then when did the Commission act on that
10 request?

11 A The next day.

12 Q They issued an order in 24 hours?

13 A I didn't know government worked that fast.
14 Yes, I called the next day to say I'm kind of having
15 canceller's remorse and can we put this on hold. I
16 was told it was already done.

17 Q Within one day?

18 A Yes.

19 Q So were you ever told -- so when they said it
20 was cancelled, did that mean that you could retract
21 your relinquishment?

22 A That was my understanding, it was a done deal.

23 Q And then how do we get here today, please?

24 A So then we get here. I guess I wanted to go
25 back and revisit this. I decided that I wanted

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1 another kick at the can. In the process of getting
2 prepared to do that, Sean also filed for Friday
3 Harbor, so I made sure I filed mine at the same time,
4 so at least they were overlapping applications, so
5 this could be heard together.

6 Q And you are aware of the Commission's
7 regulation about filing within 30 days for the same
8 route?

9 A Yes.

10 Q What is your emotional reaction to what you
11 are having to go through now, if you would?

12 A Oh, I'm frustrated. I'm angry. This has cost
13 me tens of thousands of dollars. I guess shame on me
14 for not getting better advice to begin with. I
15 wouldn't have been here to begin with.

16 Q And without going into the nature of that
17 advice, you did get advice that there was no statute
18 or rule that supported a prohibition on regulated and
19 unregulated operations in the same vessel?

20 A Oh, yes, that's part of my frustration. I
21 forwarded my communications on to you, Mr. Wiley, and
22 you responded saying, I disagree, and Staff continued
23 to disagree with you. If they are disagreeing with an
24 attorney, I figured I was out in the cold.

25 Q I'm used to that, but I appreciate that

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1 reference.

2 That then leads to a whole new application,
3 which is why you are here today?

4 A Correct.

5 Q Have you previously put on cases under the RCW
6 81.84, supporting grant of authority?

7 A Multiple times.

8 Q Would one of those be Roche Harbor to
9 Bellingham?

10 A Yes.

11 Q Would one of those be Friday Harbor to
12 Bellingham?

13 A Yes.

14 Q And does it seem like you are going over the
15 same road on the --

16 A It definitely seems like I've been here
17 before.

18 Q Okay. Let's now go to some of your exhibits
19 so that you can explain the numerous documents that
20 are now admitted into the record.

21 First of all, could you tell us about the
22 vessels that you would propose to use in this route?

23 A Well, again, my desire is to combine the
24 regulated and unregulated service in the same vessel,
25 which would be the VICTORIA STAR that normally does

0293

1 the excursion, but we do have two additional vessels
2 that we run on that and other routes.

3 Q Just for the uneducated, which would be me,
4 could you point to the certificate of inspection for
5 the VICTORIA STAR in the -- I believe it is well into
6 the exhibits. Just for the record, could you identify
7 it, please?

8 A Which exhibit is it?

9 Q It's exhibit -- I believe it's --

10 A Oh, 5.

11 Q -- 5, Page 2.

12 A Yeah, it's the first -- it's the first one in
13 the -- of the three. VICTORIA STAR is a 100-foot, 149
14 passenger, 18 knot, not 12 knot, tour boat.

15 Q While we are on that topic, yesterday there
16 was testimony from one of the shipper witnesses for
17 Mr. McNamara, that you ran your vessel at 12 knots.
18 Could you respond to that, please?

19 A No, we normally travel a little faster than
20 that. We try to keep it wherever we can to conserve
21 fuel and be economically viable.

22 Q So the 16 to 17 knot range would be something
23 that you would do?

24 A Yes.

25 Q Thank you.

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1 What about other vessels that you have that
2 you could use on this route, please?

3 A We also have the SALISH SEA, which is the --
4 was the ISLAND COMMUTER II. It is currently licensed
5 for 56 passengers. We have the VIKING STAR that is
6 currently licensed for 42 passengers.

7 Q So you have three vessels that you potentially
8 could use on this route if the circumstances arose; is
9 that correct?

10 A Correct.

11 Q Have you also provided the Commission in this
12 record documents from the Coast Guard and for
13 insurance supporting the operation -- the safe
14 operation of this vehicle?

15 A Yes.

16 Q Of this vessel, excuse me.

17 A Yes, we carry \$5 million worth of liability
18 insurance, on top of all the rest.

19 Q And those are included in Exhibit 3, I
20 believe? You have a certificate of insurance for each
21 vessel under the exhibit number; is that correct?

22 A Yes.

23 Q Are all the vessels owned by Pacific Cruises
24 Northwest?

25 A They are.

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1 Q And do your insurance policies meet or exceed
2 the Commission's minimum requirements for service to
3 transport passengers?

4 A Yes, by quite a distance.

5 Q Do you currently hold certificates of
6 inspection that are up to date on all three vessels?

7 A All of our vessels are currently -- have
8 current COIs and are currently licensed.

9 Q Let's go back to your proposed operation
10 between Bellingham and Friday Harbor. How do you
11 envision it now, if your certificate is either
12 restored or this application is granted?

13 A I envision that we would continue to do our
14 excursion service, but we would have our time schedule
15 coincide with that excursion service so that people
16 could buy a one-way ticket traveling on that vessel
17 that's going between those two points as it is.

18 Q Between fixed termini points?

19 A Fixed termini.

20 Q Would you be able to allocate both your
21 revenue and expenses appropriately, consistent with
22 the uniform system of accounts in performing that
23 service?

24 A Oh, yes, we have been doing that for years.

25 Q In the discussions that you've had with the

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1 Bellingham Chamber and other business organizations,
2 how has your proposed service been received?

3 A It's been well received. People have called
4 me, asking if we could provide this service.

5 Q Where will you berth your boats and what are
6 your docking arrangements to perform regular commuter
7 service to Friday Harbor from Bellingham?

8 A Well, from Bellingham, we operate from the
9 Bellingham cruise terminal in Fairhaven, if you are
10 familiar with Bellingham. We have a long-term lease.
11 We've been there since 1991, to berth our vessels
12 there. And then we've been doing business with Friday
13 Harbor for 25 years. They don't actually do a lease,
14 like we discussed yesterday, but they have a priority
15 docking arrangement, and we are at the top of the
16 list.

17 Q They also have what's known as an operating
18 license agreement, do they not?

19 A That's correct, and we keep that current with
20 them.

21 Q And have you offered evidence in the record,
22 specifically Exhibits 6 and 7, referencing your
23 docking arrangements as required by the statute?

24 A Yes, I include them, just to show that we do
25 indeed have those arrangements.

0297

1 Q Have you filed a proposed tariff and schedule
2 for the services described in your application?

3 A I have.

4 Q And have you also submitted that into the
5 hearing record?

6 A I have.

7 Q Just briefly, would you summarize what you
8 propose for fare and schedule?

9 A Again, I propose offering a \$49.50 one-way
10 ticket, which coincidentally is half of our excursion
11 fare, so everybody is on the same playing field. It
12 would give us a fare to be able to charge for people
13 that want to go one way. Our schedule, we've always
14 had our tariff schedule -- our schedule in our tariff,
15 so it would be the same as what we are operating.

16 Q I notice that your schedule proposes a
17 seasonal service; is that correct?

18 A That's correct.

19 Q Could you please provide some description in
20 the record as to why you are proposing a seasonal
21 service, as opposed to a year-round service?

22 A Sure. This industry is a seasonal industry.
23 It is made up of tourists. Tourists pay the freight.
24 I wish commuters could pay the freight, but they
25 can't, or they won't. We operate when the tourists

0298

1 are here. Our schedule is light in May, it's full
2 speed ahead June through September. The rest of the
3 year is -- you couldn't make a buck if you tried to.
4 We run when it is profitable.

5 Q If you offered year-round service, would that
6 have any impact on your viability to provide the
7 service?

8 A Absolutely. I would be a Wal-Mart greeter
9 next year.

10 Q In other words, you don't believe there is any
11 ability of Pacific Cruises Northwest to offer winter
12 service and still maintain a viable transportation
13 service between Bellingham and Friday Harbor?

14 A Not independently, no.

15 Q Did you hear Mr. Bryan's testimony yesterday
16 regarding that issue?

17 A Yes.

18 Q And do you agree with that testimony?

19 A Absolutely.

20 Q Are you prepared to work with the WUTC Staff
21 in modifying fares and time schedule, if necessary?

22 A Yes.

23 Q Will you provide additional, what we term
24 assessorial or concession services on board the vessel
25 to increase your overall revenues?

0299

1 A Yes, because you couldn't make it on just
2 commuter fares.

3 Q And that would be things like lattes and food
4 and that sort of thing?

5 A Yes.

6 Q Have you also cause to prepare ridership and
7 revenue forecasts for the services proposed in your
8 application?

9 A Yes, I have.

10 Q Can you please refer to those in the record?
11 I believe you have them in the notebook before you,
12 and they are exhibits. I'm looking for the markings.

13 A No. 1.

14 Q Excuse me?

15 A No. 1.

16 Q Okay, thank you.

17 MR. WILEY: My copy does not have the
18 boxed exhibit reference, so I'm fumbling, Your Honor.
19 I apologize.

20 Q Could you please first identify Exhibit 1?

21 A Exhibit 1 is a pro forma projection of our
22 ridership and revenue and the expenses forecasted to
23 operate them.

24 Q And I note that it's a 2013 projection.

25 A Yes.

0300

1 Q And what is this pro forma revenue and
2 ridership forecast based on, please?

3 A Well, it's based on -- it's an allocation
4 basis on what I think we could add to -- the ridership
5 we could add to the -- along the excursion route that
6 would want to go one way, and the fares that would --
7 that would -- for that revenue, and then an allocation
8 of the costs of that vessel.

9 Q And is this based on your prior experience,
10 when you first received the certificate in 2005, in
11 terms of studying the costs, the revenues, the
12 ridership?

13 A Yes, this is based on years of experience.

14 Q And you mentioned allocation. That verb,
15 then, would presume that there are going to be both
16 unregulated and regulated costs from revenues on board
17 this vessel; is that correct?

18 A That's correct.

19 Q And could you just briefly take us down? You
20 have also done an income statement, which is
21 exhibit --

22 A It's also Exhibit 1.

23 Q Okay.

24 A It's the same form.

25 Q Okay. And I want to ask you a little bit

0301

1 about that, if I can find it.

2 Tell us how you have extrapolated the numbers
3 here, please.

4 A Well, I just took a percentage of the
5 ridership, to break out what their share of the cost
6 would be. It's kind of a fallacy in this industry
7 that, you know, it's always -- the desire is to
8 protect the regulated customer, to make sure that they
9 are not picking up the freight for the nonregulated
10 customers. In actuality, every single one of these,
11 it is the unregulated revenue that is making the
12 regulated service viable.

13 Q And that you would expect to continue to be
14 the case?

15 A Yes.

16 Q And you've also submitted into the record an
17 updated balance sheet dated November 30, 2012, have
18 you not?

19 A I believe so.

20 Q That's Exhibit 4, two pages, please,
21 Mr. Schmidt.

22 A Okay.

23 Q Would you just take a look at that?

24 A Okay.

25 Q Describe what a balance sheet does from your

0302

1 standpoint, please.

2 A A balance sheet is a balance of your assets
3 and liabilities. All of your assets are listed on
4 there, your vessels, that sort of thing, your cash,
5 and the liabilities and outstandings.

6 Q The total equity is shown on Page 2 of
7 Exhibit 4, is it?

8 A That's correct.

9 Q And I notice you have Line Item 1590 on Page 1
10 of Exhibit 4, which shows a substantial accumulated
11 depreciation; is that correct?

12 A Yes, I've had these vessels a long time.

13 Q Could you speak briefly about your maintenance
14 of the vessels, speaking of their longevity?

15 A They are boats. They are holes in the water
16 to pour money into. I always spend 50- to \$75,000 a
17 year, I think, to maintain them.

18 Q You also submitted with your application a
19 financial statement, did you not?

20 A I did what?

21 Q You also submitted with your application a
22 financial statement, did you not?

23 A As part of the application, yes.

24 MR. WILEY: If I may approach the
25 witness, Your Honor. I want to...

0303

1 Your Honor, it is my understanding that the
2 applications are part of the record; is that correct?

3 JUDGE TOREM: They are incorporated into
4 the record by the document, but I think the initial
5 filing is your Exhibit 3.

6 MR. WILEY: Okay.

7 A Yes, I did that.

8 Q Could you open that, please? I'm going to ask
9 you a couple questions about that.

10 A Okay.

11 Q You've got your accumulated depreciation
12 figure there again, do you not?

13 A Yes.

14 Q The vessels you list at 600,000, is that --
15 that's not market value, is it?

16 A No, that was the original purchase cost.

17 Q And that's what the Commission uses to base
18 rates on, is it not?

19 A Correct.

20 Q You don't list any real estate, I notice.

21 A My company doesn't have any real estate. I
22 have my personal real estate, but not in my company.

23 Q You heard Mr. McNamara's testimony yesterday
24 about his house. Do you also own a house, residential
25 properties?

0304

1 A I have properties, yes.

2 Q And what are they valued at, would you say?

3 A Oh, half to three quarters of a million
4 dollars.

5 Q Do you believe it is prudent to pledge
6 personal real estate as available assets on hand for
7 your commercial ferry business?

8 A No, I wouldn't do that to my kids.

9 Q Does your pro forma that we talked about
10 earlier show a -- project a profit on an annual basis?

11 A It does.

12 Q Does your company, based on its financial
13 statement and its balance sheet and its other
14 submissions into the record in this proceeding, in
15 your view have sufficient resources to cover any
16 unanticipated loss on this route?

17 A Yes, it does.

18 Q Tell us again, by looking at the pro forma,
19 what your projected revenues are for the first year.

20 A I believe I projected about \$188,000.

21 Q And do you believe, based on your experience
22 and knowledge of this route and both the excursion and
23 regulated service market, that that's a reasonable
24 projection?

25 A Yes.

0305

1 Q Do the pro forma financial statements that you
2 have submitted reflect the costs of the assets to be
3 used for the proposed service, as best as you can
4 quantify them on allocations?

5 A Yes, it does.

6 Q Could you describe the financial status of
7 your operations?

8 A My current operations are profitable, well
9 capitalized, and I want to say well respected, but I
10 don't know if that's the -- that's my opinion.

11 Q Do the financial statements you have submitted
12 reflect the total assets on hand that will be expended
13 for the proposed service?

14 A Yes.

15 Q How do you generally hold out your services,
16 either unregulated or regulated, in the marketplace,
17 please?

18 A It's vast, we -- everything from the Internet
19 to publications. We send, I don't know, about 75- to
20 \$80,000 a year just on direct marketing, on top of all
21 the rest that we do.

22 Q In that direct marketing cost expenditure, do
23 you hope to attract commuter passengers on your
24 Bellingham to Friday Harbor service?

25 A Sure.

0306

1 Q If ridership is actually higher than expected,
2 if that fortuitous circumstance arises, what will you
3 do?

4 A Well, we have plenty of capacity on the vessel
5 that we currently have on the operation, but we have
6 the other vessels that we could employ as needed.

7 Q Have you ever been cited by the Commission for
8 any violation of its laws and rules?

9 A No.

10 Q If this application is granted, will you
11 conform your operations to the laws and rules of the
12 Commission in the state of Washington?

13 A Always have.

14 Q In the future, if you have questions on Staff
15 policy or on any change or interpretation of law or
16 rule, what will you do?

17 A Not what I did before. I will use you next
18 time.

19 Q Do you have any difficulty in working with the
20 Staff?

21 A No, Staff has always been great. I'm not
22 trying to throw Staff under the bus. I've always
23 enjoyed my relationship with the Staff here.

24 Q In summary of your testimony here today,
25 Captain Schmidt, can you tell us why you are seeking

0307

1 restoration of the route for Pacific Cruises Northwest
2 between Bellingham and Friday Harbor?

3 A Because I feel it was a good plan, I feel that
4 it is good for the traveling public, as well as good
5 for the financial viability of our company.

6 Q Thank you.

7 MR. WILEY: No further questions, Your
8 Honor, and I tender the witness.

9 JUDGE TOREM: Today for this witness we
10 are going to do cross-examination by Mr. Fassio first,
11 and then I will come back to Mr. Buzzard, and
12 Mr. McNamara as well.

13 MR. FASSIO: Your Honor, in that case I
14 would request that we take a short break before Staff
15 begins cross-examination.

16 JUDGE TOREM: We will be back on the
17 record in ten minutes. We will just take a brief
18 recess.

19 Mr. Buzzard, if you would just leave the line
20 open, that's fine, or if want, call back in in another
21 ten minutes.

22 MR. BUZZARD: I'll be here.

23 JUDGE TOREM: Thanks.

24 We're off the record.

25 (A brief recess.)

0308

1 JUDGE TOREM: Back on the record here.
2 It is almost 20 til 11:00. Mr. Fassio, are you ready
3 to cross-examine this witness?

4 MR. FASSIO: Yes.

5

6 C R O S S - E X A M I N A T I O N

7 BY MR. FASSIO:

8 Q Good morning, Mr. Schmidt.

9 A Good morning.

10 Q You have testified today regarding the vessels
11 that you are going to be using to provide service to
12 your route. Correct me if I'm wrong, you testified
13 the VICTORIA STAR II, the VIKING STAR and the SALISH
14 SEA, those are the three vessels?

15 A Uh-huh.

16 Q On your Exhibit 1, I believe it is -- I'm
17 sorry, your Exhibit 3, initial filing, there is a
18 reference to a vessel, the ISLAND SCOUT. Is that a
19 different vessel or is it the same vessel?

20 A That's the SALISH SEA. I was just trying to
21 decide which name I like better.

22 Q Okay.

23 A Since Bert Webber came up SALISH SEA, I
24 thought it was a pretty clever one, I liked it.

25 Q And all of these vessels have been used to

0309

1 provide regulated service in the past, is that your
2 testimony?

3 A The VICTORIA STAR has, the SALISH SEA under
4 its previous name has, the VIKING STAR has never done
5 regulated service.

