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P R O C E E D I N G S

JUDGE RENDAHL: We're back on the record the
afternoon of Tuesday, June 22nd, continuing with the
cross-examination of Mr. David Tougas by Mr. Iglitzin.

Please go ahead, Mr. Iglitzin.

MR. IGLITZIN: Thank you.

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1 Whereupon,

2 DAVID TOUGAS,

3 having been previously duly sworn, was called as a

4 witness herein and was examined and testified as

5 follows:

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

7 BY MR. IGLITZIN:

8 Q. Good afternoon, Mr. Tougas.

9 A. Good afternoon.

10 Q. I want to take you to Exhibit 16 and
11 hopefully briefly have you just break down some of these
12 numbers starting with the crew payroll taxes and
13 benefits as a vessel expense. I just want to make sure,
14 I believe you testified yesterday that the plan is to
15 hire a total of eight crew; is that correct?

16 A. Correct.

17 Q. And that would be two masters, two engineers,
18 and four deck hands?

19 A. Correct.

20 Q. And that is what would result in the vessel
21 expense listed as crew payroll taxes and benefits on
22 Exhibit 16?

23 A. Correct. I would like to correct how I
24 calculated it yesterday, because this morning I went
25 into my office and reviewed my notes, and yesterday I

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1 said that the \$20 rate that we used for the average rate
2 included taxes and benefits, and that's incorrect. We
3 added the employer portion of payroll taxes and
4 retirement, employer portion of the retirement fund, and
5 medical insurance on top of the \$20 per hour for the
6 crew.

7 Q. So the average crew wage, if I understand,
8 average crew gross wage is \$20 an hour?

9 A. That's correct.

10 Q. And can you break down further I guess how
11 you get to the -- I'm looking at this, the year one
12 number, 283,147, did you figure a certain number of crew
13 hours per -- in that year?

14 A. Yes, there's 10 hours per day for the crew, 5
15 hours in the morning and 5 hours in the afternoon, and
16 then we came up with 21 1/2 days per month. You know,
17 some months have more days than the other months, but
18 we're going to be operating on the 5 work days, Monday
19 through Friday, so on the average, an average month has
20 about 21 1/2 days after you exclude holidays and
21 weekends. So the 10 hours per day times 21 1/2 days per
22 month times the 4 crew members that are actually
23 operating the boat. And again, some crew members will
24 be operating the boat on certain days, and other crew
25 members will be operating the boat on other days, so in

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1 total we'll have two crews available to operate the
2 vessel.

3 Q. Your planning then is predicated on the idea
4 that in a given month your wage obligation is 10 hours
5 per day times 21.5 days per month times 4 crew?

6 A. Correct.

7 Q. It does not take into account the idea that
8 you would be paying more than four crew on a given day
9 for things like sick leave or vacation leave?

10 A. We haven't factored in vacation leave and
11 sick leave.

12 Q. And I take it then that if I multiplied 10
13 hours per day by 21.5 days per month by 4 crew on a
14 workday for 12 months and I divided that number into
15 283,147, I would get a number that reflected
16 approximately \$20 per hour plus the additional employer
17 tax and benefit obligations?

18 A. Correct. It's approximately 15 1/2% for
19 taxes and the retirement.

20 Q. So what we would find then if we did that
21 multiplication was that 283,000 divided by the number of
22 hours that we would be generating by the formula we just
23 discussed would result in a number approximately like
24 \$23 per hour?

25 A. I would have to do the calculation. I could

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1 do that.

2 Q. If you would, I think that would be great.

3 A. Okay.

4 JUDGE RENDAHL: Another way of doing these
5 calculations is to ask it subject to check, and he can
6 get back to you the next --

7 MR. IGLITZIN: That's fine too.

8 JUDGE RENDAHL: Okay, why don't we do that,
9 can you ask it subject to check.

10 BY MR. IGLITZIN:

11 Q. If I could ask that subject to check, then
12 that would be great.

13 Moving on to the selling general
14 administration portion of Exhibit 16 then, I see payroll
15 taxes and benefits of \$181,000. Can you give us the
16 breakdown I take it by analogy how many people are going
17 to be working how many hours a day that you're
18 contemplating paying, how you generate that \$181,000
19 number for year one.

20 A. Again, in the selling general and
21 administrative payroll we have included one general
22 manager, one accountant, one marketing manager, and one
23 customer service representative. We have budgeted
24 \$70,000 per year for the general manager, \$35,000 for
25 the accountant, \$52,000 per year for the marketing

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1 manager, and \$24,000 for the customer service
2 representative.

3 Q. And those budgeted amounts would be the
4 amounts that would have to cover payroll taxes and
5 benefits for each of those individuals, right?

6 A. Correct.

7 Q. And each of those would be what you're
8 contemplating are full-time jobs for year one?

9 A. Yes. The customer service representative and
10 the accountant would likely be hourly employees. The
11 general manager and marketing manager would likely be
12 salaried employees.

13 I should also point out on Exhibit 19 that we
14 have allocated general and administrative payroll
15 expenses to the concession division and the leasing
16 division. Again, someone is going to need to order the
17 goods that are sold in the concessions department, and
18 one of those four individuals is likely going to be
19 doing that, and someone is going to need to administer
20 the leasing division, so there's an additional \$20,000
21 worth of selling general and administrative payroll
22 allocated to those other departments.

23 Q. You said an additional \$20,000, oh, \$10,000
24 to concessions and \$10,000 to leasing?

25 A. Correct.

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1 JUDGE RENDAHL: Mr. Iglitzin, I have noticed
2 that Senator Sheldon has arrived, if it's acceptable to
3 you, we will take a break at this point.

4 MR. IGLITZIN: That's fine.

5 JUDGE RENDAHL: And take Senator Sheldon's
6 comments and then go back to your questioning.

7 MR. IGLITZIN: That's fine.

8 JUDGE RENDAHL: Okay, so let's be off the
9 record for a moment.

10 (Discussion off the record.)

