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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of the Application )  
 No. B-79276 ) TS-040794  
 ) Volume II  
 ) Pages 54-175  
 KITSAP FERRY COMPANY, LLC d/b/a )  
 KITSAP FERRY CO. )  
 )  
 For a Temporary Certificate of )  
 Public Convenience and Necessity to )  
 Operate Commercial Ferry Service. )  
 \_\_\_\_\_ )

A hearing in the above-entitled matter was held at 1:33 p.m. on Monday, June 28, 2004, at 1300 South Evergreen Park Drive, Southwest, Olympia, Washington, before Administrative Law Judge DENNIS MOSS, Chairwoman MARILYN SHOWALTER, Commissioner RICHARD HEMSTAD, and Commissioner PATRICK OSHIE.

The parties present were as follows:

KITSAP FERRY COMPANY, by Matthew C. Crane, Attorney at Law, Bauer Moynihan & Johnson, LLP, 2101 Fourth Avenue, Suite 2400, Seattle, Washington 98121.

COMMISSION STAFF, by Lisa Watson, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504.

INLANDBOATMEN'S UNION OF THE PACIFIC, by Dmitri Iglitzin, Attorney at Law, Schwerin Campbell Barnard, LLP, 18 W. Mercer Street, Suite 400, Seattle, Washington 98119.

Barbara L. Nelson, CCR  
Court Reporter

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1           JUDGE MOSS:  Let's be on the record.  Good  
2  afternoon, everyone.  My name is Dennis Moss, I'm an  
3  Administrative Law Judge for the Washington Utilities  
4  and Transportation Commission, and I'm sitting here  
5  today in lieu of Judge Wallis, who I understand has  
6  previously conducted a pre-hearing in this case.  I'm  
7  here today to assist the Commissioners, who are also  
8  sitting, as we take up the protest by the IBU  
9  concerning the Application Number B-079276, by Kitsap  
10  Ferry Company, L.L.C., doing business as Kitsap Ferry  
11  Company.

12           And the matter's current posture is that the  
13  Commission has issued a temporary commercial ferry  
14  certificate of public convenience and necessity, and  
15  the IBU is protesting that act.

16           So the first order of business will be to  
17  take appearances, we may -- I think we should  
18  probably have some brief opening statements, and then  
19  we'll see where we proceed from there.  So let's take  
20  appearances.  Why don't we start with the Applicant.

21           MR. CRANE:  Thank you, Your Honor.  Matthew  
22  Crane, representing Kitsap Ferry Company.

23           JUDGE MOSS:  And the Protestant?

24           MR. IGLITZIN:  Dmitri Iglitzin.

25           JUDGE MOSS:  Will you spell your last name,

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1 please?

2 MR. IGLITZIN: Yeah, it's I-g-l-i-t-z-i-n.

3 JUDGE MOSS: Okay.

4 MR. IGLITZIN: And Dmitri is D-m-i-t-r-i,  
5 with the firm of Schwerin Campbell Barnard,  
6 representing the Protestant, Inlandboatmen's Union of  
7 the Pacific.

8 JUDGE MOSS: And for Staff?

9 MS. WATSON: Lisa Watson, Assistant Attorney  
10 General, here on behalf of Commission Staff.

11 JUDGE MOSS: Thank you. And the brief forms  
12 will do, because we have a previous transcript in  
13 this proceeding.

14 All right. So given the posture of the  
15 case, Mr. Iglitzin, it seems appropriate that you  
16 would go first to present your case concerning or  
17 challenging, I should say, the Commission's grant of  
18 a temporary certificate. So do you have a brief  
19 opening, or tell me how you plan to proceed?

20 MR. IGLITZIN: Well, I guess I do have a  
21 brief opening, although what was not clear to me from  
22 the pre-hearing conference was whether each of the  
23 parties was going to give a brief opening and then I  
24 would be putting on my case, or whether I would give  
25 a brief opening and then immediately put on my case?

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1 JUDGE MOSS: Any preference from the Bench?

2 CHAIRWOMAN SHOWALTER: Let's have them each  
3 give a statement.

4 JUDGE MOSS: Yeah, I think that would be  
5 best. That way, we'll have the thing framed up.  
6 Let's have a brief opening from both sides, then  
7 we'll proceed.

8 MR. IGLITZIN: Thank you. Again, Dmitri  
9 Iglitzin, from the Inlandboatmen's Union of the  
10 Pacific.

11 Under the statutory and regulatory  
12 provisions pertinent to this matter, the Commission  
13 was to, in deciding whether or not to issue the  
14 temporary certificate, it's governed, as I understand  
15 it, by WAC 480-51-060, which says two things: First,  
16 that the Commission shall only issue a temporary  
17 certificate upon finding that the issuance is due to  
18 an urgent and immediate need, and then, second, that  
19 in determining whether to grant the requested  
20 temporary certificate, the Commission will consider  
21 evidence of the following factors.

22 And there are three factors that the  
23 Commission was to consider evidence of. A, an  
24 immediate and urgent need for the requested service,  
25 B, any available service capable of meeting the need,

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1 and C, the fitness of the Applicant. I'm sorry, and  
2 the fourth factor, sort of a catch-all, any other  
3 circumstance indicating that a grant of temporary  
4 authority is consistent with the public interest.

5           It's the position of the IBU that, as an  
6 initial matter, the temporary certificate should not  
7 have been issued because there is no urgent and  
8 immediate need for the proposed passenger-only  
9 service from Bremerton to Seattle.

10           It is the position of the IBU, second, that  
11 even if, for some reason, an urgent and immediate  
12 need sufficient to meet that threshold was found to  
13 exist, that an overall consideration of the need, the  
14 available service, the fitness of the applicant, and  
15 taking all other factors into account leads to the  
16 conclusion that the temporary certificate should not  
17 have been issued.

18           As I understand it, as the IBU understands  
19 it, we're in kind of a funny situation where, because  
20 the IBU is the protestant, we are asking the  
21 Commission to undo a decision that's already been  
22 done. And to that extent, one would think that we  
23 have the burden of proof. But I think that, as to  
24 the ultimate issue of whether a temporary certificate  
25 should continue to exist, we think it's the

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1 applicant's burden.

2           A temporary certificate is the exception to  
3 the rule, and normally there's a very elaborate  
4 procedure, not particularly difficult for an  
5 applicant to pursue, as Aqua Express is pursuing  
6 right now before this Commission, but there is -- the  
7 IBU sees it as an exceptional procedure if an  
8 applicant can show unusual circumstances which  
9 justify sidestepping the normal regulatory procedure.  
10 And so it's the IBU's position that it's really the  
11 applicant's burden to show that those exceptional  
12 circumstances, which would justify deviating from the  
13 normal procedures, would exist.

14           JUDGE MOSS: Let me interrupt. Are you  
15 suggesting that the standards for a temporary  
16 certificate are higher than those for a permanent  
17 certificate?

18           MR. IGLITZIN: Well, it seems to me, reading  
19 the regulation, I don't have any particular expertise  
20 in reading it, but that they are both higher and  
21 lower. They are lower in terms of the showing of the  
22 fitness of the applicant criteria, because for a  
23 permanent certificate, the applicant would have to  
24 show a pro-forma financial statement showing that it  
25 can function for a year. To that extent, it seems to

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1 me that the burden of fitness is lower for the  
2 emergency or temporary certificate.

3           But as to the showing of need, I think the  
4 burden is clearly higher. I think that's  
5 conceptually how you get to an emergency or temporary  
6 certificate, is the applicant has to come in and say  
7 this isn't simply in the public's interest; there's  
8 an urgent and immediate need requiring the  
9 certificate to be granted now, not to go through the  
10 normal procedure. So that, for example, in the Aqua  
11 Express matter, if Aqua Express can show that, on  
12 balance, it's in the public interest to have  
13 passenger-only ferry service from Kingston to Seattle  
14 after a full hearing, the Commission would be within  
15 its rights and its discretion to say, Okay, that's  
16 okay. It's been fully briefed and discussed.

17           But when Kitsap Ferry comes and says we want  
18 to bypass all of those procedures and get an  
19 emergency certificate, a temporary certificate, yes,  
20 it seems to me that where it says the Commission  
21 shall only issue a temporary certificate upon finding  
22 that the issuance is due to an urgent -- where the  
23 regulation says that the temporary certificate shall  
24 only be issued upon finding that the issuance is due  
25 to an urgent and immediate need, there is no



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1 corresponding requirement or threshold that has to be  
2 met in applying for a permanent certificate, so it's  
3 --

4 JUDGE MOSS: You used a turn of phrase,  
5 where the applicant has chosen to bypass, but in this  
6 case the applicant has, in fact, filed for permanent  
7 authority, has it not?

8 MR. IGLITZIN: Yes, yes, it has.

9 JUDGE MOSS: So they're not bypassing  
10 anything; they're using a supplemental or alternative  
11 procedure for a temporary certificate.

12 MR. IGLITZIN: Correct. I think that's --  
13 it's only bypassing to the extent that the legal  
14 authority that they have now to run this ferry was  
15 not obtained through the full hearing and evaluative  
16 process.

17 JUDGE MOSS: And that's not required for a  
18 temporary certificate?

19 MR. IGLITZIN: Correct.

20 JUDGE MOSS: Right. Okay.

21 MR. IGLITZIN: So given that the IBU feels  
22 that the essential burden is on the applicant to show  
23 that it is appropriate to be granted an emergency or  
24 temporary certificate, we will be putting on a fairly  
25 limited case this afternoon indicating that evidence

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1 that we're aware of that makes us doubt the existence  
2 of those criteria that would make the temporary  
3 certificate appropriate. Thank you.

4 CHAIRWOMAN SHOWALTER: Before you give your  
5 preliminary statement, I just have a question about  
6 the timing of -- the WAC says interested persons may  
7 file protests with the Commission within 20 days  
8 after service of the notice, that's the Commission's  
9 notice of the temporary certificate. And if someone  
10 could point me to the date that the Commission issued  
11 the notice and the date the protest was filed. I  
12 believe the protest was filed on May 21st.

13 JUDGE MOSS: Ms. Watson, do your witnesses  
14 have a record of the date on which the Commission  
15 issued the temporary certificate?

16 CHAIRWOMAN SHOWALTER: It would be the  
17 notice -- the date the notice was -- the notice --

18 JUDGE MOSS: Notice of the temporary  
19 certificate.

20 CHAIRWOMAN SHOWALTER: Oh, yes, the notice  
21 of the certificate granted; that's correct.

22 MS. WATSON: Yes, we do have that date. It  
23 was May 17th of 2004.

24 CHAIRWOMAN SHOWALTER: Okay. Thank you. Go  
25 ahead.

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1           JUDGE MOSS:  Okay.  Let's go ahead and have  
2 your opening, Mr. Crane.  And Ms. Watson, don't let  
3 me forget about Staff.

4           MR. CRANE:  Thank you, Your Honor.

5           CHAIRWOMAN SHOWALTER:  It needs to be up.

6           MR. CRANE:  Is that better?  Okay.  
7 Commissioners, Judge Moss, thank you for scheduling  
8 this on very short notice.  This is very important to  
9 my client, Kitsap Ferry Service, who is trying to  
10 start a passenger-only ferry service between  
11 Bremerton and Seattle, and would like to do so at the  
12 earliest possible time.

13           The arguments this morning that I've heard  
14 from the Inlandboatmen's Union, the IBU, I think  
15 unfortunately has the standards wrong.  The argument  
16 it has made that there has to be this overwhelming, I  
17 think, by implication, urgent and necessary showing  
18 that the service has to start and the argument's  
19 going to be made and was made in the pre-hearing  
20 conference that, well, because service hasn't been  
21 started in nine months, how can you possibly say  
22 there's an urgent and immediate need.

23           I think that has the standards wrong for a  
24 couple of reasons.  One, if we look back in analogous  
25 proceedings, I don't believe there's a temporary

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1 certificate for ferry service decision by the  
2 Commission that I'm aware of, certainly, but in a  
3 different context, and I'll cite to you authority,  
4 and I'm prepared to provide a case, if the Commission  
5 would like it, in the matter of the application of  
6 provisions of WAC 480-12-033, which was not for ferry  
7 service, certainly, but is analogous in a couple of  
8 respects because it involves the same factors as the  
9 authorities as the regulation in this case. That  
10 there be immediate and urgent need for the service,  
11 that any available service capable of meeting the  
12 need exists or not, and then, third, whether any  
13 other circumstances indicating the grant of temporary  
14 authority's consistent with public interest.

15 CHAIRWOMAN SHOWALTER: What subject does  
16 that WAC have to do with?

17 MR. CRANE: That has to do with a motor  
18 carrier, Madam Chairwoman. And certainly we don't  
19 say it's binding, by any means, but we think it's  
20 analogous. The reason it's analogous is because the  
21 Commission established the weight that it would give  
22 to factors in this sort of context.

23 And I'll quote from the Commission rule on  
24 issuance of temporary permits in that context. It  
25 says, Therefore, in considering the factors listed

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1 above, so that's one, two, three, as I mentioned.

2 CHAIRWOMAN SHOWALTER: You need to slow down  
3 if you are reading, for the court reporter.

4 MR. CRANE: Beg your pardon. Thank you,  
5 Madam Chairwoman. We will give relatively higher  
6 weight to subparagraph two than subparagraph one.  
7 Subparagraph two is any available service capable of  
8 meeting the need. Subparagraph one is any immediate  
9 and urgent need for requested service. And it goes  
10 on to say, And we will give higher weight still to  
11 the factors defined above as falling within paragraph  
12 three. Paragraph three is any other circumstances  
13 indicating that a grant of temporary authority is  
14 consistent with the public interest.

15 The reason I highlight this to the  
16 Commission is I think that it's very important, for  
17 purposes of valuation of the protest, is does the  
18 protestant have the standard backwards. In other  
19 words, that somehow there has to be a proven  
20 immediate and urgent need at the time the  
21 application's made in order to warrant the issuance  
22 of a temporary certificate. And I think that  
23 actually reverses the order.

24 The order should be is issuance of the  
25 certificate consistent with the public interest,

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1 number one. That's the highest standard or question.  
2 Number two is whether the service is being provided  
3 by any other provider currently. And then, number  
4 three, the urgent and immediate need.

5 In the temporary context, certainly there  
6 has to be a showing of urgent and immediate need.  
7 There's no question about that. But it doesn't have  
8 to be shown to this overwhelming level in order to be  
9 allowed to start, because when there is an  
10 established public interest surrounding the service  
11 itself, that itself demonstrates the urgent and  
12 immediate need.

13 And the background from this application  
14 will be testified by Greg Dronkert, who is the  
15 managing member of Kitsap Ferry, L.L.C. He will  
16 testify on how he came to propose this service, how  
17 he came to propose it in conjunction with Kitsap  
18 Transit, which is the governing authority in the  
19 Kitsap Peninsula for purposes of the passenger-only  
20 ferry service.

21 And we'll also put on testimony from Mr.  
22 Dick Hayes, who is executive director of Kitsap  
23 Transit, who will provide the Commission tremendous  
24 background and support for the public interest  
25 factors relevant to this application.

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1           And in addition, the Commission will see  
2 that, in the application itself, there is this very  
3 broad-based public interest shown through the  
4 application. We have letters from legislators, we  
5 have letters from the Kitsap Board of Commissioners,  
6 letters from riders, letters from private sector  
7 companies, fairly broad-based requests that this  
8 service is needed now that Washington State Ferries  
9 does not have the funding in order to carry it out.  
10 It has to be provided by someone.

11           And in total, then, I think the overwhelming  
12 evidence in the application itself demonstrates the  
13 broad-based and very deep public interest associated  
14 with this proposed service, and that, secondly, with  
15 respect to service being provided, this is not being  
16 something in competition with Washington State  
17 Ferries. Kitsap Ferry is not trying to run parallel  
18 services, in other words, trying to beat them to the  
19 dock on a given run. It's in the periods of time in  
20 which the ferry system doesn't run in which  
21 individuals have particularly shown an important need  
22 to use for purposes of getting to their jobs on time,  
23 to reduce their commute time, to get out of their  
24 automobiles. And so there will be evidence, as well,  
25 that it's fairly clear, I think, that there will be a

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1 showing that there's no other alternative service  
2 currently available.