6 Q I believe your testimony was that you would be
7 using -- you would have all these three vessels
8 available for service should one of them go down?

9 A I think my testimony was there was ample
10 capacity in the VICTORIA STAR and if there was more --
11 if we needed more than that, then we could redeploy
12 vessels as needed.

13 Q On your lease agreement -- on your Exhibit 6
14 you have lease agreements with the Port of Bellingham?

15 A Yes, sir.

16 Q I notice that lease agreement ends on
17 October 31st, 2013; is that correct?

18 A Yes.

19 Q Is it your intention to renew that lease,
20 then, at the conclusion of that term?

21 A Yes, it is. The current agreement we have is
22 five one-year renewals.

23 Q Oh, I see.

24 And with respect to Exhibit 7, which is --
25 you've testified regarding an operating agreement with

0310

1 the Port of Friday Harbor, that lease, when does that
2 current lease expire?

3 A It's not an actual lease. The Port of Friday
4 Harbor kind of welcomes everyone that has the
5 appropriate insurance and pays their tariffs. They
6 just have a -- every year you have to fill out an
7 operating agreement saying that you will abide by
8 their rules. That's an annual thing.

9 Q So at the conclusion of that, on 12/31/13, I
10 see under term, you would renew that operating
11 agreement?

12 A We will sign a 26th one, yes.

13 Q I would like to ask you about your ridership
14 revenue forecast. I believe that is your Exhibit 1.

15 A Yes.

16 Q Can you give us just a little more background
17 on how you -- I guess which sources you relied upon
18 for those ridership forecasts? Was that your
19 personal, or your business experience, having run the
20 service in the past? Did you hire outside
21 consultants?

22 A I did not hire outside consultants. I took
23 a -- looked at the numbers of the people that we
24 hauled to Friday Harbor with Island Commuter Service
25 and used those numbers. That service made multiple

0311

1 flag stops, so I had to back those out. It is overall
2 ridership, but just the Friday Harbor portion.

3 Q These ridership forecasts, are these
4 independent of any other -- are you running an
5 assumption that there are no other services operating
6 in the territory in coming up with these estimates?

7 A Sure. There's no others running now.

8 Q If there were other carriers that were
9 actually serving the territory to Friday Harbor, do
10 you expect that would impact your ridership in a
11 significant way?

12 A I'm sure it would impact it. The pie is only
13 so big, so...

14 Q Do you expect that to be a large impact that
15 would -- or what do you estimate to be, I guess, the
16 general size of the impact?

17 A It all depends on the viability of who is
18 competing with me. I couldn't say that until I saw
19 what they actually did.

20 Q And I believe your testimony earlier, you
21 described your seasonal service as offered to a lot of
22 tourists. Do you get a lot of tourists using your
23 service, as opposed to residents? Do you have a sense
24 of the mix of the ridership?

25 A It's almost all tourists. That's what this

0312

1 entire industry is based on.

2 Q And are those tourists using Friday Harbor as
3 a destination point for other resort activities and
4 the like?

5 A Yeah, it's the cool spot to go out there. We
6 do get some -- as far as seasonally, we get people
7 wanting to get out to their boats. You know, more so
8 than just tourists looking to get back and forth, or
9 commuters getting back and forth. We get a lot of
10 people that are trying to piggyback on something else
11 they are doing for their vacation.

12 Q And you've testified today that, in your
13 analysis, you have the financial resources to be able
14 to operate this service for 12 months. Is that your
15 testimony?

16 A Yes, it is.

17 Q In addition to -- you have access to bank
18 loans or other capital should you need to access those
19 funds?

20 A I do have active lines of credit, as well as
21 personal capital.

22 Q And is that reflected in the exhibits?

23 A No.

24 Q Mr. Schmidt, I believe you have testified, and
25 some of the materials here indicate that you are the

0313

1 sole owner of Pacific Cruises?

2 A Correct.

3 Q And you make all the business decisions that
4 are necessary for Pacific Cruises to operate?

5 A I do.

6 Q And did you make the business decision to
7 write the letter, sign the letter to the Commission,
8 requesting to voluntarily relinquish your commercial
9 ferry service?

10 A Yes, I did.

11 Q And you testified today that you had called
12 Staff soon after you had filed that letter, indicating
13 second thoughts about it and requesting -- about the
14 letter that you had sent in?

15 A Yes, I did.

16 Q Do you recall who on Staff you spoke to?

17 A Ms. Ingram.

18 Q And what do you recall about your conversation
19 with Ms. Ingram?

20 A I recall I was told that it is already done,
21 it has already been pushed through.

22 Q Were you served a copy of the Commission's
23 order cancelling your certificate --

24 A Yes.

25 Q -- in Docket TS-121174?

0314

1 A Yes.

2 Q Mr. McNamara has filed Exhibit SCM 1, which I
3 believe is a copy of that order, or Page 1 of that
4 order. Do you recall that, discussion of that exhibit
5 yesterday?

6 A Yes.

7 Q Do you recall a Page 2 of that order?

8 A It says 1 of 1. I guess I don't recall it.

9 Q Page 2, that would have contained a notice?

10 A I don't know. I'm not saying it didn't
11 happen, but I don't recall it.

12 MR. FASSIO: Your Honor, looking at
13 Exhibit SCM 1, it is, in Staff's opinion, an
14 incomplete exhibit. I do have a copy of the full
15 order cancelling the certificate as Page 1 and Page 2.
16 I have copies of that. I can approach the witness and
17 give him a copy, and then also a copy for the bench,
18 for clarity of the record.

19 JUDGE TOREM: Certainly. If my
20 understanding is correct, we have already admitted
21 Exhibit 1. There was no objection to the completeness
22 yesterday. I think for the purpose it was admitted it
23 was complete yesterday.

24 Do you have also the filing notice page, is
25 that what you've got?

0315

1 MR. FASSIO: That is correct. We can
2 file that as a separate cross-examination exhibit for
3 purposes of just a couple of questions that I have.

4 JUDGE TOREM: Okay. Let's go ahead and
5 hand it, as you requested.

6 MR. FASSIO: (Complies.)

7 Q Mr. Schmidt, let me know when you've had a
8 moment to look at the document that I have just handed
9 you.

10 JUDGE TOREM: While you are looking at
11 it, let's mark it as DMS Exhibit 17.

12 (Pause in the proceedings.)

13 A Okay.

14 Q Mr. Schmidt, I have handed you what has been
15 marked as DMS Exhibit 17. Would you agree that on
16 Page 1 of that document is a Commission order
17 cancelling the certificate of Pacific Cruises
18 Northwest, Inc., d/b/a San Juan Cruises, in Docket
19 TS-121174?

20 A Yes.

21 Q And it orders that -- that the Commission
22 orders your certificate BC 10, held by Pacific Cruises
23 Northwest, Inc., d/b/a San Juan Cruises, is cancelled
24 at the carrier's request.

25 A Yes.

0316

1 Q Looking at Page 2 of that document, would you
2 agree that it contains a notice indicating to you that
3 you may seek Commission review of this decision?

4 A I would agree that's what it says.

5 Q And would you agree that it further says you
6 must file a request for a Commission review of the
7 order no later than 14 days after the date the
8 decision is posted on the Commission's website?

9 A That's what it says.

10 Q And that if you do so, the Commission can then
11 schedule your request for review by notice of hearing
12 pursuant to various sections --

13 MR. WILEY: Your Honor --

14 Q -- that are listed?

15 MR. WILEY: -- if I could interpose an
16 objection. I understand what counsel is doing, but I
17 think the exhibit speaks for itself. If we are going
18 to ask questions on every sentence, we are going to be
19 here a long time.

20 JUDGE TOREM: Sustained.

21 Q You did not file a request for Commission
22 review of that order, correct?

23 A No, I did not.

24 Q You had previously -- your testimony had
25 indicated that you previously had spoken to your

0317

1 attorney about the issue of -- the issues that you
2 discussed regarding excursion service versus non --
3 versus unregulated -- or regulated service on the same
4 vessel and you testified that you had e-mail with
5 Commission Staff and had also spoken with your
6 attorney?

7 A Yes.

8 Q So upon receiving the notice of cancellation,
9 you could have sought Commission review or sought the
10 assistance of counsel on that as well, correct?

11 A I could have, reading this. I didn't read it
12 at the time. I didn't see it, I guess. My bad.

13 Q And you testified earlier that Staff, and you
14 said today that was -- or you had indicated at the
15 time that Staff said that the cancellation was a done
16 deal when you had spoken to them. Was that your
17 testimony?

18 A Right. Maybe I paraphrased that, but yes,
19 that it was completed.

20 Q Did you call or -- well, let me refer to --

21 MR. FASSIO: Your Honor, may I have some
22 clarification as to whether -- which of the exhibits
23 Mr. -- or the company has -- have they all been
24 admitted into the record, or what exhibits have been
25 admitted into the record at this point?

0318

1 JUDGE TOREM: 1 through 11 and 16.

2 Q Would you agree that, in looking at
3 Exhibit 17, there's a number at the top of that order?
4 Do you see that phone number there?

5 A Yes.

6 Q Did you call that number after you received
7 this order?

8 A I called whichever number is on the bottom of
9 Penny's e-mail. I don't remember what number that is.

10 Q Okay.

11 So then this -- oh, after the order cancelling
12 your certificate, you contacted Staff?

13 A I had not received this yet.

14 Q Okay.

15 So you are referring to calling before you
16 received the order cancelling, but after you had sent
17 in your letter?

18 A Correct.

19 Q Did you contact an attorney to discuss your
20 concerns after you heard from Staff that it was --
21 that it was -- let me rephrase the question.

22 Did you seek any counsel or otherwise seek any
23 counsel from anybody outside the Commission to discuss
24 any concerns that you had with the Commission Staff's
25 processing of your request for voluntary cancellation?

0319

1 MR. WILEY: I will object to the
2 question to the limited extent that it would seek to
3 elicit specific legal advice given at a specific point
4 in time.

5 MR. FASSIO: Your Honor, I am not asking
6 for him to explain any legal advice he had, only to
7 find out if he -- if he did anything other than just
8 ask Staff this question, if there was any other
9 process that he went through.

10 MR. WILEY: So long as that doesn't go
11 to specific legal advice -- question of counsel, I
12 don't have an objection.

13 JUDGE TOREM: Okay. You can answer the
14 question, Mr. Schmidt. I think generally it's not
15 what advice you may have obtained, but just whether
16 you sought any advice outside of Commission Staff.

17 THE WITNESS: When? This month, or that
18 day, or when are we talking about? I have in the last
19 two weeks, I'll tell you, yes.

20 JUDGE TOREM: Mr. Fassio, are you
21 referring simply to the July 12th and 13 time frame
22 and immediately thereafter?

23 Q Yes, just immediately -- at this point
24 immediately thereafter.

25 A No, I was so fed up at that point, I did not.

0320

1 Q You've testified about an e-mail that you
2 received on June 6th from Commission Staff; is that
3 correct?

4 A I don't remember what the date was, but yeah,
5 okay.

6 Q And you testified in that e-mail that Staff
7 gave its opinion that you couldn't mix regulated and
8 unregulated service on the same boat?

9 A Yeah. Is that the one that I put in my list
10 that you objected to, in my original exhibits?

11 Q Well, that is part of your -- yes, you
12 testified earlier about the thoughts --

13 A Okay.

14 Q -- and discussions that you had received from
15 Staff. Do you remember --

16 A Yes.

17 Q Was that on or about -- in the beginning of
18 June?

19 A Yeah, sure.

20 JUDGE TOREM: It appears that we are
21 referring to the proposed Exhibit 12. It hasn't been
22 offered. It was pending the objection we discussed
23 yesterday.

24 Q When Staff communicated with you by e-mail,
25 did they communicate that they are offering only an

0321

1 informal opinion?

2 MR. WILEY: Objection. Asked and
3 answered. There was testimony on direct exactly to
4 that issue, Your Honor. He indicated that it was
5 informal advice. He said that in his direct
6 examination.

7 JUDGE TOREM: That's already in the
8 record. The objection is sustained.

9 Do you want to rephrase the question?

10 MR. FASSIO: No, that's fine. I'll
11 withdraw it.

12 Q Is it your testimony that you had -- that you
13 relied upon those communications that were -- that
14 communication in forming an opinion that this was
15 Staff's opinion, and you didn't rely on any other --

16 A No, I did not.

17 Q -- sources?

18 Did you involve counsel at all? I'm not
19 asking for any substantive issues. Did you involve
20 counsel at all in any of the communications?

21 A Yes, to the degree I already told you, where I
22 had some interchange via e-mail with my attorney, that
23 respectfully disagreed.

24 MR. WILEY: Your Honor, at this time I
25 am going to move for the admission of Exhibit 12. We

0322

1 have had a number of questions on it. I don't think
2 it is appropriate if I am not -- I am offering and
3 moving the admission of the exhibit.

4 JUDGE TOREM: Thank you.

5 Are there any objections to Exhibit DMS 12
6 being admitted? Mr. Fassio?

7 MR. FASSIO: No, Your Honor.

8 JUDGE TOREM: Any others?

9 MR. McNAMARA: No.

10 JUDGE TOREM: Mr. Buzzard, this is one
11 that hopefully you have seen by now. It was
12 circulated to you by e-mail. Any objection?

13 MR. BUZZARD: No.

14 JUDGE TOREM: All right. 12 is
15 admitted.

16 Mr. Fassio, I think this came up, admitting
17 the exhibit, in the midst of one of your questions
18 about it. I will just describe for the record that it
19 is a two-page document with three different e-mails
20 dated the same date, June 6th, 2012. One that goes
21 between Mr. Wiley and Mr. Schmidt, one between
22 Mr. Schmidt and Ms. Ingram, and a reply from
23 Ms. Ingram back to Mr. Schmidt, all in the same day.

24 Q I have no further questions on that particular
25 exhibit, Mr. Schmidt.

0323

1 Did you also receive a formal letter from
2 Commission Staff, from Mr. Eckhardt, later in June,
3 regarding the issue of regulation of commercial
4 ferries.

5 A Yeah, I think that's the other letter you
6 objected to.

7 JUDGE TOREM: Mr. Wiley, I anticipate
8 you might want to offer Exhibit 13 at this time.

9 MR. WILEY: Well, I'm going to wait. I
10 didn't move in my direct, Your Honor. I am going to
11 wait and hear about the questions. I probably will,
12 but I'm going to withhold at this point.

13 JUDGE TOREM: Just so the record is
14 clear, we are looking at DMS Exhibit 13. Is that
15 correct, Mr. Fassio?

16 MR. FASSIO: Yes.

17 Q Would you agree that this exhibit discusses
18 Staff's interpretation of the definition of excursion
19 service?

20 A Yes, and that it is an informal opinion. I'll
21 save you that one.

22 Q And that Staff's opinions are not binding on
23 the Commission?

24 A Absolutely.

25 MR. WILEY: I was going to offer an

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1 objection to that question, Your Honor, because I
2 think it calls for a legal conclusion, but --

3 A Well, a legal conclusion and -- never mind.

4 Q I'm merely asking the witness to confirm that
5 the letter itself says that Staff's opinions are not
6 binding on the Commission.

7 A Absolutely.

8 Q In looking at that letter that's in front of
9 you, that has been marked as DMS Exhibit 13, would you
10 agree that it does not say anything about whether or
11 not the company can provide excursion service or can
12 combine excursion service and regulated service on the
13 same vessel? It doesn't talk about that issue?

14 MR. WILEY: We are going to need a
15 minute to look at the exhibit. I couldn't conclude
16 that without some time, Your Honor.

17 JUDGE TOREM: Mr. Schmidt, take your
18 time. Look up when you are ready.

19 (Pause in the proceedings.)

20 A Yeah.

21 Q So you would agree it doesn't address that
22 specific issue?

23 A Oh, yeah. This was after that, yeah.

24 Q And would you agree that the letter really
25 only discusses excursion service and that the

0325

1 Commission would not regulate excursion service only?

2 A Yes, absolutely.

3 Q Thank you. I have no further questions on
4 that exhibit.

5 JUDGE TOREM: Given its discussion,
6 should we --

7 MR. WILEY: If you want to, Your Honor.
8 Now, I don't think it is very relevant. I didn't
9 offer it in the first place.

10 MR. FASSIO: Because we've had
11 discussion on that exhibit, we would stipulate to the
12 admission of what has been offered.

13 JUDGE TOREM: I'm not seeing any
14 objections elsewhere in the room.

15 Mr. Buzzard?

16 MR. BUZZARD: No, sir.

17 JUDGE TOREM: All right. So 13 will
18 also be admitted. That way I can, if necessary, refer
19 to it later.

20 MR. FASSIO: Your Honor, I have no
21 further questions for Mr. Schmidt. However, we would
22 ask that we have the right to call Ms. Ingram to the
23 stand on the narrow questions of the e-mail that was
24 provided to her, because she is -- or the e-mail that
25 is in the record addressed from her and the

0326

1 conversations that Mr. Schmidt has discussed he had
2 with Ms. Ingram. On those narrow questions only, we
3 have a rebuttal witness on those, and we would like
4 the opportunity to respond.

5 JUDGE TOREM: I think when we get to
6 that point in the case, let me know.

7 MR. FASSIO: Thank you.

8 JUDGE TOREM: Mr. McNamara, did you have
9 any cross-examination questions of Mr. Schmidt?

10 MR. McNAMARA: Yes, I do.

11

12 C R O S S - E X A M I N A T I O N

13 BY MR. McNAMARA:

14 Q You may have been asked a few of these. If
15 you have, just rocket through them, if you would.

16 You own and operate Pacific Cruises Northwest?

17 A Yes.

18 Q What service does that company provide?

19 A Multiple things. All excursions.

20 Q For instance?

21 A For instance, tours of the San Juan Islands
22 with whale watching and shore ex -- stop at Friday
23 Harbor. We do dinner cruises, we do lunch cruises, we
24 do charter cruises, we do beer tasting cruises, we do
25 wine tasting cruises. All sorts of things.