11 CHAIRWOMAN SHOWALTER: Before we begin, why
12 don't we introduce ourselves, this is Ann Rendahl who is
13 the Administrative Law Judge that assists us in the
14 legal process, and I think you know I'm Marilyn
15 Showalter.

16 COMMISSIONER HEMSTAD: I'm Dick Hemstad.

17 COMMISSIONER OSHIE: I'm Pat Oshie, welcome.

18 SENATOR SHELDON: Thank you.

19 CHAIRWOMAN SHOWALTER: And why don't we have
20 the attorneys identify themselves and who they
21 represent.

22 MR. IGLITZIN: Dmitri Iglitzin representing
23 the Inlandboatmens' Union of the Pacific.

24 MR. WILEY: Hi, Senator Sheldon, Dave Wiley
25 representing Aqua Express.

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1 MR. SELLS: Jim Sells representing Kitsap
2 Transit.

3 MR. TROTTER: My name is Donald T. Trotter,
4 I'm an Assistant Attorney General representing the
5 Commission.

6 CHAIRWOMAN SHOWALTER: And because this is a
7 quasi-judicial proceeding, you need to be sworn in,
8 Judge Rendahl can do that.

9 SENATOR SHELDON: Okay.

10 JUDGE RENDAHL: If you would state your name
11 and address for the record, that would be helpful.

12 SENATOR SHELDON: My name is Betti Sheldon,
13 721 Northeast Woods Place, Bremerton, Washington.

14 JUDGE RENDAHL: And is that B-E-T-T-I?

15 SENATOR SHELDON: Yes, it is.

16 JUDGE RENDAHL: Thank you. Could you raise
17 your right hand, please.

18 (Witness Betti Sheldon was sworn.)

19 JUDGE RENDAHL: Thank you.

20 Please go ahead and give your comments.

21

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1 Whereupon,

2 BETTI SHELDON,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 SENATOR SHELDON: Thank you. Well, I will
7 again introduce myself. I'm Betti Sheldon. I am the
8 State Senator from the 23rd Legislative District, which
9 is the north part of Kitsap County and is the part that
10 would be served by a Kingston/Seattle run, that's part
11 of my district.

12 I have been in the senate for 12 years, and
13 prior to that I was the Bremerton area Chamber of
14 Commerce Executive Director, so I have a long history of
15 what's happening in Kitsap and particularly in
16 transportation issues.

17 JUDGE RENDAHL: Ms. Sheldon, I'm sorry, can
18 you slow down just a bit for the court reporter. Sorry
19 to interrupt you.

20 SENATOR SHELDON: No, that's fine.

21 So transportation issues, particularly ferry
22 service, is something that I have been very well aware
23 of and has been -- is a big issue to the people I
24 represent. Our county has over 300,000 people. And as
25 you know, our county is a peninsula and an island, so we

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1 have limited choices in leaving the county. We can go
2 through Shelton by land, over the Tacoma Narrow's
3 Bridge, which I'm sure you're aware is a challenge at
4 this time, or of course we can go across the Hood Canal
5 Bridge if you want to go west, but most of our people
6 are going east, so the ferry service is extremely
7 important.

8 Now we have tried for years to improve ferry
9 service, and as a legislator that was one of my top
10 issues. We twice were able to fund a passenger only
11 ferry service that would have served Kingston to
12 Seattle, a run that is not served at present as I think
13 you know. It goes Kingston to Edmonds. Kingston to
14 Seattle, Bremerton to Seattle, and Southworth to
15 Seattle, which is another -- they're all three needy
16 areas.

17 The first time we passed the legislation, the
18 Initiative 695 came along, which absolutely wiped out
19 all funding for not only our passenger only ferry
20 service, for much of transportation. So we tried again,
21 and again in Referendum 51 it would have funded ferry
22 service including the Kingston to Seattle run. And
23 again Referendum 51 did not pass, so the voters did not
24 support it.

25 Now the voters, and I have a lot of

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1 constituents I hear from that say, you know, the State
2 should support the ferry service, they should pay for
3 it. Well, quite frankly, the State isn't able to pay
4 for it. We are in a current situation where looking at
5 the next biennium, 05-07, it looks like a billion dollar
6 shortfall. And before when the State did have the Motor
7 Vehicle Excise Tax, we had some money to pay for
8 transportation. Now it's very difficult. And should we
9 get dollars for transportation, they have things like
10 the Seattle Viaduct, 405, 167, 520 bridge that are
11 priority issues.

12 So you look at the runs of ferry runs from
13 Kitsap to Seattle, and that doesn't come to a very high
14 priority to a lot of people. But it keeps a lot of
15 folks off the roads, and it's very important to the over
16 300,000 people that live not only in Kitsap, but in the
17 Olympic Peninsula. And the run we're talking about
18 today would very much serve the people that live on the
19 Olympic Peninsula. They come over to Kingston, from
20 Kingston over to the west side of the Sound.

21 So I just want to impress upon you that this
22 proposal before you today really makes a difference. It
23 is our chance to get good ferry service, passenger only
24 ferry service, moving our people rapidly from the Kitsap
25 and Olympic Peninsulas over to the west side of the

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1 Sound where they work, lots of them work.

2 As a little aside, I have -- when I run for
3 office, I stand at the Kingston ferry terminal, you
4 know, handing out brochures, it's amazing how many
5 people come from the Olympic Peninsula and come over and
6 through. Of course, then I go pick up my brochures out
7 of the trash and hand them out again, but that's part of
8 the service.

9 Anyway, I firmly support this public-private
10 partnership. I think it is our best if not our only
11 chance at having adequate ferry service between Kitsap
12 and the west side. It's very needed, and I do hope you
13 will see your way clear to give it a chance. It's an
14 innovative way, but sometimes that's the way it has to
15 be. We have to take new directions, we have to be
16 visionaries if we're going to succeed, and I would be
17 happy to answer any questions.