3           And the urgent, immediate need kind of falls  
4 from those two factors, that through all the  
5 evidence, the testimony, the documents presented to  
6 the Commission, it will be shown that the urgency and  
7 immediate need has been set by public policy by the  
8 state legislature that wants the ferry service to be  
9 provided by the private sector, not Washington State  
10 Ferries. There's no funding for the state ferries to  
11 provide this. It wants to have the service provided  
12 through a Public Transit Benefit Association, that  
13 would be Kitsap Transit in this case, in conjunction  
14 with the private sector.

15           And so I think, at the end of the day, what  
16 Kitsap Ferry is going to show is that all elements  
17 were easily met in the application and that the IBU's  
18 protest is without merit. Therefore, we ask the  
19 Commission, at the end of the hearing, to uphold the  
20 certificate that was issued earlier. Thank you.

21           JUDGE MOSS: Thank you. Let's hear from Ms.  
22 Watson concerning Staff's view of the case.

23           MS. WATSON: Good afternoon. The question  
24 here is whether the Commission properly granted the  
25 temporary commercial ferry certificate to Kitsap



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1 Ferry. Staff intends to show that the grant was  
2 properly done and, at the end of the day, we will  
3 request that the Commission affirm its decision.

4 From Staff, you'll be hearing from Ms.  
5 Bonnie Allen and Mr. Gene Eckhardt. Ms. Allen  
6 conducted the investigation regarding whether the  
7 application met the requirements set forth in the  
8 statutes and the rules, and Mr. Eckhardt presented  
9 that recommendation to the Commissioners.

10 In preparing her recommendation, Ms. Allen  
11 relied on the information that she had before her,  
12 which included things that were submitted from the  
13 applicant, and she did speak with the applicant, as  
14 well.

15 The focus of her investigation was whether  
16 Kitsap Ferry had items in place that were necessary  
17 to initiate service. The focus wasn't whether Kitsap  
18 Ferry could sustain service for an extended amount of  
19 time. That's simply not the threshold for a  
20 temporary certificate. She looked at whether Kitsap  
21 Ferry had money available, whether they had a vessel,  
22 whether they had the proper insurance, whether they  
23 had a Coast Guard certification on the vessel,  
24 whether Kitsap Ferry had access to dock space.

25 She also looked at Mr. Dronkert's

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1 experience, which includes providing passenger-only  
2 ferry, ferry service to the Navy between Bremerton  
3 and Seattle. His experience also includes providing  
4 passenger and vehicle ferry service between  
5 Steilacoom and Ketron and Anderson Islands. His  
6 experience includes providing commercial ferry  
7 service to the San Juan Islands and also operating  
8 small passenger cruise ships in Washington, British  
9 Columbia, and Alaska.

10 Ms. Allen also considered whether the  
11 10-mile rule in RCW 47.60.120 applied to this case,  
12 and because this was a passenger-only ferry, that  
13 statute does not apply. Given that, from Staff's  
14 perspective, the effect on the Washington State Ferry  
15 System wasn't an issue.

16 Staff has since received a letter from  
17 Washington State Ferries stating that they don't  
18 object to Kitsap Ferry's application.

19 JUDGE MOSS: Was that the permanent  
20 application or the temporary?

21 MS. WATSON: That's the temporary  
22 application. In conducting her investigation, Ms.  
23 Allen looked at whether the proposed route in this  
24 case is subject to an existing certificate or an  
25 application for another certificate. She also

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1 reviewed Commission records to determine whether the  
2 applicant had a history of compliance issues before  
3 the Commission.

4           Once she completed her investigation, she  
5 presented her recommendation to Mr. Eckhardt, and her  
6 recommendation was to grant Kitsap Ferry's temporary  
7 certificate. She prepared a memorandum and Mr.  
8 Eckhardt reviewed that memo and subsequently -- well,  
9 he reviewed the memo and the application and  
10 subsequently concurred with Ms. Allen's  
11 recommendation.

12           Mr. Eckhardt briefed Commissioners Hemstad  
13 and Oshie on the application and Staff's  
14 recommendation. The requirements that were set forth  
15 in the rules and the statutes were discussed during  
16 that briefing. In particular, the urgent and  
17 immediate need requirement was discussed and how it  
18 applies in this case. They also discussed the time  
19 frame that Kitsap Ferry is proposing in which to  
20 initiate service and the reasonableness of that time  
21 frame. The standards and the process through which a  
22 temporary certificate is granted were also discussed.

23           CHAIRWOMAN SHOWALTER: Ms. Watson, it's  
24 unclear to me, from your account, it seems to me that  
25 you're viewing the case as whether there was

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1 sufficient evidence to have granted the temporary  
2 application. The application was granted. There's a  
3 protest to it. And the WAC requires that grounds be  
4 stated. The grounds stated are what -- challenging  
5 in particular whether there's an urgent and immediate  
6 need and whether it's otherwise consistent with the  
7 public interest.

8           It doesn't seem to me this is in the nature  
9 of an appeal. That is, did we -- did the Commission  
10 have in front of it sufficient evidence to grant the  
11 petition so much as this is a protest to the  
12 temporary certificate, in which case it's not what  
13 process was had; it's whether there is, in fact, an  
14 urgent need. Now, I could be wrong on that, since we  
15 haven't had one of these before, but what is  
16 relevant, what Staff did and how they briefed the  
17 Commission, or whether there, in fact, is an urgent  
18 need, and there's various documents that go to that  
19 in the application itself.

20           My main concern is I don't want to get very  
21 far flung if the nature of the protest is whether  
22 there is urgent need.

23           MS. WATSON: And I don't intend to be far  
24 flung, either. I think you're partially right. The  
25 process itself isn't terribly important. How the

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1 Commission received the information, that's not  
2 what's important, and I don't mean to focus on that.  
3 What's important is what was before the Commission  
4 when they decided to grant the certificate, and I do  
5 think that whether that grant was appropriate is the  
6 ultimate issue in this case. And in order to  
7 determine that, we need to look to see what the  
8 Commission had before it.

9           And it's my understanding, based on the  
10 pre-hearing conference, is that not only are we  
11 looking at the immediate and urgent need, although  
12 that's what Staff had argued, we're also looking at a  
13 couple other issues, including the fitness of the  
14 applicant and --

15           CHAIRWOMAN SHOWALTER: Well --

16           JUDGE MOSS: That would be the general  
17 fitness of the applicant, as specified for temporary  
18 certificates?

19           MS. WATSON: Correct.

20           JUDGE MOSS: And you would see that as  
21 something different from the financial fitness that's  
22 specified for a permanent?

23           MS. WATSON: That's correct.

24           JUDGE MOSS: Which standard do you see as  
25 being stricter, more strict?

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1           MS. WATSON:  The Staff views the financial  
2  fitness as being more strict, because if you look at  
3  the statutes addressing the permanent certificates,  
4  it requires pro-forma financial statements and a  
5  number of other items.  It's more of an in-depth look  
6  at whether the company can sustain operations versus  
7  whether they can initiate service.

8           JUDGE MOSS:  But general fitness would  
9  implicate such factual concerns as you discussed, do  
10 they have a Coast Guard certificate, do they have  
11 insurance, that sort of thing?

12          MS. WATSON:  Right.

13          JUDGE MOSS:  Okay.

14          CHAIRWOMAN SHOWALTER:  And I'm having a hard  
15 time squaring that with the protest document itself,  
16 which -- and I'm looking at page six, number five,  
17 the protestor intends to raise the following issues  
18 in this proceeding:  One, whether an urgent and  
19 immediate need exists, et cetera, and two, whether  
20 the certificate is otherwise consistent with the  
21 public interest.

22                 So Mr. Iglitzin, since I do believe, at a  
23 minimum, you have the burden of going forward with  
24 your protest, doesn't the scoping of this proceeding  
25 at least begin with what you intend to raise as a

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1 basis for your protest?

2 MR. IGLITZIN: Yes, I think that one thing  
3 that is clear, without my digging out my copy of the  
4 protest, is the initial question about whether the  
5 urgent and immediate need is demonstrated. That's  
6 raised. I think that the scope of the protest by  
7 talking about consistent with the public interest, I  
8 think when we're talking about Subsections 3(a)(b)(c)  
9 and (d) of WAC 480-51-060, those all are part of the  
10 public interest.

11 So there's an immediate and urgent need sort  
12 of a threshold on its own, and then it's one of  
13 several enumerated factors, and I think that the  
14 existence of available service and the fitness of the  
15 applicant both are clearly factors which relate to  
16 the question of the public interest. So I think that  
17 that is encompassed within the protest. We did make  
18 it clear at the pre-hearing conference. And again,  
19 we did not see a need to formally amend the protest.  
20 If a formal amendment was necessary, we would bring a  
21 motion to do that if the Commission felt that that  
22 was important to do and see if there was an objection  
23 to that.

24 But from the point of view of the IBU, all  
25 of the three factors set forth under WAC

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1 480-51-060(3)(a)(b) and (c) are part of the overall  
2 public interest criteria set forth -- or factors,  
3 which is identified in the protest.

4 CHAIRWOMAN SHOWALTER: Okay.

5 MR. IGLITZIN: However inartfully.

6 MR. CRANE: Madam Chairwoman, could I answer  
7 further your question to Ms. Watson on the legal  
8 basis for the challenge and what the standards are  
9 applicable today?

10 CHAIRWOMAN SHOWALTER: Yes.

11 MR. CRANE: Thank you. What I'd like to  
12 cite to the Commission is, again, in the analogous  
13 situation of a contract carrier in which -- it's  
14 called Application P-76229 of Pure Grow Company,  
15 1992, before this Commission. I'll quote to you the  
16 following standard. This is in the context of a  
17 challenge to temporary authority. Quote, The  
18 Commission will rely on the initial evidence and  
19 Staff investigation unless they are obviously in  
20 error or unless the protest demonstrates a flaw in  
21 the applicant's presentation, which renders all or  
22 part of the presentation improper or is so convincing  
23 or so complete in its refutation of the shipper  
24 support that the Commission must conclude that the  
25 protestant has the ability to supply all of the



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1 supporting shippers' needs or that the grant of  
2 temporary authority is not consistent with the public  
3 interest.

4           Granted, some of that doesn't apply here,  
5 because this is not a competitor that's protesting;  
6 this is an outside party. But what I think Ms.  
7 Watson was focusing on is correct, from my review of  
8 this case, an analogous situation, which is the  
9 Commission relies on the initial investigation and  
10 Staff investigation, unless there's obvious error in  
11 the application or the protest demonstrates a flaw in  
12 the presentation or some overwhelming evidence, the  
13 temporary certificate should be upheld. I think  
14 that's what Ms. Watson was pointing to, and correct  
15 me if I'm wrong.

16           MS. WATSON: Well, I didn't have that  
17 particular case in mind, but I think it is analogous  
18 to a certain degree.

19           CHAIRWOMAN SHOWALTER: Okay.

20           MR. CRANE: Also, one other issue I want to  
21 raise, and I don't know if, Judge Moss, if you have  
22 notes from Judge Wallis' pre-hearing conference, but  
23 my understanding, what was resolved at the  
24 pre-hearing conference was the scope of the protest.

25           There was a challenge to the protest of the

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1 IBU, and the protest -- the challenge was rejected,  
2 but it was also clarified, and that is the protest  
3 would be the same scope of the protest that was in  
4 the Aqua Express matter, and that is in the last page  
5 of the Commission's order dated June 7th, 2004. It  
6 states that the Inlandboatmen's Union of the Pacific  
7 may participate as a protestant in this proceeding to  
8 address only the issues of the impact of the proposed  
9 service on the State Ferry System, the need for the  
10 proposed service, and the applicant's financial  
11 fitness.

12 And I would hope that the issues are limited  
13 to those, and I think it would make it a more  
14 expedited hearing today if it was adhered to.

15 CHAIRWOMAN SHOWALTER: Well, I think it  
16 would be at least that narrow. I don't -- and Mr.  
17 Iglitzin, correct me if I'm wrong. I don't believe,  
18 in this proceeding today, that impact on the -- on  
19 public agencies is at issue in a temporary  
20 proceeding.

21 MR. IGLITZIN: In the pre-hearing  
22 conference, my recollection is the same as counsel  
23 for Kitsap Ferry Company, in that Judge Wallis did  
24 indicate that the scope, over the objection of the  
25 applicant, that the scope of the objection and of

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1 evidence related to the objection would be  
2 coextensive with the Commission's ruling in the Aqua  
3 Express matter.

4 To the extent that the impact on Washington  
5 State Ferries is a circumstance indicating that a  
6 grant of temporary authority is or is not consistent  
7 with the public interest, it's the IBU's position  
8 that that is appropriately raised at this hearing and  
9 considered by the Commission.

10 I don't see how, inconsistent with WAC  
11 480-05-160, one can -- I suppose one could decide  
12 that there was no evidentiary -- Judge Wallis could  
13 have ruled on whatever grounds that it was not going  
14 to be considered, but there was no such ruling.

15 Certainly, the IBU's position is that the  
16 scope of this hearing is coextensive with that set  
17 forth in the Aqua Express matter, and that would  
18 include impact on Washington State Ferries.

19 CHAIRWOMAN SHOWALTER: We're somewhat  
20 handicapped. Judge Wallis did plan to be here, and  
21 so I don't think we want to try to -- we were not at  
22 the pre-hearing conference, and so if that is the  
23 understanding of the parties here, we would allow it.  
24 Again, it is your burden to go forward, and you're  
25 going forward on what is in the application and our

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1 grant of the temporary application.

2 MR. IGLITZIN: Well, that's what I would  
3 like to address, because that issue was specifically  
4 raised before Judge Wallis, and the argument was made  
5 to Judge Wallis that the standard of review is  
6 essentially did the Commission err based on the  
7 evidence in front of it in deciding to grant the  
8 temporary certificate.

9 And Judge Wallis, to my understanding, and I  
10 certainly -- you know, we don't have a written order  
11 -- specifically rejected that, and said that because  
12 at the time the Commission reviewed the application  
13 for the temporary certificate, there had been no  
14 opportunity for anyone to protest or make any --  
15 present any other evidence, that there would be a  
16 hearing at which additional evidence would be  
17 presented.

18 That's why counsel for Kitsap Ferry is here,  
19 prepared to put on additional witnesses and provide  
20 additional evidence as to, for example, the fitness  
21 of the applicant, and I refer to documents regarding  
22 bank loans available that have been provided to me by  
23 counsel for Kitsap Ferries since the pre-hearing  
24 conference, an indication that he plans on presenting  
25 it.

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1 I mean, there was a fundamental question in  
2 front of Judge Wallis, is this hearing a hearing by  
3 nature of review of the prior decision saying, based  
4 on the evidence which was in front of us then, was  
5 that the right decision, or is this more full-bore,  
6 albeit brief adjudicative hearing, where the  
7 Commission is going to look at the evidence presented  
8 before it on June 28th, 2004, and decide whether the  
9 standard and the regulation was met.

10 It was my clear understanding from Judge  
11 Wallis that the latter is the case; that, in fact,  
12 the intent was that the Commission was going to hear  
13 not just -- and this is a --

14 CHAIRWOMAN SHOWALTER: I understood your  
15 point. I wanted to confirm. Is that the  
16 understanding of the other parties, as well?

17 MR. CRANE: Limited evidence, Your Honor,  
18 Madam Chairwoman. Limited evidence.

19 CHAIRWOMAN SHOWALTER: I hesitate to use the  
20 word de novo, but that the purpose of today's hearing  
21 is to hear, among other things, from the applicant --

22 MR. CRANE: Yes.

23 CHAIRWOMAN SHOWALTER: -- on what undergirds  
24 the application?

25 MR. CRANE: That's correct, that's correct.

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1           CHAIRWOMAN SHOWALTER: Is that your  
2 understanding, Ms. Watson?

3           MS. WATSON: To a certain degree. With  
4 regard to the effect on other state agencies, it was  
5 more along the lines of whether it was within the  
6 Commission's discretion to hear that sort of evidence  
7 under WAC 480-51-060, Subsection 3(d), and that's the  
8 any other circumstances indicating that a grant of a  
9 temporary authority is consistent with the public  
10 interest.

11           So it's not the same sort of inquiry that's  
12 made in the permanent certificate proceeding. So  
13 with that understanding, I think that my  
14 understanding is akin to Mr. Crane's.