0327

1 Q So is it your testimony that your main
2 business is sightseeing and excursion services?

3 A Sure.

4 Q And you already answered this, but you did own
5 and operate Island Commuter Service?

6 A I owned 50 percent of it, yes.

7 Q For about how long was that again?

8 A 12 years, something like that. 11, 12 years.

9 Q In those 12 years, were you successful or
10 profitable any of those years?

11 A I think we were profitable in some of those
12 years. Not in its entirety, no.

13 Q Do you recall what years, and maybe your
14 ridership?

15 A I could say the company was profitable in some
16 years based on ancillary revenues.

17 Q And in those 12 years, did you change any of
18 the times that you ran --

19 A Oh, we --

20 Q -- or was it the same all the time?

21 A No, we changed all the time, to try to tweak
22 it to make it work as well as possible.

23 Q And again, in those 12 years, it was just a
24 summer service?

25 A Absolutely.

0328

1 Q Approximately four months full time?

2 A Yeah, about that.

3 Q In 2010, I've got you down for -- your tariff
4 it says you operated approximately 100 days.

5 A Okay.

6 Q Now, is it true in 2011 you operated nine
7 days?

8 A Yep.

9 Q You went from 100 days to nine days. Did you
10 notify the public that you were doing so?

11 A Yes, we did.

12 Q And do you believe by operating nine days that
13 entire year that you provided a viable public service?

14 A Did I do what was legal and proper?

15 Absolutely. Yeah, absolutely.

16 Q I guess I'll rephrase that. Or I won't
17 rephrase it, I'm just not sure you answered it.

18 MR. WILEY: Your Honor, a shipper
19 witness probably is on the line. Could you see if
20 they could come back?

21 MR. McNAMARA: It's not one of mine.

22 JUDGE TOREM: This is Judge Torem. We
23 had somebody else join in on the line. Is there a
24 potential witness that we have calling in?

25 MR. WILEY: Hello?

0329

1 JUDGE TOREM: It's not. We will just
2 press on with the examination, Mr. McNamara.

3 MR. WILEY: Sorry for the interruption.

4 Q So I will rephrase that question. Legally,
5 you said legally you can operate nine days. Do you
6 feel that that served the public's needs, nine days?

7 A We accomplished serving the public in the
8 capacity that we were able to in that year.

9 Q I'm trying to make it a simple question for
10 you. Just a yes or no answer. Do you feel that you
11 served the public running nine days an entire year?

12 A Yes.

13 MR. WILEY: Objection. Asked and
14 answered.

15 JUDGE TOREM: Overruled.

16 Q So it's "yes"?

17 A Yes.

18 Q Now, which boat were you using when you were
19 running the Island Commuter Service?

20 A The ISLAND COMMUTER.

21 Q Is it true that you sold seven of your eight
22 stops to Sean McNamara, myself?

23 A Sure.

24 Q Did you believe when you sold me your stops
25 that I was fit to provide the service to the public?

0330

1 A I have no opinion.

2 MR. WILEY: Objection, Your Honor. This
3 witness does not evaluate fitness. That is the
4 Commission's role and regime. I don't know why we are
5 going into such length about Island Commuter. This is
6 an application for Pacific Cruises Northwest. I
7 understand that some background information is
8 allowable, but we are getting farther and farther
9 afield.

10 MR. McNAMARA: And I believe you've had
11 your chance to examine the witness. I am only asking
12 my -- I think I should be allowed to set up some
13 history for the court.

14 JUDGE TOREM: Mr. McNamara, can you just
15 rephrase the question to focus in, without having to
16 draw legal conclusions that are reserved to the
17 Commission. If you want to inquire into the sale and
18 the motivation behind it, that's fine. We've already
19 had that become an issue in the record yesterday. As
20 far as the way you phrased the question, I sustain the
21 objection.

22 Q So you did sell your certificate to me?

23 A Yes, the portion that you wanted. The portion
24 that you were applying for in your earlier
25 application.

0331

1 Q Did you sell it because you felt it was not a
2 viable service?

3 A I sold it because you had desire for those
4 stops, and I had a desire to continue serving Friday
5 Harbor, like I have described.

6 Q So is it true that 2012, you discontinued your
7 service altogether?

8 MR. WILEY: Your Honor, I'm sorry, but
9 we have established this in the record numerous times.

10 JUDGE TOREM: For 2012 have we?

11 MR. WILEY: Yes, on direct examination
12 by me. Earlier in this case --

13 MR. McNAMARA: It's just a yes or no
14 question.

15 JUDGE TOREM: I will let the witness
16 answer the question so we can keep the flow going
17 here.

18 A In 2012, I gave back my certificate, yes.

19 JUDGE TOREM: I'm sorry, the dates of
20 that were in July. This goes to the entire operating
21 season, which on your testimony has been May through
22 September.

23 THE WITNESS: Right.

24 JUDGE TOREM: Answer the question as to
25 whether you provided any commuter service.

0332

1 THE WITNESS: I did not provide any
2 commuter service in 2012, no.

3 JUDGE TOREM: Now I'm clear on that.

4 THE WITNESS: All right.

5 Q So you have testified already that you
6 cancelled your certificate, BC 10, which was between
7 Bellingham --

8 A Several times.

9 Q -- and Friday Harbor. Included in that was a
10 sightseeing tour between north and south Bellingham --

11 A Yes.

12 Q -- and that has been cancelled as well.

13 And just six weeks later, is it true that you
14 reapplied for the exact authority that you --

15 A Yes, Sean, it is.

16 JUDGE TOREM: Mr. McNamara, if you ask
17 questions that we already know the answers to,
18 hopefully, we will go into a point, where we are going
19 to get a new question or something else that you can
20 address.

21 MR. McNAMARA: I'm just trying to set up
22 what I have down here.

23 JUDGE TOREM: It's all set up for you in
24 the record. If there is something at the end of the
25 trail that you are setting up, just go straight to it.

0333

1 MR. McNAMARA: Well, I think I am.

2 Q Did you apply -- did you apply for a new
3 certificate simply in order to protest my extension
4 for service?

5 A No.

6 Q The proposed service that you are seeking
7 here, what's different from it than what you've done
8 in the past?

9 A I don't understand your question.

10 Q Sorry. For 12 years you ran summer only.

11 A Yes.

12 Q About four months.

13 A We operated a service to Friday Harbor with
14 flag stops, in a vessel that could accommodate those
15 stops. There's multiple stops along the way that
16 required a smaller vessel, most of the stops.
17 Sinclair Island doesn't even have a dock anymore. The
18 vessel I run to Friday Harbor now could not go to
19 those stops.

20 Q And is it your testimony, with the ISLAND
21 COMMUTER, for 12 years you ran it strictly as a ferry
22 service?

23 A We ran it as a commuter ferry. We also did
24 whale watching. We also did charters. Yes.

25 Q So by saying that -- I guess I'm trying to get

0334

1 to the point that you've already been running it as an
2 excursion/ferry service?

3 A No, actually, that one would go to Friday
4 Harbor and unload its regulated passengers, and then
5 go on a whale watching excursion, and go back to
6 Friday Harbor and pick up its regulated passengers and
7 come home again.

8 Q But the same vessel did that?

9 A Sure. Not at the same time.

10 Q Okay.

11 And how long have you been in the whale
12 watching business, Mr. Schmidt?

13 A I think the first year I started whale
14 watching was 1988 or '89.

15 Q All right.

16 MR. McNAMARA: I have a quick question
17 for the court here. With all of these exhibits, am I
18 going to have a chance later on, or do I need to look
19 at all his exhibits now if I have questions or cross
20 or direct for him?

21 MR. WILEY: Now.

22 JUDGE TOREM: Mr. McNamara, this is your
23 opportunity. You should have already, hopefully,
24 reviewed the documents. They were exchanged weeks
25 ago.

0335

1 MR. McNAMARA: I have.

2 JUDGE TOREM: Do you have specific
3 questions on any one of them?

4 MR. McNAMARA: Several of them. I just
5 wanted to throw that out before I was done with this.

6 JUDGE TOREM: This is your opportunity
7 to cross-examine this witness and all of the exhibits
8 that he sponsored into the record.

9 Q So I see that you have three boats listed
10 here. What is your primary vessel that you are hoping
11 to use this?

12 A As I have said several times now, the VICTORIA
13 STAR II.

14 Q How much fuel does the VICTORIA STAR II burn
15 when you are going 18 knots?

16 A Oh, about 50 gallons an hour.

17 Q So depending on what vessel you use, your
18 overall costs would change, correct?

19 A Sure.

20 Q I just wanted to point out a couple things in
21 Exhibit No. 1, the projections and -- the expense
22 forecast, actually.

23 JUDGE TOREM: So we are looking at
24 Page 2 of that exhibit?

25 MR. McNAMARA: Page 2, yes.

0336

1 A What's your question?

2 Q Under insurance you have \$8,000. Does that
3 cover all three of your vessels?

4 A Nope. I already testified that these are all
5 allocations. They are a percentage of the overall
6 that I am basing on the regulated past percentage of
7 passengers.

8 Q So would that be times three if it was all --

9 A No, it's a percentage. I don't have a number
10 in front of me to give you the actual percentage, but
11 it is a percentage of the overall. You know, my
12 insurance is, I don't know, about \$60,000. It's a
13 percentage of that based on these regulated
14 passengers.

15 Q Okay.

16 A Same with the fuel, same with everything else
17 on this sheet.

18 JUDGE TOREM: Mr. Schmidt, I was going
19 to ask this when Mr. McNamara was done. It might
20 speed things up a bit.

21

22 E X A M I N A T I O N

23 BY JUDGE TOREM:

24 Q What I'm looking at here is Exhibit 1.

25 A Yes.

0337

1 Q You've got a total for the season, projected
2 1900 passengers each direction?

3 A Yes, sir.

4 Q I anticipate these same dates coincide with
5 your excursion service?

6 A Yes, sir.

7 Q And this proposal again, it is the same boat,
8 both services running simultaneously?

9 A Correct.

10 Q About how many passengers do you think that
11 you could get on the excursion side of the house?

12 A 8,000.

13 Q And that's for the season?

14 A Yes.

15 Q So with the day that you carried 10,000 total;
16 is that right?

17 A Yeah.

18 Q I just want to --

19 A For argument sake, yes.

20 Q I just don't want to not double-count your
21 passengers on the ferry because we are counting them
22 one way --

23 A No, they would be separate passengers.

24 Q Each direction is a separate passenger?

25 A These I put in each direction, separate

0338

1 passengers. My excursion passengers are one passenger
2 for the day and they are not included in this list
3 whatsoever.

4 Q That part I understood.

5 A Okay.

6 Q So there's 8,000 round-trip excursion
7 passengers?

8 A Plus these regulated passengers.

9 Q Okay. In the ballpark, if we took -- it is
10 the 3800 out of the total 12,000?

11 A Yes.

12 Q That gives you the percentages?

13 A Right.

14 Q So roughly a quarter to a third?

15 A Yeah, probably did 20 percent.

16 Q Okay.

17 A I guess.

18 JUDGE TOREM: Mr. McNamara, I hope I
19 didn't steal any of your questions, or if I did, that
20 we can move to the next ones.

21 MR. McNAMARA: No, that's fine.

22 Thank you.

23

24

25

0339

1 C R O S S - E X A M I N A T I O N (Continued)

2 BY MR. McNAMARA:

3 Q So it looks like in your new time schedule you
4 are going out in the morning and coming in in the
5 evening, basically.

6 A Yeah, okay.

7 Q And is that what you did with the ISLAND
8 COMMUTER as well?

9 A Yes. We did have a couple years in there
10 where we tried some out-and-back twice, but it wasn't
11 successful.

12 Q And earlier you stated that it is mainly
13 tourists that you have on board your vessel?

14 A Yes.

15 Q Do you believe if folks had the opportunity to
16 come in on a daily basis from the islands in the
17 morning, that they would?

18 A If they could afford it, yes. I do believe
19 there is a demand there, but it is a price-sensitive
20 demand.

21 MR. McNAMARA: I'm trying to rocket
22 through these as quick as I can, guys.

23 Q So the bulk of your business with this boat
24 would be whale watchers?

25 A Excursion passengers, yes.

0340

1 Q If at some point you are -- how many
2 passengers was the VICTORIA STAR?

3 A It is 149.

4 Q So you probably don't pack 149 passengers all
5 the time. If, say, you took 149 passengers of whale
6 watchers, would you reserve seats for commuters?

7 A If we were full of anything, we would put some
8 more capacity on.

9 Q Meaning you would haul over your other boats?

10 A Right.

11 Q The reason I asked that is because you get
12 twice the amount of money from a whale watcher than
13 you will get from a --

14 A No, actually, it's exactly the same.

15 Q As long as they come back, right?

16 A Right.

17 Q Just a couple more.

18 It sounds like you are pretty successful, or
19 you have been successful in the excursion business.

20 A I would like to think so.

21 Q Why would you want to risk that part of your
22 business to try a -- or combine it with a service that
23 Mr. Bryan said is not viable?

24 A Because I really --

25 MR. WILEY: Objection. Objection to the

0341

1 form of that question. Mr. Bryan did not testify that
2 it is not successful per se. I think that miscasts
3 the record. Can we ask the question fairly, please?

4 JUDGE TOREM: Mr. McNamara, just go
5 ahead and rephrase.

6 MR. McNAMARA: I'm not sure I -- I don't
7 really know how to rephrase it that quickly.

8 Q Would you agree, Mr. Bryan testified yesterday
9 that a passenger-only ferry service on its own most
10 likely would not be viable?

11 A Absolutely. That's why I'm trying to combine
12 it with an excursion service that is viable.

13 Q But it sounds like you have combined it in the
14 past.

15 A We have done ancillary things at the same --
16 with the same operation. They have never been
17 combined at the exact same time.

18 Q Okay, moving on here.

19 How many years have you worked with the
20 Commission here?

21 A Since 1980-something, '88.

22 Q Several years.

23 A Seven?

24 Q Several.

25 In all that time, when you filed something

0342

1 with the Commission, did you expect it to be final?

2 MR. WILEY: Objection to the form.

3 A What are you talking about?

4 MR. WILEY: It is too vague, Your Honor.

5 JUDGE TOREM: Sustained.

6 Q When you filed something with the Commission,
7 have you ever had second thoughts and tried to recall
8 it?

9 MR. WILEY: Well, "something" is my
10 objection, Your Honor. I don't know what "something"
11 is. Is it a tariff? Is it a certificate? Is it a
12 time schedule? If we could have some more
13 specificity, I'm not going to object.

14 JUDGE TOREM: Well, I think we could be
15 as broad as possible and just ask the question. Have
16 you ever filed anything with the Commission and had a
17 need to recall it?

18 THE WITNESS: Not that I can recall.

19 Q Once it is in the mail and it is submitted to
20 the Commission, do you feel like the decision has been
21 made?

22 JUDGE TOREM: Mr. McNamara, that's not
23 a --

24 MR. McNAMARA: I'm sorry, I'm trying to
25 say --

0343

1 JUDGE TOREM: I think the previous
2 question was all you really needed to make that point.

3 MR. McNAMARA: Okay.

4 Q Now, this is something we haven't talked about
5 today. I will have to look at your exhibit list. The
6 passenger-only ferry study that you conducted, No. 16,
7 DMS 16.

8 A That I participated in, yes.

9 Q I will have to dig through this. I will try
10 to remember what my point was there. You hauled about
11 4500 people in five months; is that correct?

12 A Three and a half, four months, yeah.

13 Q Three and a half or four months, 4500 people.
14 In the middle of winter, correct?

15 A Correct.

16 Q We have all agreed that running in the winter
17 is pretty tough.

18 A Yeah.

19 Q So back to Exhibit No. 1 here, your ridership
20 forecast for 2013. You project 3800 people the entire
21 summer.

22 A Yeah.

23 Q And that's the busiest time of the year.

24 A Right.

25 MR. McNAMARA: At this time, that's all

0344

1 I have, sir.

2 JUDGE TOREM: Mr. Buzzard, do you have
3 questions for Mr. Schmidt?

4 MR. BUZZARD: No, I don't believe I do,
5 sir.

6 JUDGE TOREM: Mr. Schmidt, I have a
7 couple of questions, just to clarify.

8 THE WITNESS: Yes, sir.

9

10 E X A M I N A T I O N

11 BY JUDGE TOREM:

12 Q The Island Commuter Service was the Friday
13 Harbor combined certificated regulated service for a
14 number of years. Is that my understanding?

15 A Yes, with multiple islands. It concluded with
16 Friday Harbor.

17 Q Friday Harbor was the --

18 A 16 different flag stops.

19 Q Was that the majority of the passengers?

20 A It was the -- well, it was probably
21 60 percent.

22 Q And the other flag stops made up, depending on
23 the day --

24 A Right, Eliza and Sinclair, as you were hearing
25 yesterday.

0345

1 Q And it appears that for whatever reason,
2 service dwindled between 2010 and 2011, and then to
3 zero in 2012?

4 A Well, in 2012, we had disbanded that operation
5 and taken our respective certificates to each company.
6 It wasn't that year, no. I was hoping to, but I
7 couldn't get our rate case through in time.

8 Q The transfer of the portion of your
9 certificate to Mr. McNamara didn't occur until the
10 April/May time frame of --

11 A Yes.

12 Q Was there any notice of discontinuance, to not
13 have the service run as Island Commuter for 2012, that
14 may or may not be in the record?

15 A I don't know, to tell you the truth. I know
16 when we split them back to part, that Island Mariner
17 filed a temporary discontinuance on their half, and I
18 filed a rate case on my portion.

19 Q I believe that it is the Certificate BC 95
20 that is Mr. Buzzard's?

21 A Yes.

22 Q And the discontinuance order I think did start
23 in April of that year.

24 Now, on your side, Mr. Schmidt, you were
25 trying to reestablish some sort of service, but you

0346

1 needed the rate case to do it?

2 A Correct.

3 Q So the people that would have used this
4 service were waiting for somebody to provide it?

5 A Correct.

6 Q How did that rate case turn out? Did you get
7 through it or did you pursue it all the way?

8 A Ultimately, I withdrew it, when we -- when we
9 gave back our certificate, because we never could get
10 it done. We couldn't make it work.