18 CHAIRWOMAN SHOWALTER: First, is there any
19 cross-examination?

20 MR. IGLITZIN: Not from the IBU.

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

2 BY MR. WILEY:

3 Q. Just one question, Senator Sheldon, putting
4 on your private citizen hat as a resident of Kitsap
5 County, if this application is granted and this route is
6 extended to Aqua Express, would you as a private citizen
7 find any benefit and convenience to you personally,
8 would you use it?

9 A. Oh, absolutely, as would thousands of my
10 fellow citizens on the peninsula, it would be used
11 constantly.

12 MR. WILEY: Thank you.

13

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

15 BY MR. TROTTER:

16 Q. Just one question, if I might. You're aware,
17 of course, that there is a State Ferry run from Kingston
18 to Edmonds and also from Winslow or Bainbridge Island to
19 Seattle, what is your -- what are your thoughts for the
20 people that you represent regarding those services
21 versus this type of proposed service?

22 A. It wouldn't affect it. Those services are
23 well used and will continue to be well used, but it
24 would take some of the pressure off Bainbridge Island.
25 Because of the loss of ferry service from Bremerton,

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1 Bainbridge is used more, and because there is no direct
2 service from the Peninsula to Seattle in the north part,
3 then lots of Kingston folks or in that general area will
4 come down. And we need to relieve the pressure, this is
5 a vital, it is a needed service, and I don't -- it
6 wouldn't affect the auto ferry service at all. If
7 you're taking your car, that's one thing, or truck
8 service, but it really helps, and it keeps cars off the
9 road.

10 MR. TROTTER: Thank you.

11

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

13 BY CHAIRWOMAN SHOWALTER:

14 Q. I have a question, one of the issues in this
15 case is whether there will be sufficient demand for this
16 particular service, and the question I have is what
17 having a run will do to generate demand. I wonder if
18 you can comment on the effect of having a direct run to
19 Seattle on say Vashon where there is one or Bainbridge
20 where there is one versus Southworth which is to West
21 Seattle but not directly to Seattle. My question is,
22 would we expect to see changes in housing and the
23 population in the greater Kingston area because there is
24 a run direct to Seattle?

25 A. I would expect you would. First of all, it's

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1 a very desirable place to live, and living on the Kitsap
2 Peninsula for many people who live on the west side in
3 King, Snohomish, Pierce County, it is less expensive,
4 plus it's a beautiful place to live. So I suspect those
5 areas would benefit from having -- I know they would
6 benefit, I know the Peninsula would, but it would not be
7 a detriment to the auto ferries.

8 But, you know, quite honestly it always kind
9 of surprises me that here in the year 2004 with the
10 Puget Sound as a waterway freeway that we haven't
11 utilized it before. We're still building concrete
12 roads, but it seems to me with some vision we could have
13 more boats going up and down Puget Sound, but that's
14 just my thought.

15 CHAIRWOMAN SHOWALTER: Any other questions?

16

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

18 BY COMMISSIONER HEMSTAD:

19 Q. Pursuing a bit further the point that
20 Mr. Trotter raised, an issue that at least has been
21 posed in this proceeding is whether this private ferry
22 from Kingston would undercut the passenger only portion
23 of the auto ferries of the State, in other words, would
24 end up cream skimming so to speak and therefore harming
25 the State Ferry System. With your background and

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1 experience in this area, do you have any opinion on
2 that?

3 A. Oh, I certainly do, I don't think it would at
4 all. The people from Bainbridge Island, of course that
5 ferry is very well used. But as I say, from other
6 points we have to use that often because we have no
7 other way to get across. And the north part of the
8 county, I think that the ferry to Edmonds would be used
9 and utilized, particularly if you're going north, King
10 County, Snohomish County, would certainly be utilized.
11 But I don't think it would skim the cream off, or we
12 wouldn't have proposed it twice before in the
13 legislature if we didn't feel that it was a worthy
14 program, and I very much support it, and I hope that
15 this time that we will be successful.

16 COMMISSIONER HEMSTAD: Thank you, that's all
17 I have.

18 CHAIRWOMAN SHOWALTER: Any other questions?
19 Thank you very much for coming, we appreciate
20 it.

21 SENATOR SHELDON: My pleasure, thank you.

22 JUDGE RENDAHL: Thank you.

23 Let's be off the record for a moment.

24 (Discussion off the record.)

25 JUDGE RENDAHL: Thank you for your patience,

0252

1 Mr. Iglitzin, and now let's continue on with your
2 cross-examination.

3 MR. IGLITZIN: Thank you.

4

5 Whereupon,

6

DAVID TOUGAS,

7 having been previously duly sworn, was called as a
8 witness herein and was examined and testified as
9 follows:

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

11 BY MR. IGLITZIN:

12 Q. Mr. Tougas, forgive my ignorance, I know that
13 if I want to take a ferry right now from Edmonds to
14 Kingston I can get my -- purchase my tickets at the
15 booths if I'm driving on, or I believe that there's a
16 spot to purchase them separately if I walk on. Can you
17 describe for us how if I am in Kingston and I want to
18 take the Aqua Express to Seattle or if I'm in Seattle
19 and I want to take the Aqua Express to Kingston
20 physically, and assuming that I have no prior, have had
21 no prior contact, how would I get a ticket or how would
22 I physically get on the ferry and then get a ticket, how
23 would I pay?

24 A. We haven't worked out exactly the details of
25 how that's going to occur, but in general we have

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1 discussed it, and we will have an office in Kingston
2 where people can get tickets. We will have tickets
3 available at, for example, the Thriftway in Kingston
4 just like State Ferry passes are available at the
5 Thriftway there and at various other locations in
6 Kingston. And if people want to ride on the ferry, they
7 can get on board the boat and pay on board the boat.