15           CHAIRWOMAN SHOWALTER: So that in the  
16 statute governing the permanent certificate, there is  
17 a statutory mandate saying the Commission shall  
18 consider and give deference to the effect on public  
19 agencies.

20           MS. WATSON: Right, and --

21           CHAIRWOMAN SHOWALTER: But there is no  
22 similar provision, either in the statute or in the  
23 WAC, affecting temporary certificates. So then it  
24 would be something that would be -- could be  
25 relevant, but is not a necessary element of the

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1 temporary certificate?

2 MS. WATSON: That's correct. And I believe  
3 that there's an argument before the Commission at  
4 this point in the Aqua Express case regarding what  
5 all of that means, so I just wanted to make note of  
6 that on this record, as well.

7 JUDGE MOSS: And my notes from Judge Wallis  
8 indicate that there was some -- there's perhaps a  
9 petition for interlocutory review on this point and  
10 that the outcome here would be dependent on the  
11 outcome there. Do I understand that correctly?

12 MS. WATSON: Correct. And I have made a  
13 similar argument here, and so he decided to let that  
14 sort of evidence in, but keeping in mind the other  
15 case.

16 JUDGE MOSS: All right. We'll -- excuse us  
17 just a minute.

18 (Discussion off the record.)

19 JUDGE MOSS: Allright. Thank you all for  
20 indulging us while we had a conference here at the  
21 bench. Based on the opening statements and  
22 discussion that we've had from the parties, it  
23 appears that it would be more appropriate to have the  
24 applicant go forward with his evidence first, and  
25 then we can -- briefly, and then we can have the, I'm

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1 assuming, brief testimony. You have one witness; is  
2 that right, Mr. Iglitzin?

3 MR. IGLITZIN: Yes, although my witness is  
4 not here, so that's another good reason to have the  
5 applicant go first.

6 JUDGE MOSS: Okay. Well, let's hope your  
7 witness is here in time, because we won't have an  
8 extended day today.

9 MR. IGLITZIN: I understand.

10 MR. CRANE: Your Honor, it would be a brief  
11 session if the protestant went first and didn't have  
12 a witness. It might be over fairly quickly.

13 JUDGE MOSS: I suspect you're correct.  
14 Well, I'll tell that story some other time. All  
15 right. And you have two witnesses, as well.

16 MS. WATSON: That's correct, although it  
17 should be fairly brief.

18 JUDGE MOSS: All right. Ms. Watson, you're  
19 going to follow the applicant with your witnesses?

20 MS. WATSON: That's correct.

21 JUDGE MOSS: And of course, we're focused on  
22 the criteria that are stated in -- I guess it's 81 --  
23 RCW 81.84.070, temporary certificate, immediate and  
24 urgent need, and the associated rule, WAC 480-51-060,  
25 concerning temporary certificates, which also



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1 specifies the immediate and urgent need standard as  
2 per the statute and general fitness standard and  
3 available service.

4           So with that introduction, why don't we get  
5 into our -- was there something else before we get  
6 into our witnesses, Ms. Watson?

7           MS. WATSON: Well, I had a point of  
8 clarification on -- one thing that did come out in  
9 the pre-hearing conference was that, as the  
10 protestant, Mr. Iglitzin's client does have the  
11 burden of proof, and I wanted to make that sure we're  
12 still proceeding under that, or if perhaps I had my  
13 understanding wrong.

14           JUDGE MOSS: Well, to be perfectly blunt,  
15 based on what I've heard here, I'm a little confused  
16 on that point. I started out under the belief that  
17 that was the case. Now, but the impression that I  
18 got from some of the discussion was perhaps something  
19 different was said at the pre-hearing conference. So  
20 I suppose we do need to clarify this point. Is there  
21 a clear understanding in your mind, from the  
22 pre-hearing conference, as to who bears the burden  
23 here, what the ultimate issue is?

24           MS. WATSON: Yes, Mr. Iglitzin's client does  
25 bear the burden of proof, because it is his protest

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1 and that's what starts this whole proceeding. The  
2 ultimate issue is whether the Commission acted  
3 properly when they granted the certificate.

4 CHAIRWOMAN SHOWALTER: So is the burden on  
5 Mr. -- does that mean the burden is on Mr. Iglitzin  
6 to demonstrate that the Commission erred in granting  
7 the application, and so we are hearing evidence on  
8 the standards governing the temporary permit?

9 MS. WATSON: That's my understanding, and  
10 additional evidence can and will be received, but  
11 that's more to indicate whether the decision in the  
12 first instance was correct, whether the evidence that  
13 the Commission had before it was valid and reliable.

14 JUDGE MOSS: Indeed, my notes from Judge  
15 Wallis reflect that the ultimate issue in this  
16 proceeding is whether the Commission erred in  
17 granting the application for temporary authority, and  
18 that's consistent with what you just said.

19 MS. WATSON: Correct.

20 JUDGE MOSS: Off the record for a moment.

21 (Discussion off the record.)

22 JUDGE MOSS: Let's be back on the record.  
23 Given the hour and the perhaps somewhat novel nature  
24 of what we're dealing with here, I guess we have two  
25 of these cases pending now, and there's some statutes

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1 recently revised and so forth. I think the best and  
2 most effective thing to do will just be to go forward  
3 with our witnesses, let's get our record built, we'll  
4 have some brief argument at the end, and then the  
5 Commission will be in a position to deliberate and  
6 take the time necessary to sort through the  
7 intricacies of the law.

8           So then, let us do that, and I think we  
9 agreed that it might be best to have the applicant go  
10 first with your witnesses.

11           MR. CRANE: Very well.

12           JUDGE MOSS: Mr. Crane, call your first  
13 witness.

14           MR. CRANE: Thank you, Your Honor. The  
15 Kitsap Ferry Company calls Greg Dronkert, please.

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1 Whereupon,

2 GREGORY A. DRONKERT,

3 having been first duly sworn by Judge Moss, was

4 called as a witness herein and was examined and

5 testified as follows:

6 JUDGE MOSS: Thank you. Please be seated.

7 THE WITNESS: Thank you.

8 JUDGE MOSS: Go ahead, Mr. Crane.

9 MR. CRANE: Thank you, Your Honor.

10

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

12 BY MR. CRANE:

13 Q. Greg, how does that -- the microphone, is it

14 working all right?

15 A. Read you loud and clear.

16 Q. Okay, great. Could you give your full name

17 for the record, please?

18 A. Gregory A. Dronkert.

19 Q. And Mr. Dronkert, what is your age?

20 A. Forty-two.

21 Q. Who's your current employer?

22 A. Pacific Marine Group.

23 Q. What is Pacific Marine Group?

24 A. Pacific Marine Group is a family of

25 businesses that provides marine transportation,

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1 consulting, and vessel operations and charters.

2 Q. In what areas, physical localities, what  
3 regions are we talking about?

4 A. Puget Sound, British Columbia, and Alaska.

5 Q. Now, what does Pacific Marine Group do in  
6 its business?

7 A. As I said, Pacific Marine Group is a family  
8 of businesses, and we really have two primary  
9 infrastructure businesses. One is a vessel  
10 management company, it's called Pacific Navigation,  
11 and it provides vessel management services, so if a  
12 company cares to outsource the services to run their  
13 businesses, they use us.

14 We operate the Pierce County Ferry for  
15 Pierce County between Steilacoom and Ketrone and  
16 Anderson Islands, we operate small cruise ships in  
17 Alaska, we operated for the U.S. Navy, between  
18 Everett and Bremerton, high-speed ferry service, we  
19 currently work with Mosquito Fleet and provide  
20 management for their operations. So that's Pacific  
21 Navigation.

22 The other element of our business is Marine  
23 Consulting, that's Pacific Marine Technical Services.  
24 And that is a, if you will, a brain trust of  
25 regulatory and training and project management

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1 services. So an operating business and a technical  
2 business, both owned by Pacific Marine Group.

3 Q. Are any of those businesses you mentioned,  
4 Pacific Marine Group, Pacific Navigation, Pacific  
5 Technical Services involved with Kitsap Ferry Company  
6 in its proposed service between Bremerton and  
7 Seattle?

8 A. The answer is yes, in that Pacific  
9 Navigation Company is going to be responsible for the  
10 operations as the concentration of operational  
11 expertise that our company has. Pacific Marine  
12 Technical Services was involved, if you will, in the  
13 evaluation of the service, in the writing of the  
14 security plans and putting together our training and  
15 our safety plans. So our technical department put  
16 together the technical aspects and our operating  
17 business is going to do the operations.

18 Q. And how does all this fit in with Kitsap  
19 Ferry Company? What's your role in that company?

20 A. Kitsap Ferry Company is a wholly-owned --  
21 it's an L.L.C., it's wholly-owned by Pacific Marine  
22 Group, and it was set up wholly and exclusively to  
23 operate between Bremerton and Seattle. It is, if you  
24 will, an operating brand, and it will have its own  
25 general manager, it will have its own administrative

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1 assistant, it will actually hire its own crew, but  
2 the management of Kitsap Ferry Company will be  
3 through Pacific Navigation, which is where all our  
4 operational expertise resides.

5 Q. Now, what's your position with Pacific  
6 Marine Group?

7 A. Pacific Marine Group, I'm the president, I'm  
8 the founder, I started the company.

9 Q. Okay. And what about Pacific Navigation?  
10 What's your position with that company?

11 A. My technical title is manager. It's a  
12 manager-managed L.L.C.

13 Q. What will be your title or is your title  
14 with Kitsap Ferry Company?

15 A. The same, manager. It's a manager-managed  
16 L.L.C.

17 Q. What does a manager mean for an L.L.C.?

18 A. With L.L.C.s, you're either member-managed,  
19 where the members get together and they form, like, a  
20 board of directors and they make all top-level  
21 executive decisions, or you hire a manager to operate  
22 the business. And in the case of my businesses, the  
23 management, the executive management of the  
24 businesses, is really allocated back to myself.

25 Q. Now, for some background, could you tell me

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1 how long you've been involved with ferries and ferry  
2 operation?

3 A. Approximately 14 years.

4 Q. And start from the beginning. What did you  
5 do 14 years ago?

6 A. Well, 14 years ago, I ran a shipyard in  
7 Alaska, Ketchikan Shipyard. I was the vice president  
8 and general manager, and our main client was the  
9 Alaska Marine Highway System. And so I have, if you  
10 will, an in-depth understanding and experience with  
11 the regulatory aspects of ferries and the various  
12 elements of capital planning and with maintenance and  
13 repair. And I did that for two years.

14 Q. Okay. What did you do after that?

15 A. I was recruited by the state of Alaska to  
16 come in and manage their engineering. So I was hired  
17 by the Alaska Marine Highway System as their marine  
18 engineering superintendent. I was responsible for  
19 the entire nine-vessel fleet and all 32 terminals for  
20 maintenance and capital planning and project  
21 management.

22 Q. Now, is there an equivalent position in  
23 Washington State Ferries that you're familiar with?

24 A. Well, yes, but my -- after that, I was  
25 appointed to be the director of the Alaska Marine



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1 Highway System, and that would be equivalent to what  
2 CEO Thorn is here in Washington.

3 Q. I got a little bit ahead. Sorry. All  
4 right. Thank you.

5 A. So --

6 Q. Go ahead and finish, elaborate a little bit  
7 on your position with Alaska Highway System as  
8 director.

9 A. When I was in my position as marine  
10 superintendent, the then director, Jim Ayers, was  
11 promoted to another opportunity and I was appointed  
12 by Governor Hickel as the director of the Alaska  
13 Marine Highway System. That is a Deputy Commissioner  
14 within the Department of Transportation. So my  
15 official title was Deputy Director -- Deputy  
16 Commissioner, Department of Transportation.

17 Q. And what did you do after you were the  
18 Deputy Director of Alaska Marine Highway System?

19 A. After I was the system director, so I was  
20 the Deputy Commissioner, excuse me, and I was the  
21 Director of the Alaska Marine Highway System. After  
22 that, I started a marine consulting business. It's  
23 an appointed position. When the Knowles  
24 administration came in, there was the usual shuffling  
25 of appointed positions, and I started a marine

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1 consulting business, which lives today in Pacific  
2 Marine Technical Services.

3 Q. And what year was that that you started  
4 those businesses?

5 A. That would have been 1995, when I finished  
6 with the Alaska Marine Highway System.

7 Q. And briefly, could you describe what  
8 operations you've been involved with with ferries  
9 since 1995 to the present?

10 A. Since managing the Alaska Marine Highway  
11 System, I've been involved with the operation of  
12 passenger ferries in Alaska. We operated ferries  
13 between Juneau and Gustavus in support of Glacier Bay  
14 National Park. We operated a ferry to support the  
15 park and we operated the ferry within the park, which  
16 did camper drop-offs in the park, and we -- so that's  
17 in Alaska.

18 Down here, our experience has been with the  
19 Pierce County Ferry, which is an outsourced  
20 operation. They own the ferries, they own the  
21 terminals, and we provide terminal personnel, all  
22 crew, all management, and we've been operating that  
23 -- we've been involved with that for two years now.

24 And then, for the last year, we've operated  
25 high-speed ferry service between Bremerton and

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1 Everett, as I've mentioned before, through Rich  
2 Passage, on this precise route that we're discussing.

3 Q. Now, Kitsap Ferry Company applied for a  
4 temporary certificate with this Commission; right?

5 A. Correct.

6 Q. Now, at the time you applied for it, was  
7 your service that you proposed being provided by  
8 anybody else?

9 A. No.

10 Q. And why is that?

11 A. In September of 2003, I'm sure everybody's  
12 aware that Washington State Ferries, after quite a  
13 bit of advanced warning, discontinued or abandoned  
14 service -- passenger-only service between Seattle and  
15 Bremerton.

16 Q. Okay.

17 A. After operating since approximately 1986.

18 Q. All right. And how did that lead to your  
19 involvement with Kitsap Ferry? What happened between  
20 September 2003 and April 2004, when you made your  
21 application?

22 A. We were literally in operation at that time  
23 for the Navy, as I said. We were operating two  
24 high-speed ferries, and in September, when the state  
25 discontinued service or abandoned the route, Kitsap

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1 Transit had been, for some months, advertising, if  
2 you will, that it was their plan or intent to  
3 initiate their own ferry service. They went through  
4 quite an elaborate public outreach and stakeholders  
5 participation process and they issued, if you will,  
6 Proposition One, I believe, and it was defeated in  
7 November of 2003.

8           After that, we were being greatly encouraged  
9 by county commissioners, city managers, chamber of  
10 commerce, rotary folks to get involved in this issue,  
11 and so we engaged this issue in approximately January  
12 of this year, and then worked with Kitsap Transit  
13 primarily to gain authority from transit to make an  
14 application to the UTC.

15           Q. Okay. Let me go back to an earlier  
16 question. I didn't ask it very well. Let me ask it  
17 again. When you answered my question that is your  
18 proposed service being provided by anybody else, you  
19 said no. In terms of your service versus, for  
20 example, the Washington State Ferries' auto ferry  
21 service, how does your yours differ?

22           A. Well, there's probably two points to this  
23 question, and I'm going to start with the first  
24 point, which is what is Washington State service. To  
25 me, and I believe this is a fairly wide-held belief,

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1 that the state provides fundamental service. It's  
2 the basic infrastructure, something that the private  
3 sector can't provide. There's barriers to entry that  
4 would prohibit someone such as myself from trying to  
5 engage in passenger/auto ferry operations.

6 Now, whether the level of service is  
7 sufficient is a matter of debate, but who should be  
8 providing it, I think, is unquestionable. The State  
9 should and does. On the other hand, the  
10 passenger-only ferry service is additional service,  
11 it's an enhanced service. What it does is it  
12 provides additional capacity during periods of high  
13 demand, during times when the State is not providing  
14 it, and that is the kind of service that the private  
15 sector can get involved in. The private sector has  
16 extensive experience with passenger-only ferries. We  
17 can afford passenger-only ferries. We perhaps have  
18 more experience than Washington State Ferries does on  
19 whole, when you look at the private sector. So  
20 that's an appropriate place for the private sector to  
21 be involved in providing a critical service.