11 Q I think that answers this question, but let me
12 ask it anyway.

13 So had the rate case gone through and you
14 could make it work, you would have an application for
15 commuter-only regulated passengers. That's what the
16 purpose was of the rate case, to support an
17 application for that?

18 A To haul those regulated passengers, yes.

19 Q And it would not have been a combined service
20 as is the current application?

21 A No, I want it to be a combined service.
22 That's what I wanted. I started out as a combined
23 service, and then when -- my understanding was that we
24 could not do that. Then I started working towards the
25 stand-alone. But because all I was operating the year

0347

1 before was an excursion service, we were trying to do
2 a rate case based on excursion service revenues and
3 expenses, and it -- we worked hard at it, the auditor
4 and I, and I finally gave up.

5 Q And it's your opinion that the only way to run
6 a commuter service is in a combination with excursion
7 or some other kind of service on the boat?

8 A Yes.

9 Q And your excursion services, will they still
10 be viable without the commuter service attached?

11 A Yes.

12 Q So one will survive without the other, but not
13 vice versa?

14 A Right. But after all those years doing of it,
15 I would certainly like to continue doing it.

16 Q That's clear to me, your testimony in the
17 record.

18 The relinquishment of the certificate back in
19 July, do you feel that was a mistake --

20 A Yes.

21 Q -- at this point?

22 A Yes, admittedly a mistake on my part.

23 Q No, I'm not trying to assign blame. I'm just
24 trying to understand the background thought process
25 that led to the sequence of events that the record

0348

1 speaks to, but doesn't really tell the full story.

2 A Okay.

3 Q If I understood from the tone and tenor of
4 your testimony today as well, that decision to
5 relinquish the certificate was made only after your
6 dissolution of business with Mr. Buzzard and Island
7 Mariner and an attempt at the rate case to make things
8 work --

9 A Yes.

10 Q -- and being told, you thought, that you
11 couldn't run a combined service?

12 A Yes.

13 Q And so even after that advice, you are
14 submitting this application for a combined service?

15 A Yes.

16 Q As far as your application goes, the question
17 before me is not only fitness, but if I were to award
18 Pacific Northwest Cruises and grant the application,
19 finding you financially fit, would be with the
20 understanding that the financial fitness includes a
21 combined excursion and regulated service, as you
22 described in your testimony?

23 A Yes.

24 Q And so I think that would tie with your
25 earlier indication yesterday, that a ruling from the

0349

1 bench on that matter and the legality of that under
2 the statute would be required?

3 A Yes.

4 Q So now I understand, I think, the full
5 question posed by your application and how it is
6 distinct from Mr. McNamara's, which doesn't have that
7 wrinkle to it.

8 A Right.

9 Q Thank you. That's helpful for me to get this
10 all in context.

11 A Thank you.

12 JUDGE TOREM: Mr. Wiley, do you have any
13 redirect?

14 MR. WILEY: Just a limited amount of
15 redirect, Your Honor, you will be relieved to know.

16

17 R E D I R E C T E X A M I N A T I O N

18 BY MR. WILEY:

19 Q Captain Schmidt, do you have Exhibit 17 in
20 front of you?

21 A That was the new one?

22 Q Yes.

23 A Sure.

24 Q When you received Order No. 1, and up until
25 yesterday when you learned the Commission Staff had at

0350

1 some point, at some unknown point in time retracted
2 its opinion that regulated and unregulated service
3 could not be provided in the same vessel, would there
4 have been any reason in your mind to appeal the
5 cancellation?

6 Do you want me to repeat the question?

7 A I don't understand that.

8 Q When you received this order cancelling your
9 certificate, and up until yesterday, when you were
10 told that the Commission Staff had retracted its view
11 that you couldn't provide regulated and unregulated
12 service in the same vessel, would there have been any
13 reason in your mind to have appealed the cancellation?

14 A No, I thought we couldn't. They said we
15 couldn't do it.

16 Q The other question I have is based on the
17 Whatcom County Council of Government, the study that
18 Mr. McNamara asked you about.

19 A Yes.

20 Q He asked you about the -- I believe that's
21 Exhibit 16. You were asked about transporting 4500
22 people in the winter. Do you recall that question?

23 A Yes.

24 Q He didn't ask you about Page 9 of that study,
25 which I would call your attention to.

0351

1 A Okay.

2 Q Is it true that you transported 4500
3 passengers in a pilot study at an extremely subsidized
4 rate?

5 A Yes, it was only \$10 a person. The federal
6 government picked up the rest of it.

7 Q As a matter of fact, there were commuter
8 books, shown on Page 9, that allowed \$75 for ten
9 one-way trips, did it not?

10 A Yeah, we sold a lot of those.

11 Q Is there any way to sustain that kind of rate
12 level without subsidy?

13 A No, and it even goes -- that report goes on to
14 say that on Page 38.

15 Q Thank you.

16 MR. WILEY: No further questions, Your
17 Honor.

18 JUDGE TOREM: So you can't haul people
19 for ten bucks?

20 THE WITNESS: I wish I could.

21

22 E X A M I N A T I O N

23 BY JUDGE TOREM:

24 Q Mr. Wiley's questions indicated a retraction
25 that you learned about yesterday from Staff's opinions

0352

1 that were discussed in Exhibit 12, and perhaps in
2 Exhibit 13 as well. How did you learn about that?

3 A A discussion in the hallway here yesterday.

4 Q And was it with the same Staff members?

5 A Yes.

6 Q All right. So I understand we will hear
7 rebuttal testimony or clarification from Staff on
8 that.

9 Is it your opinion that you can make a valid
10 application now to do a combined service?

11 A As of today, yes.

12 Q Well, we will pose the same question to Staff,
13 I'm sure.

14 JUDGE TOREM: Mr. Fassio, do you have
15 any additional cross-examine questions?

16 MR. FASSIO: No, Your Honor.

17 JUDGE TOREM: Mr. McNamara?

18 MR. McNAMARA: I just have one more.

19

20 R E C R O S S - E X A M I N A T I O N

21 BY MR. McNAMARA:

22 Q Through the years with the Island Commuter,
23 you indicated that the folks that were riding with you
24 to Friday Harbor were simply commuters?

25 A No.

0353

1 Q No?

2 A No.

3 Q So you could buy a whale watching ticket in
4 Bellingham and ride the boat to Friday Harbor and then
5 go whale watching?

6 A As a combination, sure. That's part of the
7 ancillary revenues I've been talking about.

8 Q So the service has been combined for many
9 years, has it not, in a sense?

10 A Not in the same manner, because that's -- we
11 had to -- in the past, the rule was if you want to go
12 point to point in any manner whatsoever, you had to
13 have a certificate to do that. We never -- before the
14 excursion rules, we never -- that's the way we had to
15 do it.

16 Q Okay.

17 MR. McNAMARA: That's all I have.

18 JUDGE TOREM: Mr. Buzzard, any questions
19 on your end?

20 MR. BUZZARD: No, sir, not at this time.

21 JUDGE TOREM: Thank you, Mr. Schmidt.

22 THE WITNESS: Thank you.

23 JUDGE TOREM: That closes testimony,
24 unless Mr. Wiley has anything else?

25 MR. WILEY: No more from the applicant.

0354

1 We do have some shippers. I don't know where they
2 are, but I will have my client check on that. We want
3 to work through lunch.

4 THE WITNESS: I told them all eleven
5 o'clock. I can text them.

6 JUDGE TOREM: Let's take a brief recess.
7 We will stay in place, but we will go off the record.

8 (A brief recess.)

9 JUDGE TOREM: We are going to go back on
10 the record now. It's ten minutes to 12:00. We've got
11 Ms. Randi Axelsson, who has joined us on the
12 Commission's bridge line.

13 I am going to administrator an oath of witness
14 to you. Mr. Schmidt's attorney, David Wiley, is going
15 to pose a series of questions.

16 THE WITNESS: Okay.

17 JUDGE TOREM: Once you have answered
18 those questions, I will see if the Commission's
19 attorney, Assistant Attorney General Michael Fassio,
20 has any questions for you in cross-examination. There
21 are two other parties to the case, also entitled to
22 ask those same cross-examination questions. They
23 won't be the same questions, if there are any, but
24 they are entitled to pose some. That is Mr. Sean
25 McNamara and Mr. Terry Buzzard.

0355

1 THE WITNESS: Okay.

2 JUDGE TOREM: So I'm sorry for a rapid
3 succession of people you can't see posing questions.

4 Before we do, if you will raise your right
5 hand, I'm going to give you that oath of witness.

6

7 RANDI AXELSSON, witness herein, having been
8 first duly sworn on oath,
9 was examined and testified
10 as follows:

11

12 JUDGE TOREM: Thank you.

13 Mr. Wiley.

14

15 D I R E C T E X A M I N A T I O N

16 BY MR. WILEY:

17 Q Hi, Ms. Axelsson. My name is Dave Wiley, and
18 I represent Drew Schmidt and Pacific Cruises
19 Northwest, Inc. Thank you for your time today.

20 A Sure.

21 Q Could you please state and spell your last
22 name for the record and provide your business address?

23 A Absolutely. I want to make sure that Randi is
24 spelled with an I.

25 Q Okay.

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1 A Last name Axelsson is A-X-E-L-S-S-O-N. My
2 business is Silver Reef Hotel Casino Spa.

3 Q And in what town is Silver Reef located,
4 please?

5 A Ferndale, Washington.

6 Q And in what capacity are you employed by
7 Silver Reef?

8 A Hotel sales manager.

9 Q What are your job responsibilities, just in
10 general?

11 A Bringing in large tour groups and corporate
12 entities into the hotel.

13 Q And in that capacity, do you have a need to
14 seek foot ferry service between Bellingham and Friday
15 Harbor?

16 A Absolutely.

17 Q And could you explain for the record what use
18 you would make of a commercial ferry service between
19 Friday Harbor and Bellingham?

20 A It's actually something that I offer to my
21 tour groups, when I'm out offering itineraries for
22 them, so they are not just here at my place. Having
23 the opportunity to have that right here in Bellingham,
24 easily accessible for them, is very important, as
25 another thing to offer the groups in this area.

0357

1 Q And in the months between May and September,
2 would that be when you would utilize a commercial
3 ferry?

4 A Absolutely.

5 Q And is that a busy tourist season for you in
6 your business?

7 A Very much so.

8 Q Are you personally someone who might use a
9 commercial ferry service between Bellingham and Friday
10 Harbor?

11 A I could see myself using it, yes.

12 Q And how many groups do you think you could
13 potentially schedule on a commercial ferry vessel
14 between May and September of every year?

15 A Six months times -- probably around 36 or
16 more.

17 Q Groups? Would that be total groups or
18 passengers or both?

19 A That would be groups of passengers. My groups
20 generally consist of about 60 people.

21 Q So a vessel of 149 passengers, then, would be
22 something that you would utilize for the movement
23 between Bellingham and Friday Harbor; is that correct?

24 A Absolutely, yes.

25 Q Could you tell us, Ms. Axelsson, why you are

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1 here today in support of the application?

2 A It's always been an important aspect for me to
3 offer to my groups. The San Juan Islands are
4 important, we are finding, from a lot of these groups
5 coming in from around the United States. It's just a
6 very important option for me to offer these groups
7 when they come into our area.

8 Q And would some of your groups necessarily
9 disembark at Friday Harbor and maybe stay overnight or
10 see some of the island?

11 A It's possible, yes.

12 Q And what would the effect be on you if this
13 application for service between Friday Harbor and
14 Bellingham were to be denied?

15 A If I lost the opportunity to share the San
16 Juan Islands with my groups, there would be several
17 coming from outside the area that may not consider
18 saying here in my area.

19 Q So it would be an economic impact, is that
20 what you are suggesting?

21 A Yes, sir.

22 Q Thank you very much, Ms. Axelsson.

23 MR. WILEY: I have no further questions
24 and I would tender the witness.

25 JUDGE TOREM: Mr. Fassio?

0359

1 C R O S S - E X A M I N A T I O N

2 BY MR. FASSIO:

3 Q Good morning, Ms. Axelsson, or almost good
4 afternoon. This is Mike Fassio.

5 MR. WILEY: Tell them who you represent.

6 Q I represent the Commission.

7 MR. FASSIO: Thank you, Mr. Wiley.

8 Q I represent the Commission Staff.

9 A Okay.

10 Q They are the Utilities and Transportation
11 Commission Staff.

12 A Okay.

13 Q We are reviewing the application.

14 A Okay, thank you.

15 Q Do your groups at Silver Reef Casino -- you
16 have testified that you would use the service May
17 through September of every year. Do you see groups
18 coming in other times of the year as well?

19 A Yes.

20 Q So you would see them in the wintertime, too?

21 A Yes.

22 Q Do you think that in addition to a -- the
23 operation in the summer, that your groups would
24 benefit from the service at other times of the year as
25 well?

0360

1 A Yes.

2 Q And would you, yourself -- would you use a
3 service -- when would you use the service? Would it
4 be just in the summertime, do you think, or would you
5 also use it at other time of the year?

6 A I could see myself using it at any time of the
7 year.

8 Q And how long have you been with Silver Reef
9 Casino?

10 A Five years.

11 Q Thanks. I have no further questions.

12 A Thank you.

13 JUDGE TOREM: Mr. McNamara, any
14 questions?

15 MR. McNAMARA: No questions.

16 JUDGE TOREM: Mr. Buzzard?

17 MR. BUZZARD: No, sir, not at this time.

18 Thank you.

19 JUDGE TOREM: Ms. Axelsson, I have one
20 question for you.

21

22 E X A M I N A T I O N

23 BY JUDGE TOREM:

24 Q You mentioned at the end of Mr. Wiley's
25 questioning that your groups may not come --

0361

1 Is it Ferndale?

2 A Correct.

3 Q -- into your area if that tour option to the
4 San Juans wasn't available. Do you have an idea if
5 they would just not come at all or if they would go
6 somewhere else?

7 A They would go to another state offering, I
8 would imagine. They wouldn't even come to our area in
9 the state. We are finding that the San Juan Islands
10 are getting a lot of new press out into the tourism
11 world and it is a huge draw. If I couldn't offer that
12 from my area, they probably just wouldn't come to the
13 area.

14 Q Okay.

15 So they would go somewhere else, either
16 further north or further south that did offer access?

17 A Yes.

18 JUDGE TOREM: Mr. Wiley, do you have a
19 follow-up question?

20 MR. WILEY: Yes, just one question.

21

22 R E D I R E C T E X A M I N A T I O N

23 BY MR. WILEY:

24 Q Ms. Axelsson, Dave Wiley again, the attorney
25 for Pacific Cruises.

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1 Mr. Fassio asked you if you would use the
2 service if it was available in the winter. My
3 question to you is, if offering winter service made a
4 commercial ferry service unviable, in other words, it
5 could not sustain wintertime operations, would you
6 prefer that they be able to offer service in the
7 summer and shoulder season and remain available,
8 versus offering year-round service and not be able to
9 stay in business?

10 A Obviously, I would like them to stay in
11 business. Whatever operating time works best for them
12 to stay in business is what my preference would be.

13 Q Thank you very much.

14 A Uh-huh.

15 MR. BUZZARD: Your Honor?

16 JUDGE TOREM: Mr. Buzzard?

17 MR. BUZZARD: Yes, one question, if I
18 may.

19 JUDGE TOREM: Go ahead.

20

21 C R O S S - E X A M I N A T I O N

22 BY MR. BUZZARD:

23 Q Out of your 36 groups, I believe you said 60
24 people a group, what do you find, do you find most of
25 them go out because they want to go to Friday Harbor

0363

1 per se, or because they want to go whale watching? Do
2 you have a percentage of that?

3 A I don't have an under oath percentage, but I
4 notice that a large percent of the people prefer to go
5 over to Friday Harbor and spend some time actually on
6 the island.

7 Q And then go whale watching, or do they not
8 care about the whale watching aspect?

9 A The whale watching is a wonderful addition to
10 the tour and the trip to the island.

11 Q Thank you.

12 A Uh-huh.

13 JUDGE TOREM: Counsel, any other
14 questions for Ms. Axelsson?

15 Thanks, ma'am. I appreciate you calling in
16 and waiting for us. You can hang up on your end.

17 THE WITNESS: Okay. Thank you.

18 JUDGE TOREM: I'm going to take the next
19 witness who is available, Mr. Jeff Ehlers.

20 THE WITNESS: Yes, I'm here.

21 JUDGE TOREM: If you will raise your
22 right hand.

23 THE WITNESS: Okay.

24

25

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1

2 JEFF EHLERS, witness herein, having been
3 first duly sworn on oath,
4 was examined and testified
5 as follows:

6

7 JUDGE TOREM: Can you state your first
8 and last name and spell them both for the record.

9 THE WITNESS: My name is Jeff Ehlers.

10 That's J-E-F-F, Jeff, and Ehlers is E-H-L-E-R-S.

11 JUDGE TOREM: Okay, thank you.

12 And you heard my instructions to Ms. Axelsson,
13 I presume.

14 THE WITNESS: I caught most of it.

15 JUDGE TOREM: Well, let me be very
16 concise and just suggest Mr. David Wiley is the
17 attorney who will start asking you the direct basic
18 questions, and a series of other attorneys, who will
19 identify themselves if they have questions, or other
20 parties to this case may also ask you questions in
21 cross-examination.

22 THE WITNESS: Okay.

23 JUDGE TOREM: You are under oath now.

24 Mr. Wiley, please go ahead.

25

0365

1 D I R E C T E X A M I N A T I O N

2 BY MR. WILEY:

3 Q Good afternoon, Mr. Ehlers. I see it is
4 12:01, so I can say that. As you heard, I represent
5 Drew Schmidt and Pacific Cruises Northwest, Inc. I
6 just have a few questions for you.

7 First of all, could you provide your business
8 address for the record?

9 A It would be 5375 Everson Goshen Road, in
10 Bellingham.

11 Q Are you self-employed, do I understand?

12 A Yes, I am.

13 Q And what business are you in, please?

14 A Automotive repair industry.

15 Q And in that industry and in that business, do
16 you have occasional need to have service between
17 Bellingham and Friday Harbor in commercial ferry
18 transportation?