8 On the Seattle side, again we're going to be
9 docking at Pier 56, Argosy has a ticket booth there, and
10 we will be selling the tickets through the Argosy ticket
11 booth at Pier 56. And they will also, you know, I'm --
12 that will be our primary point of sale in Seattle.

13 Q. On Exhibit 16 you list office rent as \$12,000
14 for the year. Would that be -- would that cover the
15 cost of leasing an office in Kingston from which tickets
16 would be purchased?

17 A. Yes.

18 Q. Would that also be covering whatever other
19 office space Aqua Express had for the general manager
20 and the marketing manager and customer service rep?

21 A. Yes.

22 Q. Is there going to be any payments made to
23 Argosy for the use of their ticket booth?

24 A. They will receive a commission on the sale of
25 tickets along with other third parties that sell the

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1 tickets for us.

2 Q. And have you determined how much of a
3 commission a third party who sells tickets is going to
4 get?

5 A. We have not determined a specific commission
6 rate. It will probably be a sliding scale depending on
7 how much they're selling.

8 Q. Do you know what commission the State Ferries
9 provides for example Thriftway?

10 A. No, I don't.

11 Q. How did you come up with the sum of \$20,801
12 for year one for the commissions and refunds?

13 A. We assumed a commission rate of 1% of total
14 revenue increasing to 1 1/2% in subsequent years.
15 Again, some tickets will be sold by third parties where
16 we will have to pay a commission, some tickets will be
17 sold by ourselves and we won't be paying a commission on
18 the tickets that we're selling ourselves, and exactly
19 what the mix between tickets sold by third parties
20 versus tickets sold by ourselves we haven't determined
21 that. But again, it's 1% to 1 1/2% of our revenue.

22 Q. It's fair to say though that if you're going
23 to try to get people to sell your tickets by commission,
24 you're going to have to have the commission be well in
25 excess of 1% or 1 1/2% in all likelihood; is that

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1 correct?

2 A. Not necessarily. I mean I think that, you
3 know, a lot of outlets have fairly low margins, and if
4 all they have to do is handle pieces of paper and
5 they're earning a couple of percent profit for what
6 they're selling, that they would be perfectly willing to
7 do that.

8 Q. Well, if you were paying a 2% commission and
9 a store were to sell 100 tickets, that's \$10.50; is that
10 correct?

11 A. That's correct and --

12 Q. Do you have any market study or any data on
13 which to base a conclusion that a Thriftway, for
14 example, is willing to do 100 transactions for \$10?

15 MR. TROTTER: I will object to the question.
16 I didn't understand that there would have to be 100
17 individual tickets versus a full package of tickets in a
18 discount fashion, so I will object to the form of the
19 question, no basis in fact.

20 MR. WILEY: Your Honor, I join the objection
21 and indicate we're getting into a speculative realm that
22 I don't think is adding a whole lot to the record, so I
23 object on that basis as well.

24 JUDGE RENDAHL: Mr. Iglitzin, can you either
25 rephrase your question or narrow it.

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1 MR. IGLITZIN: Thank you, of course.

2 BY MR. IGLITZIN:

3 Q. Have you done any market studies upon which
4 you base your conclusion that third parties will in fact
5 be willing to sell tickets either singly or in bulk at a
6 commission level that's consistent with your \$20,000
7 estimate?

8 A. We have not done any formal surveys, but we
9 are aware of people who have expressed a willingness to
10 do so. And again, most of the tickets that third
11 parties would be selling would be the monthly passes
12 rather than individual tickets.

13 Q. Will you remind me how much a monthly pass is
14 going to cost in the first year?

15 A. Well, it would be -- I need to calculate it,
16 and I can't find my calculator right now, stand by,
17 please.

18 MR. WILEY: Can we do that subject to check
19 as well, Your Honor?

20 JUDGE RENDAHL: We can do that subject to
21 check.

22 Again, Mr. Iglitzin, is there -- can you
23 explain the basis for your questions here.

24 MR. IGLITZIN: Sure.

25 JUDGE RENDAHL: Is there a need to go further

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1 into this?

2 MR. IGLITZIN: No, I think -- I think
3 probably the last question I guess, if I can just
4 clarify, I mean the overall basis is that all of the
5 numbers presented by Aqua Express seem to be based in
6 large part on guesswork and speculation, and I'm going
7 through all the various different wonderful revenue
8 sources which they're counting on and trying to
9 determine, as I did with the ridership and now in this
10 case is the commission, trying to figure out how they're
11 going to sell this many tickets with as few employees as
12 they plan on having, and the answer is in large part
13 they're going to sell them through third parties. I'm
14 trying to figure out whether that's actually a feasible
15 or whether there's evidence to indicate that that's a
16 plausible or predictable operation, and that's why I'm
17 trying to find out if there were any studies or any
18 evidentiary basis to conclude that that will actually
19 work.

20 JUDGE RENDAHL: So can you repeat your
21 question to the witness, and if it means a calculation,
22 we can do it subject to check.

23 MR. IGLITZIN: Sure.

24 BY MR. IGLITZIN:

25 Q. Have you had an opportunity to figure out

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1 what a monthly ticket book is going to cost?

2 A. \$106. We haven't operated the service, so we
3 can't determine exactly what our costs and our values or
4 our prices would be, and even if we were to do a study,
5 it would be based on hypotheticals. We however
6 collectively have been operating similar types of
7 vessels for decades, and we know what our costs are.
8 There are some things that we can't predict like what
9 the price of diesel is going to be next month or if a
10 particular part on the boat might break next month and
11 we have to repair it, we can't predict exactly what our
12 future costs will be. However, we have extensive
13 experience as a partnership in operating these types of
14 vessels and in providing ferry services, and based on
15 that experience, we're confident that these are
16 reasonable numbers and that we can generate at least as
17 good of results as we have here. As investors, we
18 wouldn't be getting into this unless we felt like we
19 could make a success of this business.