22 When I said that no one else is providing  
23 that service, I mean passenger-only service, and it  
24 is a distinctly different service. One, it operates  
25 at a higher speed. The other element of it is that

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1 it has -- it's regulated completely different under  
2 the Coast Guard. It's a different class or category  
3 of vessel. There's certain -- in our case, there's  
4 certain enhancements or features that the State does  
5 not and likely will not have, such as assigned  
6 seating for people that are willing to buy a pass for  
7 an assigned seat. With no disrespect to the State,  
8 we provide food service, which they do not at this  
9 time, and our service is intentionally tailored to  
10 meet demand of the public.

11 So when we built our schedules, we did it  
12 through a fairly elaborate survey process, and as we  
13 add vessels and as we add to our schedule, it is  
14 going to be through direct surveying. So my point is  
15 the difference is that the public has very direct  
16 access to our service and a lot of the same.

17 Q. Okay. Now, going back, when you said you  
18 were approached by Kitsap Transit and the rotary and  
19 county commissioners, et cetera, to provide this  
20 service, I'm sure that was flattering, but how did  
21 you know that there would be a need for your service?

22 A. In all sincerity, we weren't very interested  
23 in the very beginning. We felt that the solution  
24 that Kitsap Transit had proposed made a lot of sense.  
25 Ultimately, I think that didn't succeed, because it

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1 was a fairly elaborate plan that needed a fairly high  
2 level of funding. It was really the fully built out  
3 project. They offered the full project instead of  
4 something incrementally. So we preferred their plan  
5 and we actually supported their plan.

6           The way we came to believe that there was  
7 demand for the service was, first off, empirically,  
8 through being in Bremerton, meeting with people that  
9 were commuters, like I said, in the rotary, we're  
10 active in rotary. We got constant questions of are  
11 you going to get involved in that service, aren't you  
12 operating in Bremerton right now, do you think that  
13 there's a place for you there.

14           The county commissioners in Kitsap were very  
15 encouraging, would be the right term. I met with  
16 each one of them individually. Each one of them  
17 expressed, in light of Proposition One not passing,  
18 because they were pushing very hard for their own  
19 local ferry service, in light of that, they said, Is  
20 there something you could do right away. I mean,  
21 that's the summary of those conversations.

22           And I believe that the director of transit  
23 got a clear -- got clear direction to see if there  
24 was a way to work out something with the private  
25 sector. The way we independently, then, went and

0101

1 determined whether there was demand was we looked at  
2 all the traffic data provided by the Washington State  
3 Ferries. We looked at the last three years of data.  
4 We scrutinized it both in terms of passenger-only  
5 service and the passenger/auto ferries. We looked  
6 for whatever trends we could.

7 We did some direct surveying of passengers.  
8 We put an online survey out, we created a Web site,  
9 we advertised, and I believe we received very good  
10 response to our online survey. We had a whole range  
11 of questions, but we quickly realized that there was  
12 an immediate demand, pent up demand for this service.  
13 So kind of man on the street, person on the street,  
14 and then our direct surveying, in addition to traffic  
15 data from Washington State Ferries.

16 Q. So you made your application for the  
17 passenger-only ferry service?

18 A. Correct.

19 Q. Right. Okay. Now, have you started that  
20 service? You have the certificate already issued?

21 A. We have the permit, but we haven't started.

22 Q. And why have you not started?

23 A. There's too much risk if there is a chance  
24 of the permit being suspended or revoked. Certainly,  
25 the biggest issue with the clients revolve around the



0102

1 reliability, and a fit and start would be a  
2 tremendous blow to the project. So we certainly want  
3 to resolve whether we have the authority to proceed.  
4 That's why we haven't started yet.

5 Q. I guess I don't understand you. What do you  
6 mean, the clientele needs to know? I didn't quite  
7 understand what you just said.

8 A. Well, my point being is that once we start  
9 service, even if we could afford to have service  
10 stopped on us once we roll it out, the customers  
11 would lose confidence in the service if it started  
12 one week and ran for a couple weeks and stopped and  
13 rolled out again a month later.

14 Q. I see, all right. Now, you have --  
15 currently have a vessel that you were planning to use  
16 for this service?

17 A. That's correct. That's the vessel that we  
18 used on the Navy job, it's the Spirit of Adventure.  
19 We, as a company, have about five years of  
20 operational experience with that vessel. That vessel  
21 has run for one continuous year through Rich Passage  
22 between Bremerton and Everett.

23 Q. Okay. Now, is there any significance of  
24 starting now, as opposed to any other time of year  
25 for your service?

0103

1           A.    Absolutely.  One, it's peak season.  It's  
2   undeniable, when you look at the traffic data, that  
3   the Washington State Ferries experiences a surge of  
4   traffic in the summer months.

5           Q.    Why is that?

6           A.    Oh, I think it's primarily visitors that are  
7   coming to the state.  I don't think that the  
8   commuters surge, but I think that the visitors, and I  
9   think there's a lot of friends and families' use,  
10  where you might decide to recreate on the ferry in  
11  the summer when you wouldn't normally, so there's  
12  residents using it more and there's outside  
13  vacationers.

14          Q.    Okay.  Well, what I'd like you to do is go  
15  through your application, and I have some questions  
16  for you as to some of the information that you  
17  provided to the Commission at the time you made your  
18  application, and I'd like to ask you some questions  
19  on that.  Do you have that in front of you?

20          A.    I do, but if I may, I just want to add one  
21  thing about the importance of starting now before I  
22  lose the thought, is that also the -- there's  
23  immediate need now, and the longer that the service  
24  is left un -- the service is left unserved, the more  
25  likely people are to find other alternatives, other

0104

1 than the ferries. So basically, you have this kind  
2 of diminishing period of time where people -- where  
3 that demand, I think, will diminish over time. Now,  
4 it may not be significant, but people are still in  
5 their pattern that they were in back in November, and  
6 people will find different patterns, so the timing's  
7 important.

8 Q. Thank you. In your application, and we'll  
9 go through the beginning part, but we've talked about  
10 Pacific Marine Group, what that constitutes and what  
11 the involvement is of Pacific Marine Group. One of  
12 the questions says, Will an attorney be representing  
13 you at the hearing. It says no. Did you change your  
14 mind on that, Mr. Dronkert?

15 A. I didn't have a choice. In the temporary,  
16 we didn't have an attorney, but of course now we do.

17 Q. Thank you. Thank you for hiring me. I  
18 don't mean to be facetious, but I do want to go  
19 through some of the elements of your application.

20 A. Quickly, in all sincerity, we actually  
21 thought it was something we could do ourselves. We  
22 read through everything, we followed the  
23 instructions, and we felt comfortable with the  
24 process.

25 Q. Okay. Now, you -- let's see. There's no

0105

1 page numbers in your application, so I'm going to  
2 reference the page number that I think it is, and  
3 then by paragraph number. Paragraph number eight  
4 says, Attach a copy of the tariff you propose using,  
5 and let me just interject for a moment with the  
6 Commission and Judge Moss. If there's anything that  
7 you feel I'm devoting too much time to on the  
8 questions of Mr. Dronkert, please feel free to  
9 interrupt and I'll move to the next --

10 JUDGE MOSS: I was beginning to have seeds  
11 of thought in that direction, Mr. Crane. You  
12 anticipated me. To the extent the material is in the  
13 application, we have that before us and we don't  
14 really need to go through it in a step-wise fashion  
15 now.

16 MR. CRANE: Okay.

17 JUDGE MOSS: To the extent anything in that  
18 application was perhaps challenged on  
19 cross-examination, you could take it up on redirect.

20 MR. CRANE: Okay. And Your Honor, also,  
21 with respect to differences between the application  
22 at the time it was prepared and now, for example,  
23 financial statement, it would be one that jumps right  
24 to mind, there's been a question regarding the  
25 financial statement, that's something that should be

0106

1 dealt with on redirect?

2 JUDGE MOSS: Yeah, I don't think we need to  
3 update the financial statement as part of your direct  
4 case. It stands as it is in the application, of  
5 course, and to the extent there's any question raised  
6 about it that an update would be pertinent to, then  
7 you could take care of that on redirect.

8 MR. CRANE: All right. Thank you very much.  
9 Now, following up on that, Your Honor, that point,  
10 what I had intended to do with Mr. Dronkert was to  
11 highlight the need for the service, the urgent,  
12 immediate need for the service by virtue of the  
13 support he received through letters from the Board of  
14 Commissioners, for example, the mayor of Bremerton,  
15 mayor of Port Orchard, Representative Rockefeller.  
16 Do you wish that I not go through those?

17 JUDGE MOSS: These are all part of the  
18 application?

19 MR. CRANE: They are all part of the  
20 application; that's correct.

21 JUDGE MOSS: So I would say, unless you have  
22 some additional evidence --

23 CHAIRWOMAN SHOWALTER: No, I think they are,  
24 but I noticed you said earlier representatives, and  
25 you just mentioned Representative Rockefeller, and I

0107

1 don't have in my own set of documents that letter, so  
2 I'm just -- maybe I'm missing a page.

3 MR. CRANE: Okay. Then we certainly need to  
4 get you that page, Madam Chairwoman.

5 CHAIRWOMAN SHOWALTER: Is there any  
6 explanation for this that anyone has?

7 THE WITNESS: I actually have the  
8 explanation, is that there were certain letters that  
9 were sent in with our application, which I believe  
10 you have, and any other additional letters that you  
11 got get docketed apparently a little differently, get  
12 categorized differently.

13 CHAIRWOMAN SHOWALTER: Okay. And all of  
14 them would be part of our record, just not part of  
15 the application per se?

16 THE WITNESS: Yes, ma'am.

17 CHAIRWOMAN SHOWALTER: It would be helpful,  
18 though, to us, to give us copies, unless we're  
19 talking about a very large stack. We can always go  
20 look at the record.

21 MS. WATSON: About those letters that have  
22 come in, there's over 90 letters.

23 CHAIRWOMAN SHOWALTER: Okay.

24 MS. WATSON: Staff has requested that they  
25 be made part of the record. And there's a -- I can

0108

1 grab that number if you want that real quick.

2 CHAIRWOMAN SHOWALTER: We can find our way  
3 to our record. Thanks.

4 JUDGE MOSS: If you would furnish me a copy  
5 of the set when it's complete. Thank you.

6 MS. WATSON: We can do that.

7 JUDGE MOSS: All right. So we're cutting  
8 you short here.

9 MR. CRANE: Oh, that's fine, Your Honor.  
10 No, I don't mind being cut short on those issues,  
11 because I wasn't certain to the degree the Commission  
12 wanted the background to be heard verbally for  
13 purposes of deliberation on this issue, particularly  
14 --

15 JUDGE MOSS: I think in the interest -- we  
16 do need to conclude this afternoon, and you have  
17 another witness, we have two from Staff, and one from  
18 the protestant. So I think, again, to the extent  
19 it's already in the record, if it comes up from  
20 cross-examination and you need to redirect, fine.  
21 Otherwise, we have the paper record.

22 MR. CRANE: Very well, Your Honor.

23 Q. Mr. Dronkert, now, you have also applied for  
24 a permanent certificate of convenience and necessity?

25 A. That's correct.

0109

1 Q. Why did you apply for a permanent  
2 application, as well?

3 A. Because we fully intend to provide the  
4 service for a long, long period of time.

5 Q. Okay. Now, let's see. Do you -- from your  
6 experience, from what you've learned in the  
7 background preparing for this application, this  
8 proposed service, from what you have obtained  
9 personal knowledge of, is there an urgent and  
10 immediate need for the service?

11 A. There is.

12 Q. And why is that?

13 A. Well, when you look at the traffic data, the  
14 traffic -- the monthly passenger-only ferry traffic  
15 ranged from 50,000 per month to about 70 for the last  
16 three years, so call it 60,000 per month.

17 Q. And what are we talking about now? When you  
18 say passengers per month?

19 A. That's the passengers using the  
20 passenger-only ferry.

21 Q. That used to be provided by Washington State  
22 Ferries?

23 A. That's right, before it was abandoned.

24 Q. Okay.

25 A. When you look at averages, there's about



0110

1 700,000, depending on how you look at the numbers,  
2 per year for that service. When you look at the  
3 walk-on passengers on the auto ferry, it's another  
4 million. So annually, there's 1,700,000, looking at  
5 the data for the last three years on average, of  
6 people that walk on the ferries. As I said,  
7 approximately 700,000 of them were riding the  
8 passenger-only ferry boats. When passenger-only  
9 ferry service stopped, when you look at the data, and  
10 it was averaging about 50,000 last year when that  
11 happened --

12 Q. Per?

13 A. Per month, thank you. The 50,000 didn't  
14 move onto the Bremerton run, nor the Bainbridge run,  
15 nor the Southworth run. My point is is that there  
16 was a loss of riders on the ferry system because of  
17 the passenger only ferry service stopping. Now, I'm  
18 not saying the whole 50,000 went away, because it's  
19 hard to tell with seasonality and everything, but  
20 surely that full amount didn't show up in Bainbridge,  
21 Bremerton or Southworth. So there was a net loss to  
22 the system. They went away. That means that those  
23 folks are not being served by those other services  
24 out there. So that's one element.

25 The other is their service had been in

0111

1 existence since 1986. Certainly, it was well-used,  
2 through studies and policy and actions of the state  
3 and various groups. That service was strongly  
4 supported and it went away.

5           So in my simple approach to life, there was  
6 high demand for a service, it was discontinued purely  
7 for funding, and there's -- that demand still exists.  
8 So the immediacy is the fact that people are ready to  
9 use it right now. The urgent element of it, to me,  
10 is it's imperative, meaning it has not only direct  
11 economic effect on the people that are using it, but  
12 on that region, on that community.

13           One of the things we learned as we studied  
14 this was that Bremerton really, and I wholly believe  
15 this now, is going through a renaissance. Bremerton  
16 is going through a period of revitalization, and the  
17 reliable transportation is key to that. You see it  
18 everywhere, that transportation drives economic  
19 development.

20           And so we really feel that there's this  
21 urgent need, because they're just -- they're just  
22 ready to take off. The convention center is being  
23 built, there's a new office building, there's a  
24 government building being built. A number of those  
25 projects launched this summer. And our additional

0112

1 service, on top of Washington State Ferry service, it  
2 will help feed that community.

3 Q. Okay. Now, you mentioned earlier that your  
4 service would be supplementary, not directly  
5 competing with the ferry service provided by  
6 Washington State Ferries, even for walk-on  
7 passengers. How can you explain that in terms of the  
8 scheduling, for example? Do you have information in  
9 front of you that you can tell the Commission how  
10 your schedule varies from the Washington State Ferry  
11 schedule?

12 A. Well, I can, in general terms. There are  
13 fairly large holes in Washington State Ferries'  
14 schedule, the time that it takes the boat to make the  
15 trip across. And our general strategy is to, if you  
16 will, fill in those holes with our schedule.

17 Q. Let me interrupt you for just a moment. Do  
18 you have a copy of the Washington State Ferry  
19 schedule currently? I have one here, if you would  
20 like it.

21 A. I should.

22 MR. CRANE: Judge Moss, may I approach the  
23 witness?

24 JUDGE MOSS: Yes, please do.

25 THE WITNESS: Yes, I do. Thank you.

0113

1 Q. Okay.

2 A. Okay.

3 MR. CRANE: Judge Moss, would you like a  
4 copy of this? I probably should have --

5 JUDGE MOSS: Why don't you hand that up.

6 MR. CRANE: Sorry I only have one copy.

7 JUDGE MOSS: That's all right. We can  
8 share.

9 MR. IGLITZIN: Actually, I mean, if I can --  
10 I was going to present this, anyway, but I have  
11 additional copies in an exhibit for the IBU.

12 MR. CRANE: Your Honor, we'd like to object  
13 to the exhibit that was proposed by Mr. Iglitzin.  
14 I'd like to just go through the schedule for now, and  
15 perhaps Mr. Iglitzin can offer his --

16 JUDGE MOSS: Let's hold off on that, then,  
17 Mr. Iglitzin.

18 MR. IGLITZIN: All right.

19 Q. Mr. Dronkert, could you look at your tariff  
20 in terms of the schedule and -- which is in the  
21 application, and perhaps verbally just compare the  
22 times that you're proposing to provide service  
23 compared to the Washington State Ferries' auto  
24 service between Bremerton and Seattle?

25 A. Okay. For example, if you have the

0114

1 Washington State Ferry schedule, the first departure  
2 is at 4:50.

3 Q. In the morning?

4 A. In the morning, and their next one is at  
5 6:20. So our first departure is at 5:20, which falls  
6 between those two sailings.