19 A Oh, yes.

20 Q Could you describe for the record what that
21 need is, please?

22 A Well, the need would be for me to be able to
23 go --

24 JUDGE TOREM: I'm sorry, did --

25 A -- get on the ferry and --

0366

1 JUDGE TOREM: Excuse me, Mr. Ehlers, we
2 are going to pause your testimony just for a minute.
3 We had another witness, I believe Ms. Christine Smith,
4 call in.

5 Ms. Smith, if you will just stand by and wait
6 for Mr. Ehlers to finish his testimony. I'm sorry,
7 it's a little awkward sharing one phone line here.

8 MS. SMITH: That's fine.

9 JUDGE TOREM: Mr. Ehlers, you can please
10 start that question and answer over. Mr. Wiley asked
11 you why you would need that service to the island.

12 A It would be beneficial for me to be able to go
13 from Bellingham and go over to Friday Harbor to
14 diagnose cars. A lot of people can fix their own car,
15 but they don't know what's wrong with it. For me to
16 be able to go over there with my equipment, just carry
17 on, to diagnose cars, that would be great.

18 Q Is the Washington State Ferry a convenient
19 alternative for you?

20 A Not necessarily, because I've got to drive
21 clear down to Anacortes to go do that, then you've got
22 the car and everything else. This just makes it a
23 whole lot quicker.

24 Q And when you have to go to Friday Harbor, I
25 assume that's sort of on an emergent basis, in terms

0367

1 of a customer saying that they need your diagnostic or
2 repair skills; is that correct?

3 A Yes, yes, very much so.

4 Q And so can you estimate how many times you
5 might, during a period from May to September, need to
6 go on a commercial ferry, would it be one or two or
7 three or four? Do you have any quantification of
8 that?

9 A Not exactly. I've had calls in the past to go
10 over there and do that. I just haven't really done it
11 because it's too hard to do. I would probably say at
12 least four or five times.

13 Q And is that a cost that you anticipate either
14 sharing with your customer or passing through to your
15 customer, in terms of the transportation, if it's an
16 emergency?

17 A Yes.

18 Q And could you tell us, then, why you are here
19 today in support of an application by Pacific Cruises
20 Northwest, Inc., to authorize service between
21 Bellingham and Friday Harbor?

22 A Well, I would really like that service, so I'm
23 able to provide that service for my customers.

24 Q Do you have --

25 A Otherwise, it's almost -- it's almost not

0368

1 really cost effective otherwise, to be able to drive a
2 rig all the way down to Anacortes. It just takes too
3 long.

4 Q And your time is valuable, I assume, correct?

5 A I seem to think so.

6 Q Do you also have relatives, friends and other
7 acquaintances who might take advantage of
8 point-to-point commercial ferry service between
9 Bellingham and Friday Harbor?

10 A Yes, as a matter of fact I do. The guy I used
11 to work for would be Todd at Unlimited Service. His
12 folks have a -- kind of a cattle ranch there. I
13 actually talked to Todd about it. He has a parts
14 service, too, for automotive. He would really like to
15 be able to ship product through that.

16 Q Can you just summarize why you are here today
17 on the telephone in support of this application?

18 A I'm here because Drew called me up and asked
19 me to be a witness. I would really like to see this
20 service happen.

21 Q Thank you. No further questions.

22 MR. WILEY: I tender the witness, Your
23 Honor.

24 JUDGE TOREM: Mr. Fassio, any questions
25 for this witness?

0369

1 MR. FASSIO: Yes.

2

3 C R O S S - E X A M I N A T I O N

4 BY MR. FASSIO:

5 Q Good afternoon, Mr. Ehlers. My name is
6 Michael Fassio. I am an assistant attorney general,
7 and I represent the UTC Staff that is reviewing this
8 application that you have spoken of, and another
9 application that is also before the Commission, to
10 provide ferry service.

11 A Uh-huh, yes.

12 Q So do you also foresee -- you have testified
13 about business reasons to visit Friday Harbor. Do
14 you also have -- would you also visit for pleasure?
15 Do you ever visit any of the islands for personal or
16 pleasure reasons, in addition to business reasons?

17 A I think I would. I would have relatives come
18 up from Arizona. And, you know, kind of going on a
19 boat and going to an island -- obviously, there's no
20 water in Arizona to do something like that. I can see
21 us doing that, I would say that, when they come up.

22 Q And I assume you run your business all year
23 round?

24 A Yes.

25 Q And so would you also -- do you also have

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1 business in Friday Harbor the other times of the month
2 [sic], not in the summertime, so, for example, from
3 September through April?

4 A Yes, cars don't really have a sense of timing
5 when to break down. They kind of break down all year
6 long, so it would be beneficial for me to be able to
7 take care of that need.

8 Q And how are you familiar with Mr. Schmidt?

9 A Our kids go to the same school together.

10 Q Thank you very much. I don't have any other
11 questions.

12 JUDGE TOREM: Mr. McNamara, anything?

13 MR. McNAMARA: Yes, just a couple here
14 for you, Jeff.

15

16 C R O S S - E X A M I N A T I O N

17 BY MR. McNAMARA:

18 Q This is Sean McNamara representing Bellingham
19 Water Taxi. We actually spoke in brief a couple weeks
20 ago.

21 A Yes.

22 Q How are you doing?

23 A Good.

24 Q So did you ever take the Island Commuter
25 Service to Friday Harbor?

0371

1 A I never have, no.

2 Q Were you aware that Drew had a company called
3 Island Commuter and offered this service to Friday
4 Harbor in the past?

5 A Yes.

6 Q But in the last 12 years or so that he ran the
7 Island Commuter, you never went to Friday Harbor with
8 him?

9 A I personally didn't. I have had my
10 mother-in-law and my family and stuff go to Friday
11 Harbor with him on that cruise. I believe it was a
12 crab cruise or something of that nature. I'm not
13 100 percent sure what it was.

14 Q So you are aware that this is not actually an
15 absolutely new service?

16 MR. WILEY: Well --

17 JUDGE TOREM: Mr. McNamara, let's limit
18 it to his testimony, as to why he wants to make use of
19 it now.

20 MR. McNAMARA: No further questions.

21 JUDGE TOREM: Mr. Buzzard, any
22 questions?

23

24

25

0372

1 C R O S S - E X A M I N A T I O N

2 BY MR. BUZZARD:

3 Q I guess the only question I would have would
4 be when your family, brother-in-law, et cetera, went
5 on that trip, was that free, gratis, from Drew or did
6 he say -- did he say it was -- or have --

7 A I'm sorry, I can't quite understand you.

8 JUDGE TOREM: Mr. Buzzard --

9 Q When you did make that trip, or when your
10 brother-in-law and your family went to Friday Harbor,
11 was that free, gratis, a trade-out, or did you just
12 stand up and pay?

13 A I believe my wife paid for that, that would be
14 correct.

15 Q Okay. That's all I have.

16 JUDGE TOREM: Mr. Wiley, any follow-up
17 questions?

18 MR. WILEY: No, none, Your Honor.

19 JUDGE TOREM: Mr. Ehlers, thank you for
20 your patience and your testimony. I don't see any
21 other questions ready to be posed here. You can hang
22 up on your end.

23 THE WITNESS: All right. Thank you.

24 JUDGE TOREM: Ms. Christine Smith, are
25 you still on the line?

0373

1 MS. SMITH: I am, yes.

2 JUDGE TOREM: Thank you for your
3 patience. I am the administrative law judge, Adam
4 Torem, and I need to swear you in to testify. Similar
5 questions I think will be posed to you, as you just
6 heard Mr. Ehlers answer.

7 David Wiley is the attorney who will ask
8 questions first, on behalf of Mr. Drew Schmidt and
9 Pacific Cruises Northwest, and then the other parties,
10 you have probably picked up on, have the right to ask
11 you questions as well.

12 Ma'am, if you will raise your right hand.

13

14 CHRISTINE SMITH, witness herein, having been
15 first duly sworn on oath,
16 was examined and testified
17 as follows:

18

19 JUDGE TOREM: Can you state your first
20 and last name and spell both for the record, please?

21 THE WITNESS: Christine,
22 C-H-R-I-S-T-I-N-E, Smith, S-M-I-T-H.

23

24

25

0374

1 D I R E C T E X A M I N A T I O N

2 BY MR. WILEY:

3 Q Good afternoon, Ms. Smith. Dave Wiley here.

4 Could you provide your business address for
5 the record?

6 A My business address is P.O. Box 1431,
7 Bellingham, Washington 98227.

8 Q And by what company are you employed?

9 A I am employed by Northwest Navigation Company.

10 Q And could you describe what your job
11 responsibilities are at Northwest Navigation?

12 A I'm the vice president of Northwest
13 Navigation, and we provide tours in the San Juan
14 Islands, and the inside passage in Southeast Alaska.

15 Q So does that mean --

16 A Charter boat. Yeah, charter boat tours,
17 overnight, multiple days.

18 Q In that capacity, could you please describe
19 what either your commercial or personal travel needs
20 would be between Bellingham and Friday Harbor on a
21 commercial ferry?

22 A On a commercial ferry? We do -- occasionally
23 we do a lot of boat charters, where we will have other
24 passengers show up halfway through a trip, and having
25 them come into Bellingham, and then go straight from

0375

1 Bellingham to Friday Harbor, would be very useful for
2 us.

3 Q Would they, I assume, pick up your vessel or
4 the chartered vessel in Friday Harbor or on San Juan
5 Island?

6 A Yes, in Friday Harbor.

7 Q And so --

8 A And we could also do Roche Harbor as well.
9 That would be useful.

10 Q So that is a service that would be
11 advantageous to you?

12 A Yes, it would be very advantageous to us.

13 Q Would you or any of your relatives, friends or
14 other acquaintances potentially use a commercial ferry
15 service between Bellingham and Friday Harbor?

16 A Yes, many people that we know would like to go
17 to Friday Harbor, but often going down to Anacortes is
18 a bit of a hassle.

19 Q Yes, it --

20 A It would be easier to do it from Bellingham.

21 Q So would the provision of regulated service
22 between Bellingham and Friday Harbor be of benefit and
23 convenience to your company?

24 A Yes, it would.

25 Q Could you tell us today why you are here in

0376

1 support of this application?

2 A I'm here in support of the application because
3 I believe it would be good for Bellingham, not just my
4 business, but other tourism businesses, and I
5 believe -- like hotels and all of that. And I have
6 known Drew for a very long time. He helped me get
7 started in my business and definitely has given us
8 some help over the years, just I guess advisory-type
9 help.

10 Q And do you know him to be a reputable and
11 experienced operator in this field?

12 A Yes, I do.

13 MR. WILEY: No further questions, Your
14 Honor.

15 JUDGE TOREM: Mr. Fassio?

16

17 C R O S S - E X A M I N A T I O N

18 BY MR. FASSIO:

19 Q Good afternoon, Ms. Smith. My name is Michael
20 Fassio, I am counsel for UTC Staff.

21 How long have you been with Northwest
22 Navigation?

23 A We started the business in 1998.

24 Q And when, during the course of the year, do
25 you foresee yourself -- or you've testified as to the

0377

1 need that you and others would use this service. When
2 during the course of the year would you use it?

3 A For our business, to pick up passengers, would
4 be from sort of the end of April until the middle of
5 October. And then for my family trips and stuff like
6 that, we would -- if we had people from out of town,
7 we would like to take people out to the islands during
8 the winter. I just spent a weekend over on Orcas
9 Island, and would have liked to have been able go
10 there directly from Bellingham, as opposed to driving
11 all the way down to Anacortes and putting our car on
12 the ferry and all of that.

13 Q Okay, thank you.

14 JUDGE TOREM: Mr. McNamara?

15

16 C R O S S - E X A M I N A T I O N

17 BY MR. McNAMARA:

18 Q Hi, Christine. My name is Sean McNamara. I
19 represent Bellingham Water Tax. Just one quick
20 question for you, hopefully.

21 Are you aware that this service has been
22 offered in the past?

23 A Yes, I am.

24 Q And did you ever take it to Friday Harbor?

25 A Yes, I did.

0378

1 Q Okay, thanks.

2 JUDGE TOREM: Mr. Buzzard, any questions
3 for Ms. Smith?

4 MR. BUZZARD: Yes.

5

6 C R O S S - E X A M I N A T I O N

7 BY MR. BUZZARD:

8 Q Christine --

9 JUDGE TOREM: Mr. Buzzard, can you speak
10 up?

11 MR. BUZZARD: Yes.

12 Q Christine, are you David Bean [phonetic]
13 Christine?

14 A Yes, I am.

15 Q And you are saying that you went to Orcas
16 Island here a while back, but Drew doesn't go to Orcas
17 Island, so you obviously had to find some other way to
18 get there?

19 A I was just saying that ferry service to the
20 islands would be good. Friday Harbor is great because
21 then we could take inter-island ferry from Friday
22 Harbor over to Orcas.

23 Q I got you. That's all I have.

24 JUDGE TOREM: Any other follow-up for
25 this witness?

0379

1 MR. WILEY: None, Your Honor.

2 JUDGE TOREM: Ms. Smith, thank you very
3 much for your time today. You can hang up on your
4 end.

5 THE WITNESS: Okay, thank you.

6 MR. WILEY: Thank you.

7 JUDGE TOREM: Mr. Wiley, we've got your
8 shipper witnesses on in record time.

9 MR. WILEY: Particularly for the
10 undersigned.

11 Your Honor, the applicant at this time would
12 rest, with the right to cross-examine any rebuttal
13 witnesses.

14 JUDGE TOREM: So We have had all of
15 Mr. McNamara's case at yesterday's close of business.
16 We are now at 12:15 and we are done with Mr. Schmidt's
17 case. I think we just have the two presentations
18 left, and I want to make sure we are good to keep
19 going. Everybody wants to press on as originally
20 planned?

21 All right. Do we need a quick break before we
22 swear in Mr. Buzzard?

23 MR. WILEY: Not before Mr. Buzzard. I
24 need to talk to Mr. Fassio.

25 JUDGE TOREM: Mr. Buzzard, are we ready

0380

1 to swear you in and get your testimony in this matter?

2 MR. BUZZARD: What little I have, yes,
3 sir.

4 JUDGE TOREM: I understand that it will
5 be short.

6 If you will, where you are, raise your right
7 hand.

8 MR. BUZZARD: It's up.

9

10 TERRY BUZZARD, witness herein, having been
11 first duly sworn on oath,
12 was examined and testified
13 as follows:

14

15 JUDGE TOREM: All right. You are going
16 to give a narration as to what your protest is about
17 for both of these applications, if I understand
18 correctly, and then it will be subject to cross-exam.
19 You are a little bit light coming through on the
20 microphone.

21 MR. BUZZARD: I'll try and speak up.

22 JUDGE TOREM: Thank you. I will turn up
23 the volume here. Go ahead, sir.

24 MR. BUZZARD: I guess just so I get this
25 straight in my own head, obviously, it appears that

0381

1 the excursion permit and a schedule permit, we are
2 trying to combine both of those; is that correct?

3 JUDGE TOREM: Mr. Buzzard, this is your
4 time to testify. I think asking that question is
5 better reserved for the Commission's witness, who will
6 testify after you.

7 MR. BUZZARD: All right, sir.

8 JUDGE TOREM: So go ahead.

9 MR. BUZZARD: I really don't have
10 anything at this time, then, Your Honor. I could
11 see -- yeah, I can share some opinions, but that
12 sounds like not what we want to do at this time.

13 JUDGE TOREM: Well, Mr. Buzzard, I know
14 you filed a protest to both of these. Did you want to
15 state the factual reasons regarding and related to
16 your protest, or do you simply want to reserve the
17 right to file a closing statement of some sort?

18 MR. BUZZARD: I would prefer to reserve,
19 if I may, Your Honor.

20 JUDGE TOREM: All right. I think what
21 we need to do now is take a brief break, for about
22 five minutes. We are going to go off the record now
23 and allow Mr. Wiley and Mr. Fassio to have a brief
24 discussion, and then I anticipate we will have one
25 additional witness from Commission Staff when we come

0382

1 back.

2 (A brief recess.)

3 JUDGE TOREM: We are ready to go back on
4 the record. It is shortly after 12:30. I've got
5 Mr. Terry Buzzard back on the line.

6 Mr. Buzzard, I know you took an oath of
7 witness and actually didn't have any testimony you
8 chose to provide directly. I did have some questions
9 I needed to ask you.

10

11 E X A M I N A T I O N

12 BY JUDGE TOREM:

13 Q I am looking at your certificate, BC 95. It
14 is an exhibit that was submitted for cross-examination
15 in advance by Mr. Fassio. We will mark it as TB 1.

16 You still hold the certificate subject to a
17 discontinuance; is that correct?

18 A Yes, sir.

19 Q And again speak up. I think you said "yes,
20 sir"?

21 A Yes, sir, that is correct.

22 Q And according to an order issued by the
23 Commission back on April 26th of 2012, it is in Docket
24 TS-120418, you were granted a discontinuance for
25 12 months, that will expire at the end of April 2013;

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1 is that correct?

2 A Yes, sir.

3 Q And one of the paragraphs in the order portion
4 of that document says that should an immediate need
5 arise for commercial ferry service, your company,
6 Island Mariner Cruises, must be prepared to resume
7 service to meet those needs, and if not, the
8 Commission will consider that your company has waived
9 its interest in the commercial ferry certificate and
10 grant authority to another carrier prepared to meet
11 the needs of the traveling public.

12 Do you understand that as well?

13 A Yes, sir.

14 Q And my understanding is these two applications
15 before me today are seeking to essentially take your
16 authority under BC 95 and make it their own. Is that
17 your understanding as well?