20 Q. And by we, are you speaking both for the
21 company that employs you and the other principals in
22 Aqua Express?

23 A. I suppose I can't speak for the other
24 principals but certainly for us, and I -- I mean it
25 would not be rational for my partners to join in this

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1 partnership unless they expected to be financially
2 successful.

3 Q. On Exhibit 19, probably in other places as
4 well, there's an indication that the leasing division of
5 Aqua Express, LLC, will generate \$610,000 in gross
6 revenue and as I read this net income of \$415,000 and
7 200 of which -- \$360,000 is coming from the
8 Kingston/Seattle ferry service. So I guess just looking
9 at the gross revenue, I see a gross revenue of \$610,000,
10 \$360,000 is coming from the ferry service, where is the
11 other \$250,000 in income coming from?

12 A. \$150,000 of it is coming from the charter of
13 the vessel to Alaska this summer. The remaining
14 \$100,000 is coming from an estimated -- an estimate that
15 we can charter the vessel 20 times over the course of
16 the year at an estimated charter rate of \$5,000 per day
17 for the vessel. This would be for things like Seahawk
18 games, parties, weddings, various other trips that the
19 vessel could be used for during non-ferry operating
20 hours.

21 Q. I'm assuming that you will not be continuing
22 to lease the Aqua Express to Alaska in subsequent
23 summers.

24 A. Correct.

25 Q. And am I correct in saying that in the

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1 material that's been presented to the Commission you
2 don't present the financial numbers of the ProForma
3 income statement for Aqua Express, LLC, going forward
4 five years but only for the first year; is that correct?

5 A. Correct.

6 Q. Can you describe for the Commission in a
7 little bit more detail than appears on Exhibit 19 the
8 basis for your conclusion that the cost of the
9 concessions operation would be \$142,000 in the first
10 year?

11 MR. SELLS: Your Honor, I'm going to object,
12 we went over this in great detail yesterday in
13 cross-examination, and this is just repeating of the
14 same questions that have already been answered twice.

15 JUDGE RENDAHL: Mr. Iglitzin.

16 MR. IGLITZIN: What I recall questioning this
17 witness about was the revenue projections for
18 concessions. I don't recall questioning this witness at
19 all about the expense side of concessions. For example,
20 I don't recall asking Mr. Tougas who was going to be
21 selling the concessions, who if anyone is going to be
22 selling the concessions on the vessels, what Aqua
23 Express anticipates paying those people, which I assume
24 is what goes into the \$142,000.

25 MR. WILEY: Your Honor, I would join the

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1 objection. I recall specific testimony yesterday about
2 40% net, 60% cost on the concessions. I think we have
3 been over this area to a large degree.

4 JUDGE RENDAHL: I will sustain the objection,
5 and let's move on.

6 MR. IGLITZIN: In addition to, I apologize if
7 this was meant to be precluded by the objection, please
8 let me know, I'm not trying to avoid the Judge's ruling.

9 BY MR. IGLITZIN:

10 Q. But the specific question about whether Aqua
11 Express intends to employ additional people on the
12 vessels beyond the four crew that you have previously
13 identified, I would like to know.

14 A. No, we do not intend to hire additional
15 employees. The -- there would be a deck hand in the
16 galley selling concessions when the galley is open. The
17 galley would be closed at certain times when the deck
18 hand was needed to handle ropes or whatnot.

19 Q. I realized in looking at your ProForma income
20 statement year one, I was assuming that that was the
21 first year of operation of Aqua Express in providing
22 Kingston/Seattle ferry service. Is that -- I now
23 realize that that's incorrect, isn't it?

24 A. Well, it's again a budget, a projection, and
25 it's difficult to narrow it down to a particular time

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1 frame. Exhibit 19 was primarily meant to show, number
2 one from a businessman's perspective, are we going to be
3 able to make this thing work in the first year. And
4 from a businessman's perspective, I think that this is a
5 reasonable projected income statement for the first year
6 and that it's something that we want to move ahead with.

7 Q. But it's not actually for the first year of
8 operation assuming that the vessel begins operating
9 September 1 or so, right, because you have included
10 \$610,000 in lease revenue, and the substantial portion
11 of that comes prior and is only able to come prior to
12 the ferry service actually commencing, right?

13 A. Okay, that's a valid point.

14 Q. But the other numbers I take it, the full
15 fare revenue numbers based on the first and second
16 columns are your contemplation of the first year from
17 the commencement of the commuter ferry operation?

18 A. Right, as detailed in Exhibit 16. That's,
19 you know, the one year, the first column of Exhibit 16
20 again translates into that Exhibit 19, the first column.

21 Q. Are you familiar with Exhibit 21, the
22 operating agreement?

23 A. Yes, I am.

24 Q. And is it fair to say that if Aqua Express,
25 LLC, needs more money, it needs to go back to the four

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1 principals?

2 A. Well, I think the first step in the unlikely
3 event that we needed additional funding, we would
4 probably go to the bank. I think, again, when we took
5 out our initial half million dollar loan, we had several
6 banks that were interested in lending us money. We
7 think that the vessel again is worth a lot more than
8 what we paid for it, and the banks have expressed that,
9 you know, it's ample collateral for a loan, and so I
10 think that we could get additional funding from a bank
11 before we had to go to the partners.

12 Q. And if you couldn't get additional funding
13 from the bank, would you then go to the partners?

14 A. Again, it's becoming more and more remote of
15 an event that that would occur, but if it did occur,
16 yes, the partners are willing and able to put additional
17 funding into the operation.

18 MR. IGLITZIN: I'm going to ask to strike
19 that last answer as nonresponsive. The question was
20 what Aqua Express would do, not to have this witness
21 speak on behalf of other partners who he is not employed
22 by and can't properly speak for.