7 Q. Okay. Now, slow down there. You're saying  
8 that there's no 5:20 from the Washington State  
9 Ferries?

10 A. Correct.

11 Q. And so your service would be in between the  
12 two -- the earlier sailing and the later sailing?

13 A. Correct.

14 Q. Okay.

15 A. And our schedule pretty much fits, not  
16 purely coincidentally, the way that the  
17 passenger-only ferry boats were previously scheduled  
18 for the state. I mean, they had enough sense, of  
19 course, very competent, capable group over there, to  
20 try to integrate the passenger-only ferry schedule  
21 with the car ferry, and that's what we tried to do,  
22 as well.

23 One thing that's critical in this is the way  
24 we picked our times was through direct surveying.  
25 People went to our Web site, they filled out what

0115

1 time do you want to leave. The strongest,  
2 highest-picked departure time was 7:00 in the  
3 morning. So my next point here is that if you are on  
4 the Washington State Ferries, there's a 6:20 or a  
5 7:20 on the car ferry, but we're going to provide a  
6 7:00.

7 Q. Okay. So there's a 6:20 Washington State  
8 Ferries?

9 A. Correct.

10 Q. And a 7:20 Washington State Ferries?

11 A. Yes.

12 Q. And there's a 7:00 Kitsap Ferry departure  
13 time from Bremerton to Seattle?

14 A. That's correct.

15 Q. Okay.

16 A. The point being that the survey specifically  
17 asked folks, Given your choice of times, which one  
18 would you choose. So that's how we got there. Then  
19 there's the return trips in the afternoon.

20 Q. Okay. And I don't need you to go through  
21 those one by one.

22 A. Same concern.

23 Q. But what I want to do is just identify, does  
24 your schedule, in fact, fill in at points which the  
25 Washington State Ferries' auto ferry does not run?

0116

1 A. Precisely.

2 Q. Okay.

3 A. One thing that I want to add is that we, in  
4 our initial application, only showed two departures  
5 in the morning and two in the evening when we have  
6 modeled for three and four and more. However, it's  
7 easier to add the service, it's easier for us to go  
8 to the UTC and add a sailing than it is to take one  
9 away. So what we're doing is we're putting out the  
10 runs we believe we can fill, and then, as quickly as  
11 we can, as demand warrants, we plan to add the  
12 sailings.

13 CHAIRWOMAN SHOWALTER: Can I just interrupt  
14 while you're on this subject? What are the crossing  
15 times of the state ferry and your ferry?

16 THE WITNESS: That's an excellent point.  
17 The Washington State Ferry, on the schedule, says 60  
18 minutes. It's normally about 55, though, but let's  
19 call it 60, and our vessel is 40 minutes. So there's  
20 20 -- there's a 20-minute difference in crossing  
21 time. So if you take a morning commuter leaving  
22 Bremerton, if they start, have to be at work by 8:00,  
23 to make that, they have to leave on the 6:20. On our  
24 service, they could wait till 7:00, a full 40 minutes  
25 later, and get to work and be there by 8:00. So they

0117

1 have gained quite a bit of time back.

2 Q. Is there any importance with the 8:00  
3 arrival time in Seattle?

4 A. Well, it seems fairly critical, that most  
5 folks are trying to be there for an 8:00 start, most  
6 folks have a 5:00 shutdown on the Seattle side. So  
7 on the return trip, the highest score coming back was  
8 5:20.

9 Q. Departure time for Kitsap Ferry?

10 A. Correct, from Seattle back to Bremerton.

11 Q. Okay. Now, are any other passenger-only  
12 service providers providing the service between  
13 Bremerton and Seattle?

14 A. No.

15 Q. Aqua Express?

16 A. Aqua Express, thankfully, picked Kingston,  
17 has kept us from being -- instead of having Aqua  
18 Express here now, we have IBU, but Aqua chose to do  
19 Kingston, coincidentally, we chose Bremerton, and so  
20 currently there's no competition, if you will.

21 MR. CRANE: Those are all the questions I  
22 have for now. I'll just wait for redirect, Your  
23 Honor.

24 JUDGE MOSS: Thank you. I wouldn't expect  
25 Staff to have any questions of this witness.



0118

1 MS. WATSON: I guess we have a few, but  
2 they're not typical cross questions, so I'm not sure  
3 if --

4 JUDGE MOSS: Well, we don't want friendly  
5 cross, so --

6 MS. WATSON: Right. I wasn't sure if it  
7 would be allowed. Okay.

8 JUDGE MOSS: Do you have some clarifying  
9 points or something that we really need to hear?  
10 Otherwise, we could move on to questions from the  
11 Bench.

12 MS. WATSON: Could I ask a question or two?

13 JUDGE MOSS: Sure, go ahead. If it draws an  
14 objection, we'll rule on it.

15 MS. WATSON: Okay.

16

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

18 BY MS. WATSON:

19 Q. Has the protest delayed the time that Kitsap  
20 Ferry intends to initiate service?

21 A. Yes.

22 Q. Could you explain that?

23 A. As I mentioned, there's quite a bit of risk  
24 to us in getting too far ahead of ourselves with our  
25 approvals, and so there are a number of items that

0119

1 have lead time, like ticket stock, for example, and  
2 pass cards and printers for pass cards and certain  
3 things that we've held off purchasing until we see  
4 how this plays out. And once we turn those purchases  
5 on, they have lead time. So we're at least two weeks  
6 off schedule right now.

7 Q. So if your company intended to initiate  
8 service within 90 days of the grant of the temporary  
9 permit and the Commission rules on the protest on the  
10 89th day, could you initiate service on the 90th day?

11 A. No.

12 Q. How long would it take? Is it about the two  
13 weeks you just mentioned?

14 A. No, it would probably take three weeks,  
15 three weeks to four weeks, if we were -- depending on  
16 how confident we were with our success of holding  
17 onto our permit.

18 MS. WATSON: Those are all the questions  
19 that I have. Thank you.

20 JUDGE MOSS: Questions from the Bench before  
21 we turn to cross?

22 CHAIRWOMAN SHOWALTER: I have just a couple  
23 on that last subject.

24

25 EXAMINATION

0120

1 BY CHAIRWOMAN SHOWALTER:

2 Q. It's unclear to me, are you waiting to see  
3 if this temporary permit is granted before you start  
4 up or are you waiting for the Commission to decide  
5 the permanent?

6 A. Madam Chair, it's the temporary.

7 Q. Okay. And what happens to the Navy service  
8 that you are doing?

9 A. It has worked out perfectly. That service  
10 just ended in June, and so we've just -- we're just  
11 overhauling that vessel and, you know, preparing it  
12 for this service. So we extended the charter on that  
13 vessel, which we don't own, but we've committed to a  
14 two-year charter on it for this project. And so that  
15 Navy job's done, but these are projects of  
16 convenience, if you will, and whenever the Navy does  
17 an overhaul, they determine where they need to move  
18 their personnel, and then they bid these services  
19 out. So we anticipate there will be another one in  
20 the next 12 to 18 months that they'll bid, and we'll  
21 use a different vessel on that.

22 Q. And also regarding Rich Passage, what has  
23 been your experience with this boat and Rich Passage  
24 in your Bremerton-Everett runs?

25 A. Well, Madam Chair, the Spirit of Adventure,

0121

1 the vessel we're going to operate, has been operating  
2 through Rich Passage. At the beginning of our Navy  
3 job, we received a phone call from a self-appointed  
4 representative of shoreline owners and we scheduled a  
5 meeting to meet with them to address any concerns  
6 they might have. We were operating at a restricted  
7 speed through Rich Passage at that time, and they  
8 asked us to go slower, which we did immediately. I  
9 literally called my captain and the problem was  
10 resolved that day. And since then, those folks have  
11 become, if you will, very supportive. There's a high  
12 level of confidence, I'd say, that we do what we say,  
13 and we've built this schedule around that slowdown,  
14 12 knots in the area of concern. And so we have a  
15 history with them, which is positive.

16 CHAIRWOMAN SHOWALTER: Thank you.

17

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

19 BY COMMISSIONER HEMSTAD:

20 Q. My question goes to the timing and then the  
21 relationship between the temporary and the permanent.  
22 Assuming that the protest is rejected here, and  
23 assuming for this question, when would you anticipate  
24 starting service?

25 A. I was hoping to start service by the middle

0122

1 of July, and I believe I can launch service by the  
2 beginning of August still if I start making decisions  
3 this week. I have to start committing to some  
4 construction for some improvements to a dock in the  
5 city and I need to start ordering up my ticket stock  
6 and uniforms and everything like that.

7 Q. Now, you applied for a permanent order from  
8 this Commission, and do you have an expectation,  
9 again, assuming that were to be granted, when that  
10 would occur?

11 A. Madam Chair, Sir, Commissioner, I -- one of  
12 the reasons, or the primary reason we went with the  
13 temporary certificate was we felt we could get it in  
14 hand and get to work this summer and meet this  
15 immediate need that's there. I understand that the  
16 permanent process could take 90 days or more. And my  
17 understanding is that the temporary runs until  
18 November, and we feel confident that the issue of the  
19 permanent application would be resolved by then. And  
20 so with all due respect, I don't feel as much urgency  
21 on the permanent application, if that answers your  
22 question.

23 Q. I think it does. Thank you.

24 A. Thank you.

25 COMMISSIONER OSHIE: No questions.

0123

1 JUDGE MOSS: Mr. Iglitzin, cross?

2 MR. IGLITZIN: Yes, could I have just --  
3 would this be an appropriate time for a short break?

4 CHAIRWOMAN SHOWALTER: Five minutes.

5 JUDGE MOSS: All right. We'll take a  
6 five-minute break. Back at 10 after.

7 MR. IGLITZIN: Thank you.

8 (Recess taken.)

9 JUDGE MOSS: Back on the record, and we're  
10 ready for the cross.

11 MR. IGLITZIN: Thank you. Before I begin  
12 the cross-examination, I want to address the issue  
13 about the exhibits, because I know that there are  
14 objections to the exhibits which I plan on  
15 introducing, and depending on what the basis of the  
16 objection is, I might well have this witness identify  
17 and authenticate the exhibits, because some of them  
18 appear to be documents that he's already testified  
19 about. If I could just give Your Honors an idea, in  
20 fact, if I could --

21 CHAIRWOMAN SHOWALTER: Why don't we wait  
22 until it comes up in the course of your  
23 cross-examination?

24 MR. IGLITZIN: Because some of them won't  
25 come up -- in fact, most of them won't come up in the

0124

1 cross-examination if they are admitted, because they  
2 are things which I think are useful for the  
3 Commission to have before it, but which would not be  
4 the topic of cross-examination unless I need this  
5 witness to authenticate them, if that's the basis of  
6 the objection.

7           And what we're talking about are things like  
8 the route map for the Washington State Ferry service,  
9 the schedule for the Washington State Ferry service,  
10 which you've already seen, the fare information,  
11 almost all from the Washington State Ferries' Web  
12 site.

13           JUDGE MOSS: All public record, isn't it?

14           MR. IGLITZIN: It's all public record. It  
15 does not appear to me that there's anything  
16 objectionable here.

17           JUDGE MOSS: Well, Mr. Crane, you're not  
18 going to have any objection to these public documents  
19 on the basis of authenticity, are you? Have you  
20 looked at them?

21           MR. CRANE: Not authenticity, that's  
22 correct, Your Honor. Relevance, yes.

23           JUDGE MOSS: Well, relevance is a separate  
24 matter. If you're not going to use them with this  
25 witness, the question of relevance won't come up. If

0125

1 it's only authenticity, then we'll wait till we get  
2 to it.

3 MR. IGLITZIN: That's fine, then.

4 MR. CRANE: Your Honor, just to clarify,  
5 that's as to public documents. Some of these, I  
6 don't know, I haven't had a chance to look through.  
7 If they're all public documents, then no, I would not  
8 object on authenticity grounds.

9 JUDGE MOSS: All right. Well, we'll have  
10 the witness remain available if we need him for that  
11 purpose, but I'm interested in moving things along in  
12 terms of our examination. We can deal with exhibit  
13 issues as they come up. And I want to caution all  
14 counsel, for the remainder of the afternoon, we are  
15 on a schedule. You need to keep things brief,  
16 succinct, to the point and within the scope of the  
17 direct on cross, please.

18 MR. IGLITZIN: Thank you.

19

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

21 BY MR. IGLITZIN:

22 Q. Good afternoon, Mr. Dronkert.

23 A. Good afternoon, sir.

24 Q. In your application dated April 30, or  
25 stamped received April 29, the application for the



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1 temporary certificate, you have a financial statement  
2 indicating that the assets of the Kitsap Ferry  
3 Company are \$27,000 consisting of 22,500 in cash and  
4 \$4,500 in other assets. Is that still an accurate  
5 statement as to the financial wherewithal of the  
6 Kitsap Ferry Company?

7 A. That was the financial statement at that  
8 point in time, and that is superseded by current  
9 situations.

10 Q. And can you tell us what -- either verbally  
11 or if there's a document that you have, can you tell  
12 us what the current financial status of Kitsap Ferry  
13 Company is?

14 A. Well, once we received our temporary permit,  
15 we went ahead and started to fund the project. We  
16 have \$150,000 in a bank account with Wells Fargo for  
17 Kitsap Ferry Company. We now, instead of \$4,500 in  
18 assets, which would be startup costs, we have  
19 approximately 48,000 in startup costs. And on the  
20 payables side, we have -- excuse me, 48, plus the 14,  
21 so there'd be another 62,000, if you will, and I made  
22 some notes here. So 150,000 in cash, 64,000 in other  
23 assets, broken down as 48,000 paid to date, 16,000  
24 due, so that's on the assets side. That would be  
25 \$214,000, approximately. On the liabilities side, we

0127

1 have 16,000 in payables right now. The difference  
2 leaves us equity of 197, \$198,000.

3 Q. And just so I'm sure I understand, the --  
4 what you actually have is \$150,000 in the bank and  
5 you have the 16,000 due to you. The 48,000 in  
6 startup costs is not actually a physical asset that  
7 you have that you could sell or buy things with,  
8 right; it's more an accounting assessment of what you  
9 have paid out?

10 A. Well, actually, no. It's fairly common that  
11 if you were to sell a business, you'd look at your  
12 startup costs as part of assets. So if we were to  
13 try to sell the business right now, the cost and time  
14 and energy we have into it is an asset, as long as we  
15 have something to show for it.

16 Q. But it's not cash and it's not something you  
17 could use to --

18 A. Yes, sir, you're correct.

19 Q. -- easily convert to food or something?

20 A. That's right. And \$150,000 in cash, that's  
21 our own cash input. That's not a bank loan.

22 Q. And then the 16,000, which is due?

23 A. Excuse me, that's a payable, so that's due  
24 from us to others.

25 Q. Thank you. And do you have any accounts

0128

1 receivable at this point?

2 A. We do not.

3 Q. And who owns the vessel Spirit of Adventure?

4 A. The vessel's owned by TMT Corp., which is  
5 now Four Seasons Marine, which, coincidentally, is a  
6 partner in Aqua Express.

7 Q. And is Kitsap Ferry then leasing the vessel  
8 from Four Seasons Marine?

9 A. Yes, sir.

10 Q. And you had testified that it was your  
11 intent that Kitsap Ferry was going to hire a general  
12 manager and administrative assistant and then a crew  
13 for the vessel. To date, have you hired any of those  
14 individuals?

15 A. We have not.

16 Q. You had mentioned, I just want to make sure  
17 there's no confusion, that you were a manager of --  
18 you were one of the managers of Kitsap Ferry; is that  
19 correct?

20 A. And that is a legal term. I am the manager  
21 -- it's a manager-managed L.L.C.

22 Q. So when you talk about Kitsap Ferry hiring a  
23 manager, that will be someone else --

24 A. Yes, sir.

25 Q. -- who will be the general manager of Kitsap

0129

1 Ferry?

2 A. Correct.

3 Q. You mentioned some surveys that were done by  
4 -- I assume done by Pacific Navigation or Pacific  
5 Technical Services. Which company or entity did  
6 those surveys?

7 A. The surveys were done through our entity  
8 Kitsap Ferry Company. They're on a Web site and  
9 they're currently accessible to the public.