18 A No, my understanding is they want to run
19 parallel to me.

20 Q That's if you are running; is that correct?

21 A I'm sorry, sir?

22 Q That's if you are running and your certificate
23 is not cancelled by the Commission; is that correct?

24 A Correct. My understanding is they want to run
25 parallel to me, however, not providing all the stops.

0384

1 Q But they would also want to provide service to
2 Friday Harbor, which is included in your certificate?

3 A Yes, sir.

4 Q Now, the question I had written down for you,
5 with all that background, is whether you are now able
6 to state with any certainty your intention or ability
7 to resume service for the stops, including Friday
8 Harbor, on your schedule on or before April 30, 2013?

9 A That is my intention, but it depends on the
10 outcome of this hearing, sir.

11 Q Okay. So you are, right now --

12 A There's two things that would enter into it:
13 My finding the vessel that I want and the outcome of
14 this hearing to use the vessels that I have.

15 Q If I understand correctly, then, you have a
16 vessel now?

17 A Yes, sir.

18 Q And depending on the outcome of this hearing,
19 you may be looking for a different vessel to provide
20 the same service?

21 A Well, no, I'm looking for a different vessel
22 no matter what the outcome of the hearing is. The
23 question would be if I do not find the vessel that I'm
24 looking for by May 1, then the outcome of this hearing
25 would pertain to using the vessels that I presently

0385

1 have.

2 Q Well, let me just ask it point-blank,
3 Mr. Buzzard. Is it your intention to waive your
4 interest in this route and have this Commission cancel
5 your certificate?

6 A No, absolutely not.

7 Q And do you intend to resume service on or
8 before April 30th of 2013?

9 A Yes, I do.

10 Q And that service will include Friday Harbor;
11 is that correct?

12 A Well, yes, but I repeat, if I can find the
13 vessel I'm looking for, which I think I have found,
14 then yes. Yes, yes, all the way through. Otherwise,
15 my continuing to use the certificate would depend, I
16 guess, on the outcome of this hearing, whether you
17 allow an excursion vessel and a passenger vessel to be
18 one and the same.

19 Q Right now, though, you are the only remaining
20 certificate holder with Friday Harbor in your
21 certificate. Is that your understanding?

22 A Yes, sir.

23 Q And you intend to operate that service come
24 this summer season, May through September?

25 A Once again, if I find the vessel that I am

0386

1 looking for, that is correct.

2 Q Okay.

3 A Otherwise, it depends, I guess, on whether an
4 excursion service and a schedule can be one and the
5 same, then I will use the vessel I have. If it does
6 not become one and the same, then I might drop the
7 certificate.

8 Q But you are not stating a desire to drop your
9 certificate today?

10 A Absolutely not.

11 Q That's what I really needed to know in the
12 context of the hearing going forward.

13 A The problem I have, Mr. Schmidt referred to
14 earlier, that some of the stops on the certificate,
15 their docks and facilities are so small you cannot get
16 a larger vessel into them.

17 Q No, I understand the dilemma of vessel choice
18 to serve the entirety of your route. I'm trying to
19 focus a little bit more toward the Friday Harbor
20 nature of things.

21 Do you ever foresee having a route without
22 Friday Harbor, if you are going to resume?

23 A No, sir. I personally don't think you can
24 have a route without Friday Harbor.

25 Q Those were the questions I needed to ask you,

0387

1 to make sure as part of your protest and part of these
2 other documents that have been referred to in the
3 record.

4 Let me see if other counsel have questions for
5 you. I think it is somewhat confusing the way you
6 have stated it, but that you do intend to resume
7 service and you do intend to continue to serve Friday
8 Harbor one way or another.

9 JUDGE TOREM: Mr. Wiley, do you have
10 questions for Mr. Buzzard?

11 MR. WILEY: Just one.

12

13 C R O S S - E X A M I N A T I O N

14 BY MR. WILEY:

15 Q Mr. Buzzard, I am looking at your certificate,
16 and it does provide for service between Bellingham and
17 Friday Harbor via, and lists a number of islands, does
18 it not?

19 A That's correct.

20 Q Do you interpret that to require passage
21 through those islands and/or stops along the way to
22 get to Friday Harbor?

23 A That would be correct.

24 Q Okay. Thank you.

25 MR. WILEY: No further questions.

0388

1 A But Mr. Wiley, to repeat, as Mr. Schmidt
2 testified, it takes a certain size vessel to stop at
3 some of those stops along the way.

4 Q Understood. Thank you, Mr. Buzzard.

5 A By boat is 110 feet and it can't deal with a
6 20-foot dock.

7 Q Understood, thanks.

8 JUDGE TOREM: Mr. Fassio, any questions
9 for this witness?

10

11 C R O S S - E X A M I N A T I O N

12 BY MR. FASSIO:

13 Q Good afternoon, Mr. Buzzard.

14 A Good afternoon.

15 Q If and when you do resume service, would you
16 be resuming service on a seasonal basis only or is it
17 a year-round service?

18 A You know, Mr. Fassio, I cannot answer that at
19 the moment, I guess, to the full extent. It would
20 again depend on the vessel that I might find. I would
21 like it to be at least partially year round, but boy,
22 that's a tough go.

23 If the Commission is at all interested, I can
24 name you off some people that have attempted that over
25 the years.

0389

1 JUDGE TOREM: That's not necessary,
2 Mr. Buzzard. Just answer his question as to whether
3 you want to operate seasonally or year round.

4 A I would like to operate year round.

5 Q Historically, you have operated only a
6 seasonal service, correct?

7 A Yes, sir.

8 Q And have you ever had any compliance issues
9 with the Commission? In other words, has the
10 Commission --

11 A No, sir.

12 Q Has the Commission ever cited you for any rule
13 or tariff or statutory violations?

14 A Not that I'm aware of. I've been doing this
15 since '62. It's a little hard to remember back. No,
16 I believe there's no way that they have ever cited me
17 for anything.

18 Q Thank you, Mr. Buzzard.

19 JUDGE TOREM: Mr. McNamara, any
20 questions for Mr. Buzzard?

21 MR. McNAMARA: Sure.

22 JUDGE TOREM: You don't have to ask
23 questions, but if you have some --

24 MR. McNAMARA: I just have one question.

25

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1 C R O S S - E X A M I N A T I O N

2 BY MR. McNAMARA:

3 Q Terry, it's Sean here, from Bellingham Water
4 Taxi.

5 A Yes.

6 Q Do you believe a boat that could travel at a
7 higher speed might offer a better service than the
8 slower vessels that have been operating for the past,
9 I don't know, 25 years?

10 A Absolutely.

11 Q Thank you.

12 JUDGE TOREM: Anything else?

13 MR. McNAMARA: No, nothing more from me.

14 JUDGE TOREM: Mr. Buzzard, thank you.

15 I'm sorry, I should have remembered to ask you that
16 before the break. I think I needed it as part of the
17 record, given your protest and given the current
18 suspension, discontinuance on your certificate and how
19 it plays into the overall picture.

20 I think we are ready now for Ms. Ingram.

21 While Ms. Ingram is taking her seat,
22 Mr. Fassio, one other piece of housekeeping. You had,
23 when Mr. Schmidt was testifying, introduced what we
24 marked as Exhibit 17. I don't believe we ever
25 admitted that into the record formally. Did you want

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1 to do that?

2 MR. FASSIO: Yes, let's do that, Your
3 Honor.

4 JUDGE TOREM: It's been moved. Any
5 objection --

6 MR. WILEY: No.

7 JUDGE TOREM: -- to Exhibit 17, that
8 order with the second page attached?

9 MR. WILEY: No.

10 JUDGE TOREM: All right. That's
11 admitted.

12 Ms. Ingram, if you would raise your right
13 hand.

14

15 PENNY INGRAM, witness herein, having been
16 first duly sworn on oath,
17 was examined and testified
18 as follows:

19 JUDGE TOREM: If you will state and
20 spell your first and last name for the record.

21 THE WITNESS: Penny Ingram, P-E-N-N-Y,
22 I-N-G-R-A-M.

23 JUDGE TOREM: And your employer and how
24 long you have been here?

25 THE WITNESS: The Washington Utilities

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1 and Transportation Commission. I've been here 21
2 years.

3 JUDGE TOREM: And what is your position?

4 THE WITNESS: I am a regulatory analyst.

5 JUDGE TOREM: And you have heard all the
6 testimony earlier today about Exhibits 12 and 13 in
7 Mr. Schmidt's case?

8 THE WITNESS: Most of it.

9 JUDGE TOREM: All right. I turn you
10 over to Mr. Fassio to delve into that limited piece as
11 a rebuttal witness.

12 THE WITNESS: Sure.

13

14 D I R E C T E X A M I N A T I O N

15 BY MR. FASSIO:

16 Q Good afternoon, Ms. Ingram. I am going to ask
17 you today some very limited questions, responding to
18 the testimony of Mr. Schmidt and the exhibits, DMS 12
19 and 13.

20 A Okay.

21 Q And also to respond just briefly to Staff's
22 opinion on an issue, one issue.

23 A Okay.

24 Q Exhibit DMS 12, do you recall that e-mail?

25 A Yes, I do.

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1 Q And there has been testimony as to what was in
2 that e-mail. After you wrote that e-mail, did Staff
3 revise its opinion regarding any particular issue that
4 was raised in that e-mail?

5 A Yes, we did.

6 Q And do you recall how Staff revised or amended
7 its opinion?

8 A Staff amended its opinion in a conference call
9 with Mr. Schmidt and Mr. Young during the rate case
10 proceeding.

11 Q Let me ask you before you -- I will ask you
12 about any communications you had with the company.
13 But specifically prior to that conversation, did Staff
14 internally amend its opinion?

15 A Yes.

16 Q And how did it amend its opinion?

17 A I sought legal interpretation.

18 Q Let me focus on one line in that e-mail, which
19 is most of the way down, actually, one of the last
20 sentences there, where it says -- where it states,
21 Therefore, you cannot mix regulated, open to the
22 public, and nonregulated service, excursion limited,
23 on one boat. Do you see that?

24 A Yes, I do.

25 Q Is that the limited issue on which Staff

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1 amended its opinion?

2 A Correct.

3 Q And how did it amend its opinion? What was
4 Staff's new conclusions?

5 A Staff concluded that a company could use a
6 boat for nonregulated and regulated service.

7 Q And what was the general context in which this
8 opinion or these e-mails came through? There has been
9 testimony that there was a rate case going on. Was
10 that just the general context?

11 A This particular e-mail, Exhibit 12, was
12 offered very early on in the rate case proceeding.

13 Q Do you recall informing -- and you started to
14 testify about this -- informing the company that
15 Staff's opinion had changed and how?

16 A Yes.

17 Q How did you do that, do you recall?

18 A I recall a conference call, seeking more
19 information from Mr. Schmidt for the rate case, and
20 explaining that Staff had changed its opinion to that
21 matter.

22 Q Was anybody else on that call?

23 A Mr. Mike Young from the Commission.

24 Q And just for clarity purposes, the opinion
25 that you offered, or that you remember offering was

0395

1 what?

2 A That the company could use its boat for both
3 nonregulated and regulated services, and that Staff
4 was seeking data and information to try to make a
5 conclusion on the rates it should charge for regulated
6 customers' use of the boat versus nonregulated
7 customers' use of the boat.

8 Q And to the best of your knowledge, does that
9 particular informal conclusion still apply today?

10 A Yes.

11 Q Mr. Schmidt testified earlier that after he
12 filed a letter seeking voluntary relinquishment, he
13 spoke to Staff, and he indicated that he spoke to you.
14 Is that your recollection?

15 A Yes.

16 Q And what do you recall of that? He indicated
17 that Staff informed him that the voluntary
18 relinquishment had been ordered. Was that you that
19 indicated that to him?

20 A Yes, but I also recall informing Mr. Schmidt
21 that I was not lead on the voluntary relinquishment,
22 that Ms. Tina Leipski from our licensing services was,
23 and he could perhaps call her to see if there was
24 anything he could do to change it.

25 Q There's an exhibit that has been admitted, and

0396

1 it's DMS Exhibit 13.

2 A Correct.

3 Q Do you have that in front of you?

4 A Yes, I do.

5 Q To the best of your knowledge, does Staff
6 currently stand by the contents of this document?

7 A Yes.

8 Q And that still represents the informal
9 opinions of Commission Staff?

10 A Yes.

11 Q Does the letter address the issue of combined
12 excursion and nonexcursion service on the same vessel?

13 A No, it does not.

14 Q To the best of your knowledge, the Commission
15 does not regulate excursion service; is that correct?

16 A Correct.

17 Q And the application that is before the
18 Commission today is for regulated commercial ferry
19 service only?

20 A Correct.

21 Q So for purposes of the application today,
22 whether the applicant chooses to provide regulated and
23 nonregulated service on the same vessel, is not an
24 issue in the certificate?

25 A That's correct.

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1 Q Okay.

2 MR. FASSIO: I have nothing further,

3 Your Honor.

4 JUDGE TOREM: Mr. Wiley?

5 MR. WILEY: Just a few questions, Your

6 Honor.

7

8 C R O S S - E X A M I N A T I O N

9 BY MR. WILEY:

10 Q Hi, Ms. Ingram.

11 A Good morning.

12 Q Could you tell me when it was that Staff

13 revised its opinion about mixing regulated and

14 unregulated passengers on the same vessel?

15 A I don't have the specific date, however, I

16 believe it was mid-June.

17 Q Looking at DMS 12, which is the e-mail, and

18 there's a series of e-mails, but I'm talking about

19 only the one from you.

20 A Yes.

21 Q Mr. Fassio asked you about that operative

22 statement that was retracted. What about the prior

23 statement in that same paragraph? I assume that's --

24 is that still the Staff's opinion, and can you connect

25 the two sentences for me in terms of their logical

0398

1 correlation?

2 A What do you mean by that?

3 Q First of all, that was a compound question.

4 Let me ask you, first of all, the first
5 sentence, It is Staff's interpretation, that portion.

6 A Yes.

7 Q Is that still the informal opinion of the
8 Staff?

9 A It's within that paragraph.

10 Q I'm just asking if in isolation that first
11 sentence is still the opinion of the Staff?

12 A No.

13 Q So my next question was, could you connect the
14 two sentences, because they have never seemed
15 logically correlated to me? You are saying that
16 neither the first or the second sentence are the
17 current position of Staff?

18 A That's correct.

19 Q When was the conference call that you
20 referenced that Mike Young and Drew Schmidt and you
21 were on?

22 A I do not have the specific date, but I
23 remember having several conference calls during the
24 rate case proceeding, seeking data from Mr. Schmidt.

25 Q And it was somehow in the context of that rate

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1 investigation that message, you testified, was
2 delivered to Mr. Schmidt; is that correct?

3 A That is correct.

4 Q Did he react when you made that statement?
5 Was it you or Mr. Young who made it?

6 A It was me.

7 Q Did he react at that time?

8 A He didn't react in any way, other than he was
9 going to provide us the data that we needed to be able
10 to move forward with the rate case.

11 Q I think my question now goes to whether he
12 reacted to the retraction of the Staff opinion?

13 A To my knowledge, no.

14 Q What would have been your understanding, based
15 on your conversations with him, as to why he would
16 have cancelled his certificate if he by July knew that
17 the Staff no longer precluded operation of regulated
18 and unregulated service in the same vessel? Did you
19 have any understanding of why he would do that?

20 A It was my understanding --

21 MR. FASSIO: Your Honor, I am going to
22 object. I think he is asking the witness to speculate
23 as to -- as to what Mr. Schmidt might have been
24 thinking about. I don't know whether she is qualified
25 to do that.

0400

1 JUDGE TOREM: It sure sounded like she
2 was ready to give an answer and has had a number of
3 conversations with him. I will allow the question.

4 Ms. Ingram, you can tell us what you know.

5 A It was my understanding that Mr. Schmidt was
6 more upset over the rate proceeding and the rate
7 that -- and the information that our auditor was
8 coming forward asking him for.

9 Q Is it your testimony that he had any
10 understanding of your retraction that led him to
11 cancel the certificate?

12 A I thought he did, yes.

13 Q You may be mistaken on that?

14 A I could.

15 Q Okay.

16 A I can't explain who understands what.

17 Q Yeah, fair enough. My question, though, goes
18 back to the rate issue. There was testimony, and I
19 know you weren't here, so let me just recast it,
20 hopefully consistently. I'm sure His Honor will
21 correct me if I am wrong.

22 There was testimony this morning that the
23 triggering event for the rate case was that the Staff
24 required Mr. Schmidt and Pacific Cruises to revert on
25 the cancellation of the leased authority, which we

0401

1 have had a lot of testimony about, that the authority
2 that reverted to Pacific Cruises, that the Staff's
3 position was that they couldn't adopt the tariff of
4 Island Mariner Cruises, but had to go back to their
5 prior tariff from 2005. Is that your understanding?

6 A That's what I recall.

7 Q Yes.

8 A Two different companies.

9 Q Do you understand, is it not a fairly common
10 rule that when there is transfer of authority, the
11 transferee has to adopt the tariff of the transferor
12 or file a general rate case?

13 A In a transfer application there cannot be a
14 general rate case.

15 Q In other words, your understanding is the
16 transferee must adopt the tariff of the transferor?

17 A That's my understanding.

18 Q And were you aware that Mr. McNamara was
19 allowed to file his own tariff and did not adopt the
20 tariff of Island Mariner Cruises?

21 A I would need to go back and look. I don't
22 have that information in front of me.

23 Q Captain Schmidt testified that that was the
24 case. You have no reason to disagree with him, do
25 you?

0402

1 A I would like to look.

2 Q Subject to check, would you then accept that
3 premise, that Mr. McNamara was allowed to adopt the
4 tariff -- was not required to adopt the tariff of
5 Island Mariner Cruises -- excuse me, of Pacific
6 Cruises?

7 A Do you have any information you could show me?

8 Q Not with me. I only have the testimony of
9 Captain Schmidt this morning.

10 A I would have to review the file.

11 Q Would you at least acknowledge, Ms. Ingram,
12 that it was rather an unusual circumstance that the
13 lease of the authority was not reissued under a
14 different number than either the less -- than either
15 of the lessors' certificate numbers?

16 A What I recall with the leasing, there were a
17 lot of problems along the way, it took many months to
18 resolve, and all parties that are in this room and on
19 the phone worked very hard to try to resolve those
20 issues.