23 JUDGE RENDAHL: Mr. Tougas, can you restate
24 your answer.

25 BY MR. IGLITZIN:

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1 Q. And the question again was whether the next
2 step if the bank doesn't come up with more money is that
3 Aqua Express, LLC, has to turn to its partners for more
4 money?

5 A. Well, I guess, again, my perspective right
6 now, I am employed by Four Seasons Marine Services, and
7 I'm working together with our other partners in order to
8 organize Aqua Express, and we will be hiring a general
9 manager who will be an employee of Aqua Express, we will
10 be hiring an accountant who will be an employee of Aqua
11 Express, and so I don't want to put words into the mouth
12 of a future general manager, but I could speculate that
13 that future general manager would come to the partners
14 and ask for additional funding in the unlikely event
15 that that was necessary.

16 Q. And is it your understanding of the operating
17 agreement that three out of those four partners would
18 have to agree prior to the four partners making -- being
19 obligated to provide that additional money?

20 A. Yes, a majority of the partners need to
21 agree.

22 MR. IGLITZIN: If I can just have one more
23 minute.

24 I have no further questions, thanks.

25 JUDGE RENDAHL: Thank you, Mr. Iglitzin.

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1 Mr. Sells.

2 MR. SELLS: Thank you, Your Honor.

3

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

5 BY MR. SELLS:

6 Q. Mr. Tougas, just to clarify one thing, I
7 understand that the vessel will be in charter in Alaska
8 this summer; is that correct?

9 A. Correct.

10 Q. And will that be a charter at the market
11 rate?

12 A. Yes.

13 Q. And that if there is any other service
14 performed by one of the three partners or the four
15 partners in this business for Aqua Express, will that
16 also be at market rate?

17 A. Yes, it will be.

18 Q. No sweetheart deals for the partners?

19 A. No. In fact, because there's four partners,
20 any one partner -- I mean the other three partners are
21 going to make sure that it's a fair market value
22 exchange, because they don't want one partner getting an
23 advantage when the other three partners get -- have to
24 hold the bag.

25 Q. And as I look at the materials here, it

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1 appears to me that these four partners have, and I added
2 them up here, at least 150 years combined in the boat
3 business in some manner or another; is that correct?

4 A. I would need to calculate it, but I will take
5 your word for it, that's reasonable.

6 Q. And I presume that you folks have come up
7 with a business plan to operate Aqua Express?

8 A. Yes, we have.

9 Q. And you have run the numbers?

10 A. Yes, we have.

11 Q. And you have taken these numbers by the other
12 partners, the four people with 150, 160 years experience
13 in this business, and you think you can make it work?

14 A. Absolutely.

15 MR. SELLS: All right, I have no further
16 questions, Your Honor.

17 JUDGE RENDAHL: Mr. Trotter.

18 MR. TROTTER: Thank you, Your Honor.

19

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

21 BY MR. TROTTER:

22 Q. Could you first turn to Exhibit 19, please.
23 You were asked a question from Mr. Iglitzin regarding
24 whether this is a statement applicable to year one, and
25 you focused on the Alaska lease revenue being prior to

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1 when year one starts; do you recall that?

2 A. Correct.

3 Q. Are there any other items on this sheet that
4 would commence before year one starts, or would all the
5 other items be applicable to year one?

6 A. Well, I guess the one item that I could see
7 that might -- well, actually there's a few, the interest
8 expense, again we've got a loan currently.

9 Q. No, no, no, let me ask you before you get
10 started, that interest expense will also occur for the
11 year starting October 1st --

12 A. Right, that a --

13 Q. -- through September 30th?

14 A. That's a one year's interest fee.

15 Q. Right, that's what I'm talking about, so that
16 would be an expense attributable to the first year of
17 operation?

18 A. Correct.

19 Q. Okay. I'm looking for expenses on this sheet
20 like the lease revenue which would necessarily apply
21 only to a period prior to the beginning of year one.
22 Are there any others on this sheet that would qualify?

23 A. I don't see any others.

24 Q. Now with respect to that lease revenue, is
25 that actual cash received by Aqua Express, the \$150,000?

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1 A. Yes.

2 Q. Let's go to Exhibit 15, please, the interim
3 balance sheet. And when the \$150,000 comes in, I assume
4 it won't all come in at once, but each month as it comes
5 in, will that go to cash?

6 A. Correct. We have -- I -- on this balance
7 sheet or as of June 15th, we have made two \$30,000
8 payments, so a total of \$60,000 of the \$150,000 is
9 included in the \$180,000 in cash. And then the 1st of
10 July, 1st of August, and 1st of September we have
11 additional \$30,000, or Four Seasons Marine Services has
12 additional \$30,000 payments, so there's \$90,000 in cash
13 coming in in the future.

14 Q. And that's not reflected on Exhibit 15, is
15 that correct, the \$90,000?

16 A. I think that the July 1st payment is included
17 in the accounts receivable.

18 Q. Okay. So it would be \$60,000 then that's not
19 reflected on this sheet?

20 A. Correct.

21 Q. And are all these figures on this sheet
22 actual figures, or are they projections?

23 A. No, they're approximations. Again, generally
24 accepted accounting principles, you close the books at
25 the end of the month, and in order to give the

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1 Commission the most up to date information, we did this
2 interim balance sheet, which is a pretty good
3 approximation of the balances in these various accounts,
4 but we did not close the books, and they aren't firm
5 absolute numbers.

6 Q. Okay. These are total company numbers for
7 Aqua Express, LLC, correct?

8 A. Correct.

9 Q. So you haven't made any separation between
10 operating divisions on this exhibit?

11 A. No.

12 Q. I believe you mentioned that the vessel is
13 secured, is security for the Foundation Bank loan; is
14 that right?

15 A. That's correct.

16 Q. Since the loan amount is \$500,000, if just
17 assuming that the vessel had a fair market value of what
18 appears to be its book value of \$922,000, would that
19 imply an additional \$422,000 would be available for
20 collateral?