10 Q. And so when were those surveys conducted?

11 A. We started those surveys back in March.

12 Q. Of 2004?

13 A. Of this year; correct.

14 Q. And how many surveys have been received or  
15 filled out, surveys have been received by Kitsap  
16 Ferry?

17 A. Approximately 500.

18 Q. And do you -- the breakdown for the surveys  
19 is on the Web site?

20 A. Yes, sir.

21 Q. I noticed in your material, if I understood  
22 it correctly in the application, that you are  
23 anticipating carrying approximately 245,000  
24 passengers in the course of a year?

25 A. That's correct.

0130

1 Q. And that averages out to approximately  
2 20,000 per month?

3 A. That's correct.

4 Q. Roughly 1,000 per working day?

5 A. Yes, except it's really 500, because they go  
6 both directions, so that's 500 round trips. We count  
7 each segment, so 500 people, two segments a day,  
8 1,000 segments a day.

9 Q. Do you have any estimate as to -- let's talk  
10 about that as if that's just 500 -- not just, but as  
11 if it's 500 people. Obviously, there could be some  
12 people that would go one way, and you'd have more  
13 than 500. But if you're comfortable just talking  
14 about just 500 round trip segments, or 1,000  
15 segments, 500 round trips, do you have any estimate  
16 of how many of those 500 people are people who  
17 otherwise would be using -- would be walk-ons on the  
18 Washington State Ferry Service, as opposed to people  
19 who otherwise would not be using ferry service at all  
20 to get from Bremerton to Seattle?

21 A. No, the data I've used does not allow me to  
22 differentiate.

23 Q. And the surveys have not given you an idea  
24 of to what extent this is going to be sort of new  
25 ferry customers, as opposed to ferry customers who

0131

1 otherwise would be on Washington State Ferries?

2 CHAIRWOMAN SHOWALTER: Can you clarify that  
3 question? When you said new ferry customers, do you  
4 mean people who've never used a state ferry, or do  
5 you mean new meaning do not use currently the state  
6 auto ferry?

7 MR. IGLITZIN: Sure, I'd be happy to  
8 clarify.

9 Q. What I'm trying to ask, very inartfully, I'm  
10 sure, is if this witness knows the extent to which  
11 what will happen if the Kitsap Ferry passenger-only  
12 service commences operation is individuals who  
13 otherwise would be either walking on the Washington  
14 State Ferry Bremerton-Seattle service, or being a  
15 passenger on or driving on the Washington State Ferry  
16 Bremerton-Seattle service or in fact getting from  
17 Bremerton to Seattle by driving to Bainbridge or in  
18 some other way taking existing ferry service, as  
19 opposed to individuals who, under the current  
20 situation, are not using any ferry service at all,  
21 but who would become ferry users.

22 What I'm talking about is the extent -- and  
23 maybe I can ask this question. Is it fair to  
24 understand the service you're providing as being  
25 primarily tailored to commuters?

0132

1 A. That is correct.

2 Q. So what I'm asking about is the extent to  
3 which these are commuters who otherwise would be  
4 using Washington State Ferries to commute versus  
5 commuters who otherwise would not be using ferries at  
6 all to commute. Did that clarify the question?

7 A. I think I understand the question. We  
8 haven't analyzed the cross-elasticity between the two  
9 offerings, if you will, but we do see our service as  
10 a distinctly different product than the Washington  
11 State Ferry product.

12 MR. IGLITZIN: I have no further questions.  
13 Thank you.

14 JUDGE MOSS: Thank you. Any redirect?

15 MR. CRANE: Just one question, Your Honor.  
16 Thank you.

17

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

19 BY MR. CRANE:

20 Q. Mr. Dronkert, you just used a term that I'm  
21 not very familiar with, which is the  
22 cross-elasticity. What do you mean by that?

23 A. At the risk of boring the Commissioners, one  
24 of the interesting things that's been happening at  
25 Washington State Ferries is how changes in price

0133

1 affect ridership. So from our -- from economics,  
2 people remember that as price goes up, quantity  
3 normally goes down. The question is, as price goes  
4 up, how quickly does quantity go down.

5           And what they've learned at the Washington  
6 State Ferries is as you raise the price, what they  
7 call the price elasticity of demand, ridership drops,  
8 but not as much as what you gained in raising the  
9 prices. So raising prices at Washington State  
10 Ferries has been successful. Even though people go  
11 away, which is not a good thing, the amount that go  
12 away is less than the amount that they gained.

13           The issue of cross-elasticity is how  
14 competing products' price changes affect each other.  
15 So on two competing airlines that are going to the  
16 same location, as one changes its price, often it  
17 will quickly move people to the other carrier. We  
18 have not done an analysis of the cross-elasticity of  
19 demand for this route.

20           Q. But in terms of the increase in price not  
21 affecting ridership as much as the loss of ridership,  
22 how does that apply to your proposed business?

23           A. Well, in two ways. On one hand, it  
24 encourages the private sector to enter the market.  
25 if the good is underpriced, then the private sector



0134

1 isn't likely to step forward and try to provide the  
2 good, because it won't be purchased. So as pricing  
3 goes up at Washington State Ferries, I believe you'll  
4 see a trend of commercial operators more and more  
5 willing to provide this passenger-only ferry service,  
6 so it encourages entries into the market.

7 Q. How does that relate to your proposed price,  
8 your tariff?

9 A. Well, what we've done is we've tried to  
10 determine what the proper price point is for the  
11 service. And it -- our tariff's in there. I'm not  
12 sure if you'd like me to try to explain that. We've  
13 done some surveying, we've asked people's willingness  
14 to pay for different price points. And ultimately,  
15 any time you set a price, there's a certain amount of  
16 art and a certain amount of science.

17 Q. And what was the reaction on your survey  
18 relative to your pricing?

19 A. Pricing's been very well received.  
20 Actually, our survey asked people's interest to  
21 purchase a reserved seating for a premium price, and  
22 that actually ended up being -- there was a higher  
23 level of interest than what we anticipated. So  
24 actually, we feel that our pricing is in the right  
25 area. And for someone who owns -- purchases a pass

0135

1 with us, it's \$5 each direction, which is \$10 round  
2 trip.

3 Q. So did you reach any conclusions whether  
4 your expected ridership will materialize based on the  
5 price that you're proposing?

6 A. Yes. Ultimately, our surveys verified what  
7 we felt intuitively the market would bear for that  
8 route and what we were hearing from people. And so  
9 we believe the survey proved or verified our  
10 assumptions.

11 MR. CRANE: Okay. No further questions.  
12 Thank you.

13 JUDGE MOSS: Okay. I believe that completes  
14 our questioning.

15 MR. IGLITZIN: I just have a little bit of  
16 re-cross based on the questions that were just asked  
17 by Mr. Crane.

18 JUDGE MOSS: All right.  
19

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

21 BY MR. IGLITZIN:

22 Q. I just wanted to make sure I understood. If  
23 someone buys -- with your tariff, your proposal, if  
24 someone purchases a pass, is that a monthly pass?

25 A. Yes, sir.

0136

1 Q. And it averaged -- the cost averages out to  
2 then \$10 for a round trip?

3 A. Correct.

4 Q. And would that include, then, a reserved  
5 seat for that \$10?

6 A. No.

7 Q. Is there a separate tariff or charge --  
8 ticket charge, which I don't see in the application,  
9 that would get people a reserved seat?

10 A. Yes, there is.

11 Q. And I'm sorry, did I just miss it in the  
12 application? Is it in there?

13 A. I believe so.

14 JUDGE MOSS: I don't think we need to spend  
15 a lot of time. I don't see how that bears on the  
16 questions before us, and I felt the same way about  
17 the redirect, as far as that goes. So I just don't  
18 think it's an area of evidence we need to spend a lot  
19 of time developing.

20 MR. IGLITZIN: That's fine. Thank you.

21 JUDGE MOSS: Thank you. All right. Mr.  
22 Dronkert, we appreciate your testimony today, and you  
23 may step down. We'd like you to remain available in  
24 case we need you later in the hearing. Is that  
25 possible?

0137

1                   THE WITNESS: Thank you, sir. Thank you,  
2 Madam Chair.

3                   JUDGE MOSS: Call your next witness.

4                   MR. CRANE: Thank you, Your Honor. Kitsap  
5 Ferry Company calls Mr. Dick Hayes, please, to the  
6 stand.

7                   JUDGE MOSS: Please remain standing and  
8 raise your right hand.

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1 Whereupon,

2 RICHARD M. HAYES,

3 having been first duly sworn by Judge Moss, was

4 called as a witness herein and was examined and

5 testified as follows:

6 JUDGE MOSS: Thank you. Please be seated.

7

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

9 BY MR. CRANE:

10 Q. Good afternoon, Mr. Hayes.

11 A. Good afternoon.

12 Q. Could you provide your full name for the  
13 record, please?

14 A. Richard M. Hayes.

15 Q. And what is your position, Mr. Hayes?

16 A. I'm the executive director of Kitsap  
17 Transit.

18 Q. Just briefly, what do you do in your job as  
19 executive director?

20 A. Well, the agency provides a full range of  
21 public transportation services to the residents of  
22 all of Kitsap County, including access for the  
23 elderly and disabled, van pools and carpools, buses,  
24 including a big subscription worker driver program  
25 for the shipyard, and we provide local POF. And part

0139

1 of our mission, as board approved, is to support, to  
2 the extent that we can, cross-Sound POF, as well,  
3 passenger-only ferries.

4 Q. Now, what geographic area does Kitsap  
5 Transit serve?

6 A. It covers the entire county, about 240,000  
7 people. It runs from Point No Point to the border  
8 with Pierce County in the Purdy area. Covers the  
9 towns of Bremerton, Port Orchard, Bainbridge Island,  
10 and the larger communities of Silverdale and  
11 Kingston.

12 Q. Can you tell me about how many riders, on  
13 average, use Kitsap Transit in an average day and  
14 then an average month?

15 A. We have about 400 -- well, I'll stay with  
16 the month. It's about 15,000 a day, but there aren't  
17 as many people that ride Saturdays and Sundays. Last  
18 month was 420,000 plus riders. We'll reach about  
19 five million riders this year.

20 Q. Now, just as a little bit of background for  
21 your testimony today, are you a member of other  
22 transit organizations?

23 A. Yes, we're a member of the Washington State  
24 Transit Association, the American Public Transit  
25 Association, and the Passenger Vessel Association.

0140

1 Q. Okay. Now, could you tell me how, for  
2 purposes of your testimony, how do you fit in with  
3 the governance of Kitsap Transit? You're the  
4 executive director. Is anybody above you?

5 A. There's a board of commissioners of the  
6 transit agency. It's a separate municipality for  
7 public transit purposes. It's basically the core of  
8 the elected officials in Kitsap County. It's all  
9 three commissioners, county commissioners, the mayors  
10 of the four cities, and then two additional members  
11 appointed by the largest city, Bremerton.

12 Q. So you're getting membership in your board  
13 of all municipality level and regional governance  
14 level?

15 A. Yes, and then, with them and through them,  
16 we participate in the regional governance of Puget  
17 Sound Regional Council, as well.

18 Q. I see, okay. Now, how long have you been  
19 the executive director of Kitsap Transit?

20 A. About 22 years. I was the first employee  
21 hired after the PTBA was formed, that's a Public  
22 Transportation Benefit Area authority.

23 Q. And could you just briefly explain what that  
24 is, PTBA?

25 A. That's an entity created by the legislature

0141

1 about 27 or 28 years ago to expand transportation  
2 services and to set up a funding system that allowed  
3 their expansion beyond city boundaries. There was a  
4 lot of expansion outside cities and a lot of really  
5 stupid situations where the service ended, but the  
6 population just kept going on for some visible  
7 distance. You had to pick an area. The elected  
8 officials created a process and then went to the  
9 ballot with a sales tax and a motor vehicle excise  
10 tax package together that was designed to encourage  
11 people to create a broader transit base.

12 Q. And is Kitsap Transit, did you say, a PTBA?

13 A. Yes, we are a PTBA.

14 Q. Okay. Now, in your role as executive  
15 director, you deal with your bus system; right?

16 A. Yes.

17 Q. And you also deal with what we call POF, or  
18 passenger-only ferry system services?

19 A. Yes.

20 Q. Now, how much of your time would you say is  
21 split between the two types of services?

22 A. The split for the last year or so has been  
23 about 50/50. Over 22 years, you collect really an  
24 excellent staff on the transit operating side of it,  
25 which has allowed a lot of my time to be focused on



0142

1 the development of passenger-only ferry services.

2 Q. And so it takes half of your time to do  
3 ferries?

4 A. Well, in our agency, I'm also the one with  
5 the development history and the development  
6 experience, but it's a very big piece of work.

7 Q. Does that relate to its importance? I guess  
8 I just want to get to that point.

9 A. Well, it's hugely important. Part of our  
10 mission, it's in our mission statement, is to support  
11 land use, specifically the Growth Management Act as  
12 it's interpreted in our community, and to assist with  
13 economic development. And in both of these cases,  
14 helping improve Bremerton's position as the  
15 community's central city and helping improve the  
16 financial situation in Bremerton, which is everything  
17 from merchant opportunities to house values. This  
18 figures very highly.

19 Q. When you say this, you're talking about the  
20 passenger-only ferry system; correct?

21 A. Yes, yes.

22 Q. Okay. Now, based on your experience, your  
23 knowledge, what you've learned the last number of  
24 years, 20 years or more, would you say there's a need  
25 for passenger-only ferry service between Bremerton

0143

1 and Seattle?

2 A. Very definitely. During the period of time  
3 that the passenger-only ferry service ran, Bremerton  
4 began, for the first time in 25 years, to experience  
5 a surge in both growth and development and on down to  
6 housing values. Even in population, which hadn't  
7 grown at all over a very long period of time, it  
8 actually went up significantly for the first time  
9 just this last count.

10 Q. Okay. So other than your Bremerton -- city  
11 of Bremerton economic benefit and house values, can  
12 you think of other reasons why you say there is a  
13 need for this passenger-only ferry service?

14 A. Well, in general, and here I'm talking about  
15 all three potential passenger-only ferry services --

16 Q. Those would be which, now?

17 A. The Kingston, Bremerton and the Southworth  
18 area.

19 Q. Okay.

20 A. We're looking at creating a situation in  
21 which people who lived in these communities would be  
22 within a half an hour transit time of downtown  
23 Seattle. The half-hour transit time was the transit  
24 time when Bellevue started and Kirkland started and  
25 all those places, and clearly the value of being that

0144

1 close to the state's economic engine is absolutely  
2 huge, if you just look at history at all in the  
3 region.

4 Q. Okay. Now, do you have any other knowledge  
5 that you've gained in your position, such as meeting  
6 with people, attending board meetings, attending  
7 seminars, public meetings, et cetera, as to  
8 individuals who expressed a need for passenger-only  
9 ferry service between Bremerton and Seattle?

10 A. Well, certainly. Some quite close to me.  
11 My own daughter has been working in Seattle. And the  
12 absence of passenger ferries is making it almost  
13 impossible for her to get back in time to get to my  
14 grandson before the day-care closes. That's been  
15 averted because she was one of the very lucky few who  
16 managed to get a job in the Bremerton area just about  
17 a week ago. Her best friend, who had moved here at  
18 her encouragement from the firm she'd worked at in  
19 Seattle, is now looking at moving to Poulsbo to  
20 secure the shorter commute.

21 Q. Okay. Any other personal experience you've  
22 had attending meetings, rotary functions, something  
23 along the lines?

24 A. Well, we've been absolutely besieged  
25 throughout the entire process by commuters who were

0145

1 supportive. I've personally, in the last couple of  
2 months, talked to four or five people who said if it  
3 doesn't happen this time, then I will have to move  
4 back to Seattle, so --

5 Q. And what do they mean by if it doesn't  
6 happen this time?

7 A. If passenger ferries don't start within some  
8 reasonable period of time.

9 Q. So obviously, you want to make sure it  
10 happens?

11 A. Yes.

12 Q. Okay. Now, when the Washington State  
13 Passenger-Only Ferry Service discontinued or ended,  
14 how did that affect your -- Kitsap Transit as a  
15 whole? I should ask you that question.

16 A. Well, we were already carrying a very high  
17 volume of people to Bremerton, so it really didn't  
18 affect the service as much as it affected all of our  
19 passengers. We will have to make minor adjustments,  
20 but we won't have to add a lot of service when Kitsap  
21 Ferry Company starts, because the service is there  
22 and enough volume and it's already timed to the  
23 various times, because we didn't really change it  
24 much. There's no point in taking it out and then  
25 putting it back in again eight, nine months later.