21 Q But in terms of the permit number and the fact
22 that it was issued -- that Island Mariner Cruises was
23 issued a certificate number that matched the less --
24 one of the two lessor's was a complication, was it
25 not?

0403

1 A That was before my time. I can't speak to
2 that issue.

3 Q Is it your experience that, on a lease of
4 authority, that there is a new certificate issued on
5 the provision of the lease for the interval of the
6 lease?

7 A I have not had any experience in leasing
8 authority until we tried to unravel the lease between
9 Island Mariner and Pacific Cruises. I have not had
10 any experience on another company coming in and asking
11 to lease authority to another entity, so I can't speak
12 to that.

13 Q Is that true in the solid waste and other
14 transportation fields as well, that you have never had
15 a certificate lease, where you know how the lessee's
16 certificate --

17 MR. FASSIO: Your Honor, I am going to
18 object to this line of questioning. We are getting a
19 bit far afield from the purpose of the rebuttal
20 testimony today, into the issues of the transfer of
21 the lease of Mr. McNamara. This witness was brought
22 forth as a rebuttal witness on a specific issue
23 relating to the relinquishment of the certificate of
24 Mr. Schmidt.

25 MR. WILEY: Your Honor, it's --

1 MR. FASSIO: This witness I don't think
2 is prepared today to go into the details of a leasing
3 arrangement and what may have happened before the
4 Commission on that.

5 MR. WILEY: Your Honor, it is all
6 directly relevant to the filing of the general rate
7 case, what precipitated it, why they had to file a
8 general rate case, how it was handled and how the
9 roads bifurcated. She has indicated in her testimony
10 that the reason -- that actually the subject of the
11 delivery of the retraction was in a general rate call.

12 That was my last question in that area. I
13 just wanted to know if she ever dealt with transfer of
14 certificates in other transportation fields where they
15 reissue the certificate number to the lessee.

16 MR. FASSIO: Your Honor, if I may,
17 the -- how it got there and the long history of that
18 is again going far beyond the issue of responding to
19 the technical assistance that would have been provided
20 in June, after all of this was completed, and the
21 nature of that particular issue.

22 JUDGE TOREM: I understand the
23 distinction you are drawing. I overrule the
24 objection. Because Mr. Wiley is wrapping up this
25 inquiry, and it does play into the reason he wants to

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1 inquire of this witness, I will allow the question.

2 Let me see if I can capture it, Mr. Wiley.

3 Ms. Ingram, again this transfer of certificate
4 authority, if you can just state your general
5 experience as to tariffs that are adopted and rate
6 cases that are necessary in general, not only in ferry
7 cases, but in any transportation cases.

8 THE WITNESS: It is my understanding in
9 a sale and transfer application that there cannot be
10 any rate cases. The rates remain the same, as they
11 are in the tariffs.

12 JUDGE TOREM: So the person receiving
13 the transferred authority continues to implement the
14 rates that have been in effect?

15 THE WITNESS: That's my understanding.

16 Q And Sellen is an auto transportation company,
17 so you have had experience at least in the leasing of
18 that area, right?

19 A Excuse me, who?

20 Q Sellen Transportation.

21 A Um...

22 Q I thought you said Sellen. Did you say Cellar
23 or Sellen, I'm sorry?

24 A I didn't say that at all.

25 Actually, the only involvement I have in

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1 applications are when they are protested. If they are
2 not protested, our licensing services division handles
3 them.

4 Q In answer to the bench's question, I then
5 think you would say what you said to me, which was the
6 transferee adopts the tariff of the transferor; is
7 that correct, in your experience?

8 A Yes.

9 Q A few other questions.

10 You understand that Captain Schmidt, if he is
11 put on to testify, would testify he doesn't recall any
12 reference to a retraction in the Staff position on the
13 service on a vessel, regulated and unregulated
14 customers. You understand that, don't you?

15 A If that's what he testified. I have no --

16 Q He hasn't testified. I can put him on, but
17 that is what he will say, is my question.

18 A I assume he will say that.

19 Q And you understand that people -- that
20 reasonable minds can differ in terms of interpreting a
21 phone conversation, correct?

22 A Yes.

23 Q Did you, by the way, search, at our request,
24 yesterday for any e-mails that communicated the
25 reversal or retraction of the Staff's position on the

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1 June 6th e-mail, Exhibit 12?

2 A I was in the hearing all day with you
3 yesterday.

4 Q Are you saying that there are -- that you
5 believe there may be some e-mails that exist?

6 MR. WILEY: And if so, Your Honor, I
7 would make a request.

8 Q Because we made a similar search and couldn't
9 find any, so if you would like that opportunity --

10 A I will tell you, I don't believe that the
11 retraction of Staff's opinion came in writing.

12 Q Thank you.

13 A It was verbally.

14 Q Thank you. No further questions, Ms. Ingram.

15 JUDGE TOREM: Mr. McNamara, did you have
16 any questions in this limited regard? It is not
17 directly pertinent to your application. If you ask a
18 question that's not relevant, I am just going to
19 strike it.

20 MR. McNAMARA: Sure. I feel like it
21 kind of is because it says that I adopted a new --

22 JUDGE TOREM: That's a side issue. This
23 is not directly relevant to your application.

24 MR. McNAMARA: Okay.

25 JUDGE TOREM: No one here is questioning

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1 what your tariff should or shouldn't be, simply its
2 effect or interpretation on Mr. Schmidt and how he
3 perceived it. That's how I understand Mr. Wiley --

4 MR. WILEY: Correct, Your Honor.

5 MR. McNAMARA: As to why he cancelled
6 his certificate?

7 JUDGE TOREM: Right.

8 MR. McNAMARA: I guess I just have -- I
9 have just one clarification on two things.

10

11 C R O S S - E X A M I N A T I O N

12 BY MR. McNAMARA:

13 Q So Staff did amend their position and said
14 that you could operate an excursion and a ferry
15 service?

16 A That's correct.

17 Q In mid-June?

18 A That's correct.

19 Q And that's approximately a month before Drew
20 Schmidt cancelled his certificate?

21 A I believe so.

22 MR. McNAMARA: No further questions.

23 JUDGE TOREM: Mr. Buzzard, do you have
24 any questions on this topic?

25 MR. BUZZARD: No. I would just like to

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1 make one statement, and that is to thank Mrs. Ingram
2 for all the help she has been to me over the years and
3 the wonderful information. I have talked to her
4 several times in the last 21 years and she has always
5 been very, very helpful.

6 JUDGE TOREM: Well, thank you for that.

7 MR. WILEY: Applicant would join that
8 endorsement.

9 MR. McNAMARA: I think we all will.

10 JUDGE TOREM: At this time, Mr. Fassio,
11 do you have any follow-up questions?

12 MR. FASSIO: I may, Your Honor. Just
13 one moment.

14 JUDGE TOREM: How long will it take,
15 Mr. Fassio?

16 MR. FASSIO: Very briefly.

17 JUDGE TOREM: Not the questions, but the
18 preparation?

19 MR. FASSIO: Brief.

20 (Pause in the proceedings.)

21 MR. FASSIO: A couple follow-up
22 questions, Ms. Ingram.

23

24

25

0410

1 R E D I R E C T E X A M I N A T I O N

2 BY MR. FASSIO:

3 Q You were asked about timing of conversations
4 and anything around that. Were you aware that there
5 was any written communications between Staff and the
6 company regarding the rate case during the month of
7 June?

8 A I believe so.

9 Q And --

10 MR. WILEY: We would so stipulate, Your
11 Honor.

12 Q And is it your opinion -- have you seen some
13 of the e-mails that may have been -- that may have
14 gone between Staff -- between Staff -- involve the
15 rate case -- I'm not going to ask you about the
16 contents of anything, but are you at all familiar --

17 A Yes.

18 Q -- or aware that e-mails happened?

19 A Yes.

20 Q And is it Staff's opinion that -- that any of
21 the advice that might have been given or -- well, let
22 me rephrase that.

23 Is it your belief or understanding that you
24 thought that communications were consistent with the
25 changed opinion that you had --

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1 MR. WILEY: Objection to the form, Your
2 Honor. It is vague. It is not well phrased. I don't
3 know what the communications are. Is he referring to
4 unspecified and unproduced e-mails? Is he talking
5 about Exhibit 12? The question is not appropriate.

6 JUDGE TOREM: Mr. Fassio, I have to
7 admit, I am confused as to exactly what you are asking
8 so I have to sustain the objection.

9 MR. FASSIO: I'll attempt to rephrase,
10 Your Honor.

11 Q Are you aware that -- that Commission
12 Regulatory Staff may have sent, and other Commission
13 Staff, such as Mike Young, who may have worked on this
14 case, may have sent e-mails to the company regarding
15 the rate case on or about June 18th?

16 A Yes, I am.

17 Q And were those e-mails requesting information
18 from the company regarding the rate case?

19 A Yes.

20 Q And --

21 MR. WILEY: Your Honor, we stipulated to
22 this. I don't know why we are going over it. It is
23 not something I opened.

24 JUDGE TOREM: Mr. Fassio, where are we
25 going?

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1 Q Do you believe that those communications were
2 at least not inconsistent with the opinion that you
3 have -- at that point had Staff, in your recollection,
4 communicated -- or at least that that was consistent
5 with your interpretation today regarding the regulated
6 and unregulated service on the same vessel?

7 MR. WILEY: Objection. Same objection.
8 I don't know what communications. Is he referring to
9 a June 18th e-mail that hasn't been produced in
10 evidence? I don't know what he is talking about, what
11 time period or what documents? What form of
12 communication, Your Honor?

13 MR. FASSIO: I will withdraw the
14 question.

15 JUDGE TOREM: Mr. Fassio, it seems to me
16 you are just attempting to ask if Ms. Ingram believes
17 Mr. Young's e-mails back and forth in regard to the
18 rate case clearly communicated a change of the
19 Commission's prior position. Is that the question?

20 MR. FASSIO: That is partially the
21 question.

22 Q I am not asking if they clearly communicated,
23 but do you believe at least they were consistent?

24 A Yes.

25

0413

1 EXAMINATION

2 BY JUDGE TOREM:

3 Q So if I understand correctly, Ms. Ingram, you
4 want to state -- the sequence of events was we had
5 this June 6th e-mail stating a position, not combining
6 things, right?

7 MR. FASSIO: You are --

8 JUDGE TOREM: I'm going to ask the
9 questions.

10 A That's correct.

11 Q And you subsequently changed that verbally?

12 A That's correct.

13 Q And subsequent to that, you think Mr. Young
14 sent some e-mails that were consistent with the
15 change?

16 A That's correct.

17 Q And you previously testified that you never
18 changed the Commission's opinion in writing?

19 A That's correct.

20 Q So what I think Mr. Fassio is trying to ask
21 you, if you think it would be reasonable for
22 Mr. Schmidt to have drawn some inference from
23 Mr. Young's later e-mails, that the Commission changed
24 its position. Do you think it is reasonable to assume
25 that?

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1 A I believe so, yes.

2 JUDGE TOREM: Mr. Fassio, you can
3 inquire further, if I have somehow misconstrued the
4 intent of your questions.

5 MR. FASSIO: That is exactly the intent
6 of my questions, Your Honor.

7 JUDGE TOREM: Any further questions,
8 then?

9

10 R E D I R E C T E X A M I N A T I O N (Continued)

11 BY MR. FASSIO:

12 Q When the company submitted its request for
13 relinquishment, for voluntary relinquishment, was it
14 Staff's understanding that they intended to provide an
15 excursion-only service at that time?

16 A Yes.

17 MR. FASSIO: No further questions.

18 JUDGE TOREM: Mr. Wiley?

19 MR. WILEY: Yes.

20 JUDGE TOREM: I think I get the
21 back-and-forth. I understand your --

22 MR. WILEY: Mr. Young is in the room. I
23 requested copies of all e-mails. I haven't received
24 one as of today. I make a standing request for that.
25 I would like to ask Mr. Young -- if he has e-mails, I

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1 would like them.

2 I thought we were talking about Exhibits 12
3 and 13. Now we have reached a question of credibility
4 that I think requires Mr. Young to be presented.

5 MR. FASSIO: Your Honor, we can
6 stipulate, if it would make the record easier, because
7 I have asked questions about an e-mail that isn't
8 before the Commission. We have an e-mail.

9 JUDGE TOREM: Why don't you show it to
10 Mr. Wiley.

11 MR. FASSIO: I can show it to Mr. Wiley.
12 If Mr. Wiley thinks it would help me understand this
13 back and forth, I will take it.

14 (Pause in the proceedings.)

15 MR. WILEY: I have no problem with this
16 exhibit whatsoever, but it doesn't answer the question
17 posed to Ms. Ingram, which is why I want to ask
18 Mr. Young to take the stand.

19 I didn't open this up, Your Honor.

20 JUDGE TOREM: I understand, Mr. Wiley.
21 It is just a question of getting this complete
22 understanding, that Ms. Ingram believes that it was
23 communicated to your client verbally, and now the
24 question is who knew what, when or understood what
25 when.

0416

1 Mr. Fassio, are we going to mark that as an
2 exhibit?

3 MR. FASSIO: Yes, we can do that, Your
4 Honor.

5 JUDGE TOREM: For numbering purposes,
6 simply because this is associated with Mr. Schmidt's
7 case, I would suggest we just mark it as DMS 18. The
8 sponsoring witness for the -- will initially be
9 Ms. Ingram. If Mr. Young testifies, we can mark and
10 annotate the record.

11 This is now DMS 18. My understanding was,
12 Mr. Wiley, you didn't have any objection to it?

13 MR. WILEY: No, Your Honor.

14 JUDGE TOREM: And this is an e-mail
15 dated -- well, it is a series of e-mails. They start
16 on June 14th, from Mr. Schmidt to Mr. Young, and they
17 have several on that same date, and finally a response
18 dated June 18th, from Mr. Young to Mr. Schmidt. It's
19 a two-page document.

20 MR. McNAMARA: I don't have a copy.

21 JUDGE TOREM: Mr. McNamara, you are
22 going to be handed one. Again, as I indicated
23 earlier, I am not sure this is directly relevant to
24 your case or Mr. Buzzard's involvement.

25 I am going to go ahead and admit the document.

0417

1 MR. McNAMARA: Okay.

2 JUDGE TOREM: Ms. Ingram, I see you have
3 been handed a copy of it and are reviewing it.

4 Mr. Fassio, do you have a question on this?

5 MR. FASSIO: I have just one question on
6 this document we have been talking about.

7 Q I asked you if you believe that -- first of
8 all, when I asked you regarding an e-mail back and
9 forth, is this -- and on June 18th. Is this the
10 e-mail that -- that you are referring to when you
11 testified about your understanding of that?

12 A Yes.

13 Q And you have been asked if at least it was
14 your belief that information provided in the e-mail
15 was consistent with that. I'm going to read a -- that
16 first paragraph.

17 Can you explain what in that e-mail you
18 believe would have been consistent with that?

19 MR. WILEY: Your Honor --

20 Q I want to clearly differentiate that your
21 testimony is not -- your testimony has been that
22 Staff's changed opinion wasn't -- was only verbally
23 communicated with respect to the issue of whether you
24 could offer regulated and nonregulated service on the
25 same boat.

0418

1 JUDGE TOREM: How about this,
2 Mr. Fassio. This isn't her e-mail. She is not even
3 copied on any of it. The real question is can
4 Ms. Ingram point to any words in this e-mailed that
5 would communicate the change and something consistent
6 with it? I mean why are we beating around the bush
7 and asking such complicated questions?

8

9 E X A M I N A T I O N

10 BY JUDGE TOREM:

11 Q Ms. Ingram, can you look at this e-mail and
12 tell me where --

13 A Yes.

14 Q -- you think Mr. Young is communicating
15 something consistent with your previously only verbal
16 change in the Commission position?

17 A It is in the first paragraph, last sentence.
18 Once I have the total cost to operate each boat, I can
19 separate those costs into regulated and nonregulated
20 by passenger count.

21 Q And you take that to mean that this is taking
22 the boats --

23 A Actually, can I go back one more? It's
24 actually where it says, The purpose of this data will
25 be to allocate overhead costs to each boat. Once I

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1 have the total cost to operate each boat, then I can
2 separate those costs into regulated and nonregulated
3 by passenger count.

4 Q And so you think from there the person
5 receiving this, Mr. Schmidt, would understand that he
6 can run both a regulated and a nonregulated service on
7 the same boat?

8 A Yes.

9 Q Even though it is referring to two boats and
10 it says give me the costs for each boat? Is that what
11 you are saying?

12 A That's what I am saying.

13 Q And I could see where, given all of the
14 context we have just had, allocating overhead costs by
15 itself might show we are going to do a division of
16 costs of different activities. I am confused, even
17 knowing everything that I have been told today, where
18 it says to each boat, and the fact that it starts with
19 a preface, Since there are two boats.

20 This is you think how it might have been
21 transferred, that Mr. Young's position was consistent
22 with the change?

23 A I believe this goes back to the conference
24 call as well between Mr. Young, myself and
25 Mr. Schmidt, about the pending rate case and how the

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1 Commission sets rates. If a company was using one
2 boat for nonregulated service and -- and regulated
3 commercial service, Commission Staff then has to
4 figure out how to allocate the cost to the regulated
5 customers, so that they are not subsidizing the costs
6 for the time and use of the boat for the nonregulated.

7 That was discussed in a conference call that
8 I -- when -- I explained that we changed our position
9 on that, and then this -- I believe that this e-mail
10 was follow-up, following that. That's -- that's kind
11 of the sequence that I recall and that I remember.

12 Q Thanks, Ms. Ingram. I get the sequence now.
13 That's become clear.

14 A Okay.

15 Q And I'm sure for the limited purpose that
16 Mr. Young was seeking the data for the now defunct
17 rate case, this might have been clear to him at the
18 time. And as you have said, and who knows what
19 anybody else understood.