21 A. Assuming that, yes, there would be an
22 additional \$422,000 in collateral.

23 Q. But I believe it's your testimony that the
24 boat exceeds that value as a market value prospect?

25 A. Yes.

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1 Q. So would it be fair to say that you could
2 borrow in the range of at least \$400,000 against this
3 security?

4 A. At least \$400,000.

5 Q. \$400,000 more?

6 A. Yes.

7 Q. Now Aqua Express, LLC, owns that vessel, not
8 the leasing division; is that right?

9 A. Correct, I'm -- again, we have changed
10 exactly how we are organizing the operating company and
11 the leasing company, and exactly whose name is on the
12 title of the boat at this time I'm not sure. Certainly
13 by the time we begin operations it will be in the name
14 of Aqua Express, LLC. We'll need to work with Kim
15 Marine documentation to make sure that the name on the
16 title or the certificate of documentation is correct by
17 that time. But since both companies have common
18 ownership and the intent is to put it all together as
19 one, by the time we're operating the vessel, it will be
20 in the name of Aqua Express, LLC.

21 Q. My question was who owns it, whether it's
22 Aqua Express, LLC, or the leasing division of Aqua
23 Express. Is it your testimony that ACNT still owns it
24 and just awaiting a final transfer to Aqua Express?

25 A. Again, I'm not sure whose name is on the

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1 certificate of documentation at this time.

2 Q. Are you aware of any sale of the vessel from
3 ACNT to Aqua Express, LLC?

4 A. We're still working with our tax accountant
5 on how to do that and whether or not the vessel will be
6 sold by ACNT to Aqua Express or whether the two
7 companies will be merged.

8 Q. I see.

9 A. We're not -- we're still working on what's
10 the most advantageous way of transferring the vessels
11 and the companies together.

12 JUDGE RENDAHL: Mr. Trotter, before you go
13 on, if everyone would please turn off their cell phones,
14 that would be helpful, thank you very much.

15 Go ahead Mr. Trotter.

16 BY MR. TROTTER:

17 Q. You mentioned the vessel was currently leased
18 to Four Seasons in Alaska at a rate of \$30,000 a month;
19 is that right?

20 A. That's correct.

21 Q. Is that a full-time lease?

22 A. Yes.

23 Q. So the operator, which I take it is your Four
24 Seasons company, has the right to use that boat 24 hours
25 a day, 7 days a week, in exchange for \$30,000 a month?

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1 A. Correct.

2 Q. And that same \$30,000 is what you have
3 imputed as a monthly rate in your ProFormas here,
4 correct?

5 A. Correct.

6 Q. But the Kingston/Seattle ferry will only be
7 using the vessel for ten hours a day, five days a week,
8 and excluding state and federal holidays, correct?

9 A. That's the plan, although if our service, if
10 we have the opportunity to expand service, they would
11 have the right to use it at additional times.

12 Q. For the times I'm just focusing on the
13 schedule you're proposing.

14 A. Okay.

15 Q. And your answer to my question is yes?

16 A. Yes.

17 Q. Okay. So the leasing division could use it
18 during times that aren't scheduled on your tariff,
19 correct?

20 A. Correct.

21 Q. You were asked some questions about where
22 Aqua Express would go to get funding if it needed
23 funding, and you said the first place would be to go to
24 the bank, we talked about that a little bit. Did you
25 assume for your answers that cash earned by Aqua Express

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1 from other operations such as leasing or concessions
2 would not be made available to the ferry service, or did
3 you assume that that cash would be available?

4 A. I assumed that cash would be available.
5 Again, since Four Seasons Marine uses the same system, I
6 just kind of make a lot of assumptions, and one of your
7 comments was about the balance sheet being for the
8 company as a whole and the income statement being for
9 the divisions. Again, that's kind of second nature to
10 me that the assets are available to all the divisions,
11 and it's, you know, what do you do with the assets to
12 earn the revenue and to incur the expenses that shows up
13 on the income statement. So to me it's perfectly
14 natural to have one balance sheet and the income
15 statement broken out into divisions.

16 Q. I understand, let me just explain before I,
17 as a precursor to my question, that I'm focusing on the
18 statute which says:

19 The Commission shall determine that the
20 applicant has the financial resources to
21 operate the proposed service for at
22 least 12 months based on the submission
23 by the applicant of a ProForma financial
24 statement of operations.

25 And so I'm -- would cash from other

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1 operations of Aqua Express, LLC, be financial resources
2 that could be used to operate the proposed service
3 during the first year?

4 A. Yes, absolutely. I kind of indicated that on
5 Exhibit 20 again where I have the cash on hand as of
6 June 15, the charter payments that we're going to be
7 receiving from now until the end of the year from Four
8 Seasons, or that Aqua Express is going to be receiving
9 Four Seasons, and my estimated net cash from leasing as
10 all being available to cover the operating expenses of
11 the ferry division.

12 Q. All right. So just in terms of a hierarchy,
13 if the Kingston/Seattle ferry division needed cash that
14 it could not generate from its operations, it would
15 probably first go to its other operations, the other
16 operations of Aqua Express, LLC, before it would go to
17 the bank?

18 A. Correct.

19 Q. And then if it had to go to the bank, it
20 would do so, we have talked about that, and then next
21 the partners?

22 A. Correct.

23 Q. Turn to Exhibit 5. On the first page, this
24 is the Certificate of Inspection. Just above the middle
25 it refers to persons on the vessel. And as I read this,

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1 it requires one master, one licensed mate, and three
2 deck hands, whereas you testified to one master, one
3 licensed mate, and two deck hands. Can you -- am I
4 missing something?