0146

1 Q. Your bus schedule will mesh with the ferry?

2 A. Yes, it will. That's what we do.

3 Q. Okay. Now, Kitsap, Bremerton, currently has  
4 ferry service through Washington State Ferries;  
5 right?

6 A. Yes.

7 Q. And it's -- but it's not passenger-only?

8 A. Yes.

9 Q. So what's the difference between running the  
10 Washington State Ferries system, auto ferries  
11 passenger service versus adding Kitsap Ferry Company  
12 service?

13 A. The buses that reach the terminal between  
14 the current sailings in the morning and the afternoon  
15 of WSF will have a ferry to meet, which will be good  
16 news. The --

17 Q. So in other words --

18 A. -- service levels --

19 Q. Sorry, I didn't mean to interrupt you.  
20 You're saying currently buses arrive at the terminal,  
21 there's no ferry there?

22 A. Yeah, our timing is set up, is keyed off the  
23 ferries, but the buses meet and carry people  
24 throughout other parts of the community.

25 Q. I see.

0147

1           A.    But it's all timed to the ferries, so you  
2    can't really un-time it.  It's better to get the  
3    ferries back, from my point of view.

4           Q.    So adding the passenger-only ferry service  
5    will allow your current riders to make a connection?

6           A.    Yes.

7           Q.    Anything else that you can identify that --

8           A.    Well, we'd have to take -- we have two buses  
9    doing what one bus used to do.  The bus that we  
10   doubled up will go back to meeting probably the 7:00.  
11   So minor adjustments in the equipment and route  
12   assignments.

13          Q.    Okay.  All right.  Now, what about  
14   economically with the city of Bremerton?  Do you have  
15   any knowledge, based on your discussions with public  
16   officials, as to how the passenger-only ferry service  
17   will affect the region's economy, starting with  
18   Bremerton?

19          A.    I know, because we've worked on this  
20   together for a long time now, that the mayor of  
21   Bremerton agrees with the premise that getting  
22   passenger-only ferry service back and ultimately  
23   getting it able to operate at a higher speed is  
24   absolutely crucial to Bremerton's economic success.  
25   The kinds of people we're trying -- especially

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1 companies we're trying to bring to Bremerton, this  
2 includes the kind of people we're trying to get in  
3 our building right at the terminal, want to be able  
4 to have their employees reach downtown Seattle  
5 throughout the day. The big gap in the early  
6 afternoon is as much of a problem for them as  
7 anything else is, and they want to be able to reach  
8 Seattle and reach the office and return more quickly.

9 Q. Okay.

10 A. And we hear that from them as we talk to  
11 them about lease rates, among other things.

12 Q. Now, were you involved in a recent  
13 legislation to provide passenger-only ferry service  
14 through a Public Transit Benefit Area mechanism that  
15 the legislature provided?

16 A. Yes, we worked very hard on that with our  
17 legislators.

18 Q. And could you summarize, just so I have an  
19 understanding of what Kitsap Transit's involvement  
20 was leading up to the service that's being offered  
21 now through that legislation?

22 A. Okay. We were happy to see the bill passed  
23 in its first session. It allowed us to ask for a  
24 separate level of tax funding, primarily additional  
25 sales tax, but also a foray back into the MBET, which

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1 we did use, or try to, for purposes of establishing  
2 cross-Sound passenger-only ferry service, put out by  
3 PTBAs, but in our case to be contracted. So we --

4 Q. Why did you want a contract? Why did you  
5 want to do that?

6 A. Why did we want a contract?

7 Q. Why did you want to resume that service  
8 through a PTBA?

9 A. In our case, the board has been very clear  
10 for a long time that we don't want to repeat the King  
11 County situation, where there's different  
12 transportation agencies for every little tiny kind of  
13 transportation you can dream up. The coordination  
14 problems you have with that are really pretty  
15 obvious, and I suspect everybody's read about them in  
16 the newspaper.

17 So the board's been very clear that Kitsap  
18 Transit would be the broad-scale public transit  
19 agency, and that will include rail or monorail,  
20 although more likely earlier something they call a  
21 fixed guideway bus or bus rapid transit. They're not  
22 going to go build a whole bunch of additional  
23 agencies to accomplish these things. So this is  
24 within our purview locally and at the regional level.

25 Q. And you said that you were happy the bill



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1 passed on the first reading or first presentation.  
2 What was the outcome of that legislation relative to  
3 the service that's being proposed now?

4 A. It let us go to the voters for a fully  
5 developed plan. It did require a plan. We lost the  
6 ballot measure 39 to 61, and of course, after you  
7 lose it, everyone is very happy to tell you why you  
8 lost in order -- absolutely a host of reasons, and if  
9 we had thought about them, of course, why did we put  
10 it out there. But the people in the affected areas  
11 did vote for it, in Bremerton and in the Kingston  
12 area, especially, and in Bainbridge Island, where it  
13 will take a lot of stress off the main highway that  
14 runs to the Bainbridge Ferry terminal. They voted at  
15 a 68 percent level. As you got way out into the  
16 rural areas of Kitsap, we just got killed, so --

17 Q. Okay. So after the ballot measure failed,  
18 what was your next step as Kitsap Transit?

19 A. Well, we considered trying to scale it back,  
20 but at that point, we'd been talking with the private  
21 operators for years, in part because we had wanted to  
22 contract out the service, rather than run it directly  
23 ourselves under any circumstance, and they came  
24 forward and said, Well, we'd like to try. And our  
25 response was, That sounds good to us, but we would

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1 like to try to set it up in such a way that we can  
2 provide you especially the federal grant level  
3 support and the terminals that we've built and those  
4 kinds of issues. So we came up with a joint  
5 development agreement that lets us go forward under  
6 those terms, and we are seeking the federal funds.

7 Q. Now, is there a joint development agreement  
8 between Kitsap Transit and Kitsap Ferry Company?

9 A. Yes, there is.

10 Q. Just briefly, what does that document do?  
11 What is the purpose of that joint development  
12 agreement?

13 A. Well, it lets them use, as an asset, the  
14 ferry dock in Bremerton that actually is ours, the  
15 passenger ferry dock, and it sets it up so that we  
16 can help them with boats in the near future. We have  
17 grant requests in for a prototype ultra low-weight  
18 boat. It lets us work with them as Kitsap's official  
19 representative on helping to create a major passenger  
20 ferry terminal on the Seattle waterfront, because  
21 we're going to have a crisis after our three start  
22 and three or four others want to start, where to put  
23 these boats when they all want to get there at a  
24 quarter to 8:00 in the morning.

25 JUDGE MOSS: Mr. Crane, let me interrupt you

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1 at this point.

2 MR. CRANE: Sure.

3 JUDGE MOSS: I think we're getting into a  
4 lot of detail that we don't need for present  
5 purposes. The focus of our concern is on the urgent  
6 and immediate need question that was challenged. So  
7 if you have something specifically on that point from  
8 this witness, that would be fine. Otherwise, this  
9 general information is simply not helpful to us, and  
10 we are a little bit short of time. I'm going to make  
11 some other adjustments to our hearing here  
12 momentarily.

13 MR. CRANE: Thank you, Your Honor.

14 Q. I don't have many more questions, one of  
15 which had to do with in the event this passenger-only  
16 ferry service is, in fact, commenced, what will that  
17 effect be on your transit system as a whole? In  
18 other words, how does that affect people using cars,  
19 ridership in automobiles, that sort of thing? What's  
20 the effect more broadly than just buses?

21 A. We did lose some riders -- or riders. Some  
22 switched to either -- to either Southworth or to  
23 Bainbridge Island. It's much better for us if they  
24 make the shorter trip to Bremerton. And I think we  
25 probably lost some people to driving around, which is

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1 sort of an environmental nightmare for the whole  
2 region to have people not take a ferry, but to drive  
3 90-some miles to get to Seattle.

4 Q. So the passenger-only ferry service would,  
5 in other words, relieve the use of the automobile to  
6 some degree?

7 A. Yes, it would, it would.

8 Q. What about other use, like bicycle riders?  
9 How is that affected by the service?

10 A. Most of the bicycle riders, I believe,  
11 switched to the WSF boats. That's our general  
12 conclusion. There's tremendous overcrowding on the  
13 WSF boats at this moment.

14 Q. And will the Kitsap Ferry System -- Kitsap  
15 Ferry Company have bicycle capacity on its vessels?

16 A. Yes, I believe it will. And we already have  
17 bicycle capacity at the terminal for storage.

18 MR. CRANE: Okay. That's all the questions  
19 I have.

20 JUDGE MOSS: Thank you. Anything from  
21 Staff?

22 MS. WATSON: No.

23 JUDGE MOSS: All right. Anything from the  
24 Bench? All right. Let's have our cross-examination.

25 MR. IGLITZIN: I have no questions.

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1           JUDGE MOSS: All right. Very good. We  
2 just saved a lot of time. Thank you very much.  
3 Appreciate your testimony. I think, in terms of the  
4 -- we had talked about having the Staff witnesses  
5 next. We have the statements by Staff as part of our  
6 record, and I think there's some supplemental  
7 material with respect to Ms. Allen, at least, perhaps  
8 the memorandum that was prepared, as I recall. My  
9 intention, I should say, is to make all of this  
10 material that's part of the application and part of  
11 the process we've had today, it will be considered as  
12 part of the record.

13           It strikes the Bench that it is really  
14 unnecessary to have live testimony from Staff that  
15 would basically cover this same material. So what we  
16 would propose to do at this juncture, then, is have  
17 Mr. Iglitzin put on his witness, and if he can show  
18 rebuttal evidence that would perhaps persuade the  
19 Bench differently, then we might reconsider, but at  
20 this juncture, I think we could get by without  
21 Staff's testimony.

22           MS. WATSON: That's fine with Staff. If  
23 time permits, we would like to still present some  
24 evidence, because there's a little bit that's  
25 additional to what's in the materials that we

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1 previously filed.

2 JUDGE MOSS: In terms of paper evidence or  
3 --

4 MS. WATSON: There is one exhibit that we  
5 wanted to offer and there's a small amount of new  
6 verbal testimony, as well.

7 JUDGE MOSS: Okay. We can consider that at  
8 the end, but I think, in the interest of time, we  
9 need to go ahead, so --

10 MS. WATSON: Sure. That's perfectly fine  
11 with Staff.

12 JUDGE MOSS: Thank you, Ms. Watson. We  
13 appreciate you being so accommodating there. Mr.  
14 Iglitzin, if you'd call your witness, please.

15 MR. IGLITZIN: Thank you. I do not have a  
16 witness to call. What I would like to do is  
17 introduce these documents and address any objections  
18 to them, all of which are from public record, except  
19 for a two-page declaration identifying what they are  
20 and where they are from, from an attorney in my firm.  
21 I guess if I could present them to you, so you could  
22 look at them while we discuss them, if that's  
23 appropriate?

24 JUDGE MOSS: Being mindful, Mr. Crane, have  
25 you had an opportunity to review these?

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1           MR. CRANE: Just in a cursory fashion. My  
2 -- I would object to all -- almost all of it, Your  
3 Honor. The only thing that didn't bother me at first  
4 was an area map. I mean, I guess it's somewhat  
5 helpful for purposes of orientation, and that's  
6 Exhibit A. Other than that, Exhibit B is a schedule  
7 that's already been discussed, although I didn't move  
8 to admit the schedule that Mr. Dronkert testified to,  
9 and I'd like to do that now, Your Honor. If I could  
10 move to admit that schedule as an exhibit from the  
11 Kitsap Ferry Company.

12           JUDGE MOSS: Is it the same as this?

13           MR. CRANE: It is -- well, it probably is  
14 the same. It looks different. Mine is summer 2004,  
15 yes. But the rest of the information, I just don't  
16 see its relevance.

17           MR. IGLITZIN: I'm happy to address the  
18 relevance, although I think mostly the relevance is  
19 pretty apparent, but --

20           CHAIRWOMAN SHOWALTER: What is the  
21 relevance?

22           MR. IGLITZIN: Well, the relevance is that  
23 in determining the need for the proposed service,  
24 it's important to see what service already exists.  
25 And in fact, Exhibit A shows the routes currently

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1 being served by Washington State Ferries, Exhibit B  
2 is the schedule which we mutually agree is relevant,  
3 Exhibit C is the WSF fare information, and one of the  
4 issues which we haven't talked about today, because  
5 I'm not wasting everyone's time by making all of my  
6 argument prematurely, is that what is, in fact,  
7 happening is that what's being offered is a premium  
8 service, and in thinking about where the use is going  
9 to come from, we think that the evidence indicates  
10 that what we're simply going to have is certain  
11 passengers currently taking Washington State Ferry  
12 service switching to a more premium level, first  
13 class service on the applicant's ferry. And we  
14 believe that there might be a demand for that, but  
15 that does not demonstrate that there's a need for  
16 that service.

17           The rest of the documents, all of which are  
18 public records from the State Ferries Web site,  
19 except for Exhibit F, which indicates the bus  
20 service, which is provided by Kitsap Transit, which  
21 we've just heard testimony about, showing that  
22 there's already a coordinated bus service for people  
23 who take the Washington State Ferries.

24           The rest of the material -- the bulk of the  
25 material is the ridership information that Mr.



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1 Dronkert testified he looked at, and it basically  
2 will allow the IBU to argue or allow the Commission  
3 to review what's happening with passenger-only  
4 ridership. You'll notice --

5 JUDGE MOSS: Mr. Iglitzin, I think, having  
6 an opportunity to review this, we are fairly  
7 persuaded that it is at least of some relevance.  
8 It's not irrelevant to the point that we would deny  
9 its entry into the record. So over counsel's  
10 objection, we will admit -- is all of this underneath  
11 the Krebs declaration?

12 MR. IGLITZIN: Yes, it is.

13 JUDGE MOSS: All right. I'm simply going to  
14 mark it as a single exhibit. I'll assign it a number  
15 later on. You can refer to it, for purposes of  
16 argument, as the Krebs exhibit.

17 MR. IGLITZIN: Thank you.

18 JUDGE MOSS: All right.

19 MR. IGLITZIN: And I have no other case to  
20 put on.

21 JUDGE MOSS: Okay. Ms. Watson, what was it  
22 you wanted to hand up?

23 MS. WATSON: We received -- Staff received a  
24 letter from the Washington State Ferry System, and  
25 that was really the only piece of evidence that we

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1 wanted to submit during this proceeding.

2 JUDGE MOSS: All right. Why don't you hand  
3 that up and make sure counsel have a copy.

4 MS. WATSON: They do.

5 JUDGE MOSS: They have copies. Is there  
6 going to be any objection to this exhibit?

7 MR. IGLITZIN: No, Your Honor.

8 MR. CRANE: No.

9 JUDGE MOSS: It will be admitted. I'll mark  
10 it later.

11 MR. CRANE: Your Honor, have you already  
12 ruled on and wish to not receive any further argument  
13 with respect to the exhibit proposed by the IBU? We  
14 have a declaration of Judith Krebs --

15 JUDGE MOSS: Right.

16 MR. CRANE: -- and a bunch of exhibits, but  
17 no witness testified on anything in here.

18 JUDGE MOSS: Right, and that will certainly  
19 go to the weight it's given.

20 MR. CRANE: Okay. So I should argue that in  
21 my closing, is what you're saying.

22 JUDGE MOSS: Sure.

23 MR. CRANE: Okay. That's fine.

24 JUDGE MOSS: Ms. Watson, what was the nature  
25 of the oral testimony you wanted to offer?

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1 MS. WATSON: I think that the way the record  
2 stands right now, it's fairly complete, so --

3 JUDGE MOSS: We think so, too. Thank you  
4 very much. All right. Let's have a little time for  
5 oral argument here, I think. And what I would  
6 propose is that we -- that Mr. Iglitzin go first. It  
7 is on his protest that we are here today. And I'll  
8 give you ten minutes for that, and then we'll give  
9 each of the other parties ten minutes to argue, and  
10 then five minutes for rebuttal. Mr. Iglitzin.

11 MR. IGLITZIN: Thank you.

12 JUDGE MOSS: Is that reasonable? All right.  
13 I'll try to time you all closely. I'll use my watch,  
14 so if there's any disagreement, no one gets to see it  
15 but me. All right. Mr. Iglitzin, go ahead, please.