20 A Right.

21 JUDGE TOREM: Mr. Fassio, do you have
22 any additional questions on this, DMS 18?

23 MR. FASSIO: No, Your Honor.

24 JUDGE TOREM: Mr. Wiley, is it worth
25 delving into it on cross?

0421

1 MR. WILEY: I would prefer Mr. Young
2 testify, and Mr. Schmidt. I think we have heard her
3 interpretation of both DMS 18 and the conference call.
4 I think we need, on rebuttal, these two witnesses, so
5 we can clear up, from the applicant's standpoint, his
6 understanding.

7 This has gone much further afield than I
8 thought the testimony was --

9 JUDGE TOREM: My question to you is, I
10 am not certain that Mr. Young, what he thought your
11 client understood is relevant.

12 MR. WILEY: My question would be whether
13 he heard the communication on that conference call
14 that Staff had --

15 JUDGE TOREM: What who heard?

16 MR. WILEY: Whether Mr. Young heard
17 Staff advise, in the conference call -- whether he
18 recalls hearing that that opinion had been retracted.
19 That's my only question. And then whether he
20 communicated in any other e-mail, or anything that he
21 is aware of, that retraction. Those are my two
22 questions. It's been opened up on this much more
23 lengthy direct examination.

24 JUDGE TOREM: Was there anything else
25 for this witness?

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1 MR. FASSIO: No, Your Honor.

2 JUDGE TOREM: Ms. Ingram, you can step
3 down.

4 THE WITNESS: Thank you.

5 JUDGE TOREM: Mr. Fassio, do you want
6 respond to what Mr. Wiley was just suggesting?

7 MR. FASSIO: I think we have delved into
8 this issue quite considerably already. I'm not sure
9 what additional purpose further testimony would
10 elicit, but we are not going to necessarily object.

11 JUDGE TOREM: Mr. Young is present.
12 Just because I want to give an opportunity for both
13 counsel to leave the room thinking they have done
14 their best to keep the record clear for their
15 purposes.

16 Mr. Young, are you able to testify today?

17 MR. YOUNG: Yes.

18 JUDGE TOREM: If you will come and take
19 the witness stand, please.

20 MR. FASSIO: Your Honor, if I may, I
21 will request that Mr. Wiley do restrict his questions
22 to what he indicated that he would ask of Mr. Young
23 and not delve further into the matters.

24 JUDGE TOREM: Understood.

25

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1 MICHAEL YOUNG, witness herein, having been
2 first duly sworn on oath,
3 was examined and testified
4 as follows:

5
6 JUDGE TOREM: Mr. Young, you have been
7 sworn in. Will you please state your first and last
8 name and your employer and position for the record.

9 THE WITNESS: I am Michael Young. I
10 work for the Utilities and Transportation Commission
11 regulatory services division.

12
13 DIRECT EXAMINATION

14 BY MR. WILEY:

15 Q Sorry, Mr. Young, to spring you into action,
16 but I didn't anticipate I would need to.

17 Two questions for you. The first question is,
18 do you recall the conference call that Ms. Ingram
19 spoke at? Do you recall in that conference call with
20 Mr. Schmidt a communication to him that the Commission
21 Staff had retracted its view that you could not mix
22 regulate and unregulated passengers in the same
23 vessel?

24 A I recall not the specific words, but I do
25 recall having that conference call.

0424

1 Q You recall the conference call. My question
2 only is to the communication of the retraction of the
3 Staff position. Do you recall that, yes or no?

4 A Yes, that was the purpose of the call.

5 Q Who made the statement?

6 A Ms. Ingram.

7 Q And do you recall in what context it was made
8 at all?

9 A I don't recall the details.

10 Q What do you recall, if anything?

11 A That we had a discussion with Captain Schmidt,
12 and then discussed how we would have to get additional
13 information to do an allocation based on that. Our
14 previous premise would have been that there would be
15 separate boats.

16 Q So you then recall there was discussion about
17 allocating costs for regulated and unregulated
18 passengers in the same vessel? Is that what you are
19 saying?

20 A Yes.

21 Q Do you recall any written communication of
22 that position to Captain Schmidt by you or Ms. Ingram?

23 A I don't recall, but my subsequent e-mails
24 requesting the data were based on that premise.

25 Q Are you referring to Exhibit 18 by that? And

0425

1 by what premise do you mean, when you say "that
2 premise," are you referring to?

3 Again, that goes to the same company. My
4 question is directed to the same company, which is
5 what I think your e-mail is directed to.

6 A Yes, the premise I referred to is that we
7 would allowed regulated and nonregulated activities on
8 the same boat. I had a subsequent e-mail, I believe,
9 that I sent to Captain Schmidt, asking for some
10 additional data. It was after this one.

11 Q But that didn't relate to the premise of
12 regulated and unregulated passengers on the same
13 vessel and the retraction of that position, did it?
14 It just talked about general rate case and allocations
15 of vessel costs, did it not?

16 A That's correct, but I generated that question
17 because of the change in our opinion.

18 Q Could you search your records and present a
19 copy of that e-mail as an after-filed exhibit, if the
20 bench allows that?

21 A Yes.

22 Q Thank you. No further questions.

23 JUDGE TOREM: Mr. Fassio, any follow-up?

24 MR. FASSIO: No, Your Honor.

25 MR. WILEY: Captain Schmidt to the stand

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1 for a couple of questions.

2 JUDGE TOREM: Thank you, Mr. Young, for
3 that limited testimony. If you can identify an
4 exhibit, please forward it to Mr. Fassio, and he can
5 share it with the other counsel, and if necessary
6 forward it to me for an additional exhibit, DMS 19, if
7 one is identified and they think it is relevant, in a
8 separate letter suggesting as much.

9 THE WITNESS: Okay.

10 JUDGE TOREM: Mr. Schmidt, you were
11 previously sworn in, so that oath would still apply.

12 Mr. Wiley.

13 MR. WILEY: Yes.

14

15 FURTHER REDIRECT EXAMINATION

16 BY MR. WILEY:

17 Q Captain Schmidt, just a couple questions. You
18 heard Ms. Ingram's testimony this afternoon?

19 A Yes.

20 Q Do you recall the conference call that was
21 held that she referred to?

22 A I don't remember a specific conference call.
23 We had lots of those. I won't say we didn't have it.

24 Q My question is, do you recall what the subject
25 of the call was? Was it a general rate case-based

0427

1 call?

2 A I believe so, yes.

3 Q During that conversation, do you recall being
4 informed by Ms. Ingram that their June 6th informal
5 Staff opinion had been reversed or retracted?

6 A No, in no way whatsoever.

7 Q And you are under oath here. When was the
8 first time that you learned that Staff had taken the
9 position that they retracted that view?

10 A Yesterday.

11 Q Thank you. No further questions.

12 JUDGE TOREM: Thank you, Mr. Schmidt.

13 Do we have any cross-examination?

14 MR. FASSIO: No.

15 JUDGE TOREM: All right. At this time,
16 I think we have taken all the witness and exhibit
17 testimony that is coming in today.

18 Mr. Fassio, if there is an additional e-mail
19 that you and Mr. Wiley deem relevant, or even disagree
20 if it is relevant, but if there is something to
21 submit, please bring that to my attention in the week
22 ahead.

23 I will ask Mr. Young, while you are still
24 here. Today is February 1st. I would like to get
25 that e-mail and a letter from counsel no later than

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1 Monday the 11th. You will have ten calendar days to
2 find it, process it and get it to Mr. Wiley, so that
3 counsel can have time, by the 11th, to submit it to
4 me. Hopefully, it is a stipulation that it is coming
5 in and not competing argument.

6 We have already covered posthearing procedures
7 to include written closing summations on why each
8 applicant believes they have met the criteria. Those
9 would be due Monday the 25th of February.

10 It appears to me, Mr. Wiley, that there is
11 agreement on the fact that the Commission is no longer
12 saying using a boat for two purposes simultaneously is
13 prohibited. Is that your understanding of the
14 testimony?

15 MR. WILEY: That is certainly my
16 understanding, too, Your Honor.

17 JUDGE TOREM: So We won't need any legal
18 briefing as to one side or the other of that issue.
19 That's my understanding from how the testimony went.

20 MR. FASSIO: That is Staff's
21 understanding.

22 JUDGE TOREM: Mr. Wiley and Mr. Fassio,
23 in particular, is there a need in your mind for any
24 other legal briefing, other than the summation on how
25 each side believes the facts played out?

0429

1 MR. FASSIO: No, Your Honor.

2 JUDGE TOREM: So what I am looking for
3 is just written closing summations, somewhere between
4 three and five pages in length. It could be one page
5 in length if you would like, but no more than five
6 pages. Those will be due by close of business on
7 Monday the 25th of February. If there is a DMS 19,
8 then ten days from now, otherwise, the record for
9 additional exhibits will close then. Closing
10 statements will come in on the 25th.

11 Mr. McNamara, you would submit this written
12 closing summation. And I want to be clear as to what
13 would go into it. This is in place of a closing
14 argument, where you have an opportunity advocate for
15 why you believe you carried your burden of proof,
16 which would have to show your ability to meet the
17 statutory requirements in RCW 81.84.020, specifically
18 Subparagraph 2, which were the criteria I went over
19 yesterday. If there are any additional statutory or
20 relevant provisions you think you needed to prove up,
21 or regulatory matters in Chapter 480-51 of the
22 Administrative Code, you can refer to those as well.

23 The crux of the issues before me are was the
24 applicant sufficient and is there sufficient resources
25 to operate the service for at least 12 months, and

0430

1 there is that listing of criteria. It is not
2 exhaustive. If you have other criteria or other
3 evidence to show how you can keep going for 12 months,
4 that's what I expect from you and Mr. Wiley, and from
5 Staff, an evaluation as to whether they think each of
6 those applicants met the criteria.

7 In the case that Staff determines and wants to
8 make argument that Mr. McNamara's application does not
9 meet the financial requirements at this time for the
10 extension, I will expect some kind of discussion as to
11 why Staff did not object to his previously approved
12 and existing certificate for the remainder of the
13 route, as I indicated yesterday. That is on the
14 record, it is there. It speaks with the presumption
15 that he was financially fit to be able to receive that
16 at the time. If Staff wants to take a position
17 contrary now, for the remainder of the route, I will
18 expect an explanation.

19 Are there any other documents that need to
20 come in from the applicants or Staff that you are
21 requesting to submit?

22 Mr. Wiley?

23 MR. WILEY: Your Honor, I think I told
24 you during the break that I had one final comment to
25 make on the record. I have discussed it with

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1 Mr. Fassio. I understand he may have a procedural
2 objection, but --

3 JUDGE TOREM: Mr. Buzzard?

4 MR. BUZZARD: Yes, sir.

5 JUDGE TOREM: Your certificate is
6 governed in another docket and you are not obligated
7 to file anything as a protestant in this case. If you
8 do want to take the position as to -- you have the
9 same rights as a party here, so you can submit a
10 closing statement if you would like, but you are not
11 obligated to.

12 MR. BUZZARD: All right.

13 JUDGE TOREM: Your closing statement
14 would be similar to Staff's taking a position as to
15 how the facts laid out for either of the applicants on
16 the applications that you have protested. Again, a
17 five-page maximum. If you wanted to file something
18 after the fact, as you reserved your right to do
19 earlier, I want to make sure you understood that the
20 same kind of things I just gave to Staff, as to -- for
21 you, really, why each applicant did or didn't meet
22 81.84.020, then you can better explain the protest as
23 it relates to the statute in that regard.

24 MR. BUZZARD: Yes, sir.

25 May I have time yet today to make a statement?

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1 JUDGE TOREM: No, this is in place of
2 the closing statement. Your statement, your testimony
3 was offered to you earlier and you said you wanted to
4 defer for the closing. I have chosen to take these
5 closings in writing.

6 MR. BUZZARD: All right.

7 JUDGE TOREM: Thank you.

8 MR. BUZZARD: I think I could save the
9 Commission and everyone a lot of time.

10 JUDGE TOREM: Well, you are not going to
11 save me any time this afternoon by continuing, because
12 I have asked you to submit it in writing. If you
13 choose not to, that's up to you.

14 Mr. Wiley, you had one last item.

15 MR. WILEY: Yes, your Honor, briefly.

16 During the course of the applicant's
17 presentation, meaning Pacific Cruises Northwest,
18 Inc.'s presentation, clearly some issues have arisen
19 that are highly unusual, that I have never seen in 34
20 years of practicing before this agency, to the extent
21 that there is at least a unilateral mistake, if not
22 mutual mistake.

23 My concern, and I am raising now, I would ask
24 you to -- if you, after weighing all the evidence, do
25 not find Pacific Cruises Northwest has met its

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1 statutory burden to prove fitness, willingness,
2 ability and requirement by public convenience and
3 necessity, then under these unique circumstances, you
4 also consider reopening or rehearing on the original
5 Order 1 cancelling the certificate.

6 The Commission under 81.04.200 can rehear at
7 its own discretion, and under 81.04.210, may change
8 orders on its own motion. This is such a unique
9 factual circumstance, again without blaming anybody,
10 other than the tragedy, frankly, of relinquishment of
11 a valuable property right under mistaken
12 circumstances, that you consider that with the record
13 that's been developed here. I understand that counsel
14 may have concerns about a separate docket and a
15 separate hearing, but we have put in all of the
16 evidence supporting that issue. I don't see a need to
17 duplicate it by opening another docket and having
18 another hearing.

19 With that noted, Your Honor, I think you have
20 broad remedial power under the statutes. We clearly
21 have changed circumstances. WAC 480-070-870 allows
22 rehearing under unique circumstances, particularly to
23 prevent manifest injustice, Your Honor. I think that
24 is what has happened here, and I think the facts and
25 evidence show that.

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1 With that noted, we have no further comments.

2 JUDGE TOREM: Mr. Wiley, I just invite
3 you to add that as a concluding paragraph, with the
4 appropriate citations and otherwise, to your closing
5 statement, just in the case it does become necessary.

6 I am well aware of the Commission's ability to
7 change its mind. I have seen it in other rail cases,
8 going back. I am aware of the powers you are citing.
9 Whether I might choose to think I needed to exercise
10 those, I understand how you think it could occur and
11 the facts of this case. I assure you if I don't think
12 so, that you certainly know you have the opportunity
13 to invite the commissioners themselves to do just
14 that, and either remind the case for exactly what you
15 have recommended, or to do it themselves, based on the
16 record we have established here. The transcript,
17 confused as it may be in some parts, I think will
18 allow exactly for that full story to be told. I know
19 the court reporter has got it all down. I don't know
20 exactly in what order. I think the applications, the
21 stories of both of them, and the sequence of
22 events are better told by the record we have created
23 over the last two days.

24 MR. WILEY: Fair enough, Your Honor.

25 May I ask for one final favor, which is a

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1 one-page addition to my brief, to address that issue
2 only, because I would like to take the five pages on
3 the traditional criteria and address that on one page.

4 JUDGE TOREM: I will give you half a
5 page additional.

6 MR. WILEY: Thank you.

7 JUDGE TOREM: And I don't want to see
8 this in eight-point font, single spaced, Mr. Wiley. I
9 don't think we will need anything more than just an
10 indication of what you said with appropriate
11 citations.

12 MR. WILEY: Fine.

13 JUDGE TOREM: It will simply be a
14 reminder to the record that you have asked me, whether
15 I choose to take you up on it or not.

16 Mr. Fassio, I don't think that you need to
17 anticipate any sort of relief being granted or not
18 granted. If I'm going to do it, I'm going to do it,
19 and you have the same rights on review. You don't
20 need to trouble yourself, unless you choose to, to add
21 another half a page to your submission.

22 MR. FASSIO: Just to be clear, we do
23 have the opportunity to do so, the half a page, as
24 Mr. Wiley would have?

25 JUDGE TOREM: I want to treat everybody

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1 equally, so if you choose, you may.

2 MR. FASSIO: Thank you, Your Honor.

3 JUDGE TOREM: Is there anything else for
4 the record today?

5 MR. WILEY: Nothing further, Your Honor.

6 JUDGE TOREM: Mr. McNamara, are you
7 clear on what your deadlines are? There won't be
8 anything further in writing coming from me. This is
9 the order from the bench. Monday the 25th, closing
10 statements, no more than five pages.

11 MR. McNAMARA: Just one question on
12 that. If, say, I had it in next week, do they have a
13 chance to see that ahead of time and can respond to my
14 closing statement?

15 JUDGE TOREM: That's true. I think most
16 people --

17 MR. WILEY: Simultaneous.

18 MR. McNAMARA: So does everybody just
19 drop it on the 25th?

20 JUDGE TOREM: That's the practice. No
21 one wants to play their hand and say what they have
22 said, to give opportunities for rebuttal.

23 MR. McNAMARA: I'm just making sure.

24 JUDGE TOREM: You can do it tonight and
25 then sit on it until the 25th, otherwise, what you say

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1 will be used against you almost for sure.

2 MR. WILEY: Your Honor, are we allowed
3 to electronically file and serve? I haven't seen the
4 prehearing conference order on that, but I would
5 assume we could serve on the 25th and get the hard
6 copy in on the 26th?

7 JUDGE TOREM: As long as it comes in by
8 that date. I do want the hard copies to follow as
9 required.

10 Mr. Buzzard, anything else?

11 MR. BUZZARD: Will we be back in
12 session, then, on the 25th?

13 JUDGE TOREM: This will be the end of
14 the on-the-record sessions, unless the case is somehow
15 called back into session for something unexpected,
16 Mr. Buzzard. This is simply a written filing on or
17 before close of business on the 25th.

18 MR. BUZZARD: All right. So we will not
19 be discussing it, it will just go before yourselves?

20 JUDGE TOREM: Correct, simply in
21 writing.

22 MR. BUZZARD: All right.

23 JUDGE TOREM: Thank you all. It is 1:37
24 on the clock on the wall here. A little later than we
25 hoped to today, a little longer than we hoped to

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1 today, but the record is complete. We are adjourned.

2 (Hearing concluded 1:37 p.m.)

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I, Sherrilyn Smith, a Certified

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Shorthand Reporter in and for the State of Washington,

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do hereby certify that the foregoing transcript is

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true and accurate to the best of my knowledge, skill

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and ability.

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SHERRILYN SMITH

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