16 MR. IGLITZIN: Thank you very much. The  
17 legal standard which has been posed to the Commission  
18 seems very clear. Earlier today, we were discussing  
19 the issue about who has the burden of proof. I  
20 think, while I'm not aware of any authority  
21 interpreting this administrative code provision, and  
22 I'll note that the authority that was quoted by Mr.  
23 Crane really is not the same standard.

24 What I was struck by is that there need not  
25 be a hearing on the protest at all. The decision of

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1 the Commission -- it was within the Commission's  
2 discretion to grant or deny the protest without  
3 hearing. So it seems to the IBU that what's really  
4 going on today is that the Commission has the burden  
5 of persuading itself in deciding, really -- I don't  
6 think either of the parties, the applicant or the  
7 protestant, really bear the burden of proof in the  
8 sense we might expect in certain kinds of judicial  
9 proceedings. This is a quasi-judicial proceeding.

10           The Commission has to decide ultimately  
11 whether or not the criteria for granting -- issuing a  
12 temporary certificate are met. If the Commission  
13 decides that they are met, then the protest is  
14 denied. If the Commission decides that they are not  
15 met, then the protest would be granted and the  
16 temporary certificate revoked or vacated.

17           As I said in my brief opening statement, the  
18 threshold test is whether there's an urgent and  
19 immediate need for the passenger-only service being  
20 offered by the applicant, and the IBU contends that  
21 no urgent and immediate need has been demonstrated.  
22 The need is -- the desire for this service cannot be  
23 seen as urgent.

24           The passenger-only ferry service being  
25 provided by the Washington State Ferries, we heard

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1 testimony, terminated in September of 2003,  
2 approximately nine months ago. A few months later,  
3 the voters of Kitsap County voted down a proposal  
4 that would have replaced that service with  
5 passenger-only ferries. That was in November of 2003.  
6 And it was not until the end of April 2004 that  
7 Kitsap Ferry Company applied for this service. That  
8 does not -- and all during that time, there is no  
9 evidence that there has been an economic catastrophe  
10 in Kitsap County or in Bremerton. What you heard is  
11 that people are unhappy that they do not have the  
12 precise routes, sailing times that they might prefer,  
13 and that they do not -- there might be suggestions  
14 that people would prefer a 40-minute sailing time to  
15 a 60-minute sailing time.

16           What the IBU focuses on is the term need.  
17 We heard in the testimony what's evidence of demand,  
18 and demand being that there are apparently people  
19 who, offered the choice of paying a little over \$5  
20 round trip to sail on a Washington State ferry as a  
21 passenger versus paying \$12 or even in excess of that  
22 to get what might be for them a more convenient or  
23 more luxurious or quicker ferry service from the  
24 applicant, there are, in fact, people who would stop  
25 riding Washington State Ferries and instead ride the

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1 Aqua Express, or people who would stop driving around  
2 the peninsula, driving through Tacoma, and instead  
3 would ride the Aqua Express.

4 JUDGE MOSS: Let's keep our cases straight.  
5 This is not Aqua Express.

6 MR. IGLITZIN: I'm sorry, thank you. The  
7 people would, instead of riding Washington State  
8 Ferries or driving around or finding some other means  
9 of doing their commute, they would choose to ride the  
10 Kitsap Ferry Company, or indeed, I suppose there are  
11 people who would prefer to relocate their residence  
12 or relocate their job rather than continuing to ride  
13 Washington State Ferries.

14 We've heard scant evidence of those kinds of  
15 lifestyle changes. What evidence we have heard  
16 suggests that, yes, indeed, there may well be a  
17 demand for this service. But when the legislature  
18 used the word need, we think that they meant  
19 something more than just a preference. And  
20 comparisons are -- but at least with the Aqua Express  
21 application, they are attempting to offer service  
22 from Kingston to Seattle that does not currently  
23 exist.

24 I think it is misleading to continually say  
25 this is passenger-only service and that's a new

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1 service. Any passenger without a car right now can  
2 go on a ferry from Bremerton to Seattle and back, and  
3 the experience is, in all meaningful ways, identical  
4 to the service which will be provided by Kitsap Ferry  
5 Company.

6 CHAIRWOMAN SHOWALTER: What is your comment,  
7 though, on the evidence that a passenger or a person  
8 trying to get to a job in Seattle that starts at 8:00  
9 can save 40 minutes one way, and that that can affect  
10 whether a person can actually take a job,  
11 particularly in terms of child care?

12 MR. IGLITZIN: Well, we've heard only  
13 anecdotal evidence of people whose schedules would be  
14 more convenient. I did not sit down and look at the  
15 exact bus and ferry schedules. Yes, certainly  
16 someone might have to take an earlier ferry than they  
17 otherwise would choose to or they would have to try  
18 to arrange to have a later job start date.

19 We heard testimony in the Aqua Express case  
20 that, in fact, one reason that they are confident  
21 there will be a demand for that ferry service is that  
22 their survey shows people's job times are quite  
23 elastic and that people are able to adjust their work  
24 schedules in large part to meet their ferry sailing  
25 needs.

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1           I don't dispute that there might be people  
2 for whom this would be an enormous convenience to  
3 have the additional sailings, if nothing else. It's  
4 obviously better to have two additional sailings.  
5 That is going to be convenient for people.

6           What I note is the absence of any evidence  
7 of substantial harm or detriment in the nine months  
8 since the Washington State passenger-only ferry  
9 ceased.

10           Again, the ultimate point that I think the  
11 IBU wants to make is that, as we understand, the test  
12 is not whether this service would be a good thing.  
13 It quite clearly would be a good thing for some  
14 people who would have that additional option, and  
15 it's a good thing either for people to whom it's  
16 important to have reserved seats and that that's an  
17 amenity that they want. The question is whether it's  
18 the urgent and immediate need, which to the IBU is a  
19 much higher threshold, justifying this kind of  
20 emergency approval, and it would release the Kitsap  
21 Ferry Company for this period between now and  
22 November of the obligation of going through and  
23 completing the permanent application process. Thank  
24 you.

25           JUDGE MOSS: Thank you.



0166

1           MR. CRANE: Your Honor and the members of  
2 the Commission, what we just heard was an admission  
3 by the IBU that, in fact, the service would be used  
4 by a substantial number of people who preferred, by  
5 choice, to use the service or to pay for the service  
6 that they felt they wanted.

7           What really struck me is there's no evidence  
8 by the IBU that this would not be urgent and  
9 necessary. There's no evidence that it wasn't needed  
10 by the commuters. There's no evidence that it was  
11 not needed by the transit service. There's no  
12 evidence that it was not needed by the city of  
13 Bremerton for economic revitalization.

14           All it was was questioning, Well, we don't  
15 interpret the data this way. In other words, we  
16 don't have any evidence to put on to dispute it, we  
17 just don't really like the result. That's really not  
18 the purpose of this hearing, to determine, on a  
19 temporary certificate, whether someone, by virtue of  
20 assertion, can demonstrate there is no urgent and  
21 immediate need.

22           Clearly, their evidence is in the record in  
23 replete form through the application, the letters of  
24 support by legislation, cities, counties, transit  
25 agencies, 90 letters. An amazing response, from my

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1 standpoint, who really want this service. The  
2 ridership results, nearly 500 responding to a survey,  
3 saying we would like to have the service and we would  
4 like to have it at certain times. I just don't think  
5 there's any question that there's an urgent and  
6 immediate need.

7           It's not just, Well, we would prefer this  
8 premium service and if you offered it to us, you  
9 know, we'll take it. That's not the test here. The  
10 test is is the service being provided at times not  
11 currently available, is it being provided under  
12 transit times that are improved over the ferry  
13 system, and are there people who wish to do so and  
14 are currently unable to by virtue of the termination  
15 of the passenger-only ferry service by Washington  
16 State Ferries in 2003?

17           That termination was a result of a  
18 legislative decision that it could no longer fund  
19 Washington State Ferries' very expensive  
20 passenger-only ferry service. The legislature  
21 determined the State was not to provide it. The  
22 legislature did not determine that the commuters  
23 weren't going to get it, however. In fact, the  
24 opposite occurred. The legislature said, We want the  
25 Public Transit Benefit Areas to determine whether to

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1 initiate the service. It's the PTBA that is the  
2 relevant government agency here, and the PTBA, Kitsap  
3 Transit, through the testimony of Mr. Hayes, has  
4 identified this is an enormously valuable service and  
5 beneficial and wishes to do so by contracting with  
6 Kitsap Ferry to provide the service that everyone has  
7 indicated they want and need.

8           Relative to the urgency, it's difficult to  
9 say it's not urgent, because it hasn't been provided.  
10 I alluded to that in my opening statement. Because  
11 nobody had the right to provide it in September 2003,  
12 when the Washington State Ferries discontinued it.  
13 It had to go through the PTBA. That was the process  
14 that Kitsap Transit took months with the Kitsap Ferry  
15 System. The fact that the voters turned down or  
16 refused to tax themselves for the service doesn't  
17 mean they didn't want it; it just meant that they  
18 didn't want to provide public taxes as a means to  
19 support it.

20           The alternative, therefore, is to contract  
21 with a very capable, able, fit, financially viable,  
22 ready to work business, Kitsap Ferry, to provide that  
23 service as soon as possible. That's exactly what it  
24 intends to do. Mr. Dronkert I think summarized it  
25 very well when he said, Really, there's a pent up

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1 demand here, there's a need established by virtue of  
2 everything in the application, all the discussions,  
3 the surveys, the meetings with the government  
4 officials that there is this need out here. And for  
5 the IBU to challenge that and say, Well, they really  
6 don't need it at all, it's not the IBU that's taking  
7 the service; it's the commuters, it's the visitors,  
8 it's the people working in the region. We're not  
9 asking the IBU do they need this; the question is  
10 whether the region needs this, whether the commuters  
11 and individual business users, travelers, and people  
12 on recreation need the service.

13           And I think, by virtue of the service that's  
14 being provided as an alternative to Washington State  
15 Ferries, a faster, probably even better service, is  
16 something that I think the Commission should  
17 wholeheartedly endorse and provide as soon as  
18 possible so this ferry system can get started.

19           And so the admission that it would be a good  
20 thing I don't think at all makes this application  
21 subject to being reversed. The Commission found,  
22 through the initial application and an investigation,  
23 through the Commission Staff doing the investigation  
24 and analysis, I think demonstrated it quite clearly  
25 that there was the need, and there's nothing today

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1 that I've heard that at all undercuts that, and so we  
2 would like to argue that, based on the evidence  
3 presented today, there's an overwhelming showing of  
4 urgent and immediate need, and the service is  
5 necessary, and the Commission should uphold its prior  
6 decision. Thank you.

7 JUDGE MOSS: Thank you. I commend you both  
8 on your brevity. Ms. Watson.

9 MS. WATSON: Hopefully, I will be just as  
10 brief.

11 JUDGE MOSS: Hopefully.

12 MS. WATSON: I would like to begin with a  
13 look at the burden, and I will be brief in this part.  
14 If you look at WAC 480-51-060, Subsections (5) and  
15 (6), those are the sections that address a protest of  
16 a temporary permit. And in Subsection (5), it states  
17 that the interested person must state the grounds for  
18 the protest and contain a statement of the interest,  
19 and then, in Section (6) it goes on to state that a  
20 hearing might be held if the Commission so desires.  
21 And if that hearing is held, it's held on the  
22 protest, and even if it's not held, the Commission  
23 must be persuaded based on the written protest  
24 itself.

25 So what that boils down to is that the

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1 Commission must be persuaded by the protest that its  
2 decision was wrong, so the burden does properly lie  
3 with IBU. The Commission itself does not have the  
4 burden of determining that it was wrong or right in  
5 issuing the order, as was suggested.

6           Having said that, I'd like to move on to the  
7 immediate and urgent need standard. The Commission  
8 hasn't had an opportunity to address many ferry  
9 cases, especially in a contested proceeding.  
10 However, the solid waste industry offers an analogous  
11 set of rules. For example, the solid waste rules  
12 also use the immediate and urgent standard for  
13 issuing a temporary certificate. I'll give you a  
14 case cite, and I'm going to talk about this case a  
15 little bit, and I can provide a copy of that order if  
16 you'd like.

17           It's order MVG Number 1536, in re: Ryder  
18 Distribution Systems, Inc., Application Number  
19 GA-75563. In that case, the Commission had an  
20 opportunity to define what the need is that -- well,  
21 define what need needs to be in existence.

22           The Commission's principal concern in  
23 deciding whether to grant a temporary authority is  
24 the need for the service, and if it appears  
25 reasonably probable that unmet need for the service

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1 exists and if other indicators are generally  
2 favorable to a grant, the Commission will grant the  
3 temporary authority. That comes from pages two and  
4 three of that order.

5 In this case, the Commission had before it  
6 letters of support submitted by the applicant. Those  
7 letters indicate that passenger-only ferry service is  
8 something distinct and different from automobile  
9 ferries, and that the automobile ferry service  
10 offered by Washington State Ferries is inadequate to  
11 meet their need.

12 Since the time that the protest has been  
13 filed, the Commission has received over 90 letters,  
14 and we will supply a copy of those. Thus, there's a  
15 -- it's reasonably probable that an unmet need for  
16 passenger-only ferry service between Bremerton and  
17 Seattle exists.

18 In the same case that I cited to you before,  
19 in re: Ryder Distribution Systems, the Commission had  
20 an opportunity to apply the immediate and urgent need  
21 standard, and the Commission there stated that an  
22 immediate and -- an immediate need is an imminent  
23 need that is required prior to the time a contested  
24 application for a permanent authority can be granted.

25 So in other words, if an unmet need exists

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1 that cannot be fulfilled prior to the permanent  
2 authority process being completed, before the time  
3 that the applicant intends to initiate the service,  
4 then there's an immediacy.

5           In this case, Kitsap Ferry intends to  
6 commence service within 90 days of the grant of the  
7 temporary authority. That temporary authority has  
8 been granted, and we had testimony today stating that  
9 after the Commission rules upon this protest, it will  
10 take them approximately four weeks to get things in  
11 place so they can put the boat in the water and start  
12 transporting passengers back and forth.

13           In all likelihood, the proceeding on Kitsap  
14 Ferry's permanent certificate will not be completed  
15 by August 1st. For example, if you look at the Aqua  
16 Express proceeding, that application was filed, I  
17 believe, on April 8th, which was a number of weeks  
18 before Kitsap Ferry filed its application. The  
19 hearing -- you've already heard hearing on part of  
20 that, and there will be another hearing date on June  
21 19th -- I'm sorry, July 19th. It's not likely that  
22 an order will be available before August 1st, and so  
23 it's fairly apparent that the permanent authority  
24 won't be revoked by August 1st for Kitsap Ferry. So  
25 there is an immediate and urgent need in this case.



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1           The Commission also has before it  
2 information that indicates that granting the  
3 temporary authority was in the public interest, and  
4 the record is fairly complete on that, and I won't  
5 belabor the point.

6           So in conclusion, IBU has failed to meet its  
7 burden showing that the grant of a temporary permit  
8 was not in the public interest and that the  
9 Commission acted improperly, thus the Commission  
10 should uphold its decision to grant the temporary  
11 authority.

12           JUDGE MOSS: Thank you, Ms. Watson. Mr.  
13 Iglitzin, do you wish to use any of your five minutes  
14 rebuttal time?

15           MR. IGLITZIN: Only to the following extent.  
16 Regardless of the discussion of burdens of proof or  
17 persuasion, the administrative regulation is clear,  
18 that in order for a temporary certificate to be  
19 justified, the Commission must find an urgent and  
20 immediate need. And to say, Well, the IBU hasn't  
21 presented evidence of absence of such a need, we  
22 think that the burden on that point ultimately rests  
23 with the party that is asserting that an urgent and  
24 immediate need exists. Thank you.

25           JUDGE MOSS: All right. Having received the

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1 evidence and heard the argument, the Commission will  
2 retire to deliberate and will, in short order, due  
3 course, enter a written order. And with that, we're  
4 in recess. Thank you.

5 MR. IGLITZIN: Thank you.

6 (Exhibits Numbers 1 through 6 were marked  
7 and admitted following the hearing.)

8 (Proceedings adjourned at 4:20 p.m.)

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