5 A. Yeah, if you read down a couple of
6 paragraphs, it says, lakes, bays, and sounds, and then
7 you skip the next paragraph that starts Puget Sound and
8 the contributing tributaries, and then it says:

9 When one of the deck hands has been
10 designated by letter as a senior deck
11 hand as provided, the mate need not be
12 carried.

13 Q. Okay, thank you.

14 JUDGE RENDAHL: Mr. Trotter, I note that
15 representative Ericksen is here, is this a good time for
16 you to take a break?

17 MR. TROTTER: Of course.

18 JUDGE RENDAHL: Okay, let's be off the record
19 for a moment while we ask Mr. Tougas to move again.

20 (Discussion off the record.)

21 JUDGE RENDAHL: Good afternoon,
22 Representative Ericksen, could you state your full name
23 and address for the record, please.

24 REPRESENTATIVE ERICKSEN: Doug Ericksen, 7028
25 Dahlberg Road, Ferndale, Washington.

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1 JUDGE RENDAHL: And is Ericksen with an E or
2 an O?

3 REPRESENTATIVE ERICKSEN: With an E.

4 JUDGE RENDAHL: Thank you. Would you raise
5 your right hand, please.

6 (Witness Doug Ericksen was sworn.)

7 JUDGE RENDAHL: Okay, please go ahead.

8 REPRESENTATIVE ERICKSEN: I got out of jury
9 duty to be here today. I guess I would have been doing
10 that today some way in one way or another no matter
11 where I was at.

12 CHAIRWOMAN SHOWALTER: Also, just before you
13 start, remember that the court reporter needs you to
14 speak relatively slowly, and you can tell if she's
15 getting frantic.

16 REPRESENTATIVE ERICKSEN: Okay, I will be
17 measured in my comments from here on out.

18

19

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1 Whereupon,

2 DOUG ERICKSEN,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 REPRESENTATIVE ERICKSEN: Thank you so much
7 for the opportunity to come in here and talk today about
8 passenger only ferry service in Washington state and
9 hopefully to give you a perspective from my seat in the
10 state legislature as to our vision for POF service. I
11 served as the ranking Republican on the House
12 Transportation Committee for the last two years when we
13 have been going through quite a few, how to describe it,
14 twists and turns, ups and downs, with regard to
15 transportation funding in Washington state and also with
16 regards to how we prioritize our transportation spending
17 in Washington state.

18 As you are probably all aware, Referendum 49
19 was followed by Initiative 695, which was then followed
20 by the failure of Referendum 51, which put us on a
21 funding roller coaster with transportation. At various
22 points our ferry system has been highly funded, and at
23 various points funding for our State Ferry fleet has
24 declined.

25 In the legislative arena, I divide, and I

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1 think many of my colleagues, divide the service between
2 car ferries and passenger only ferries in a different
3 light. The basic reasoning for that is under State law
4 and under our Constitution, 18th Amendment dollars,
5 which are gas tax dollars and controlled by the
6 constitution, can only go for highway related purposes.
7 The Supreme Court has ruled that car ferries are
8 considered highways in Washington state, so they are
9 qualified for 18th Amendment dollars, gas tax dollars.
10 Passenger only ferries, however, have never qualified
11 for gas tax revenue, which puts us in a bit of a
12 difficult situation to try to find funding for passenger
13 only ferry service in Washington, because we simply can
14 not use gas tax dollars.

15 So in the past we have been looking for ways
16 to provide a much needed service in the central Puget
17 Sound region in particular with regards to passenger
18 only ferry service but also trying to find a way that we
19 can do that without the State being involved. And I
20 think if you look at the legislation that has passed in
21 the last two years with regards to our ferry system, you
22 will see a very clear movement away from passenger only
23 ferries from the Department of Transportation and from
24 the legislature.

25 Two years ago we passed two pieces of

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1 legislation in particular. One bill would have allowed
2 Kitsap Transit or any regional entity to form a public
3 taxing district to support passenger only ferries. The
4 second piece of legislation, which was intended to
5 follow upon the first, basically allowed private
6 companies to come in and be able to provide the service
7 if the other entities are not able to come up with
8 funding for POF service.

9 Well, the other vote I guess that I haven't
10 mentioned here yet today that the public took was the
11 vote in Kitsap County with regards to passenger only
12 ferry service, which resulted from the first bill that I
13 mentioned. I don't have the number in my hands right
14 now, but we can get that for you for the record. And,
15 of course, that piece of -- the vote in Kitsap County
16 failed and not only failed a little bit, failed a lot,
17 clearly showing that the public in my opinion was not
18 interested in funding the type of ferry system that was
19 put forward in that ballot title.

20 Which then leaves us with the second piece of
21 legislation that the legislature passed overwhelmingly
22 and Governor Locke signed into law, which said we're now
23 going to let the private sector have a crack at
24 operating passenger only ferry service in Washington
25 state. And I guess that's what brings us here today is

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1 really that second piece of legislation and the
2 relationship with the UTC to overseeing and making sure
3 that these -- to overseeing this type of ferry system in
4 Washington.

5 So my purpose in being here today is that
6 from my role as ranking member on the House
7 Transportation Committee, I have to take a statewide
8 view of all of our transportation issues. I don't have
9 a passenger only ferry in my district, we may in the
10 future. I do actually, but it's a part time and it runs
11 to the San Juan Islands. But what we're looking at here
12 is how we can provide that service, and my job I believe
13 from my position is to make sure the public gets the
14 service that they want, and they have clearly said that
15 they would like to have the service, there is demand for
16 it, but how do I get that service to the people in a
17 cost effective fashion that allows private vendors to
18 operate the service, and I think that's where we are
19 today with the proposal we have and that fulfills I
20 think the intent of the legislation that we passed,
21 allows them to proceed if they can move past this
22 hurdle.

23 So I strongly urge us to move forward, not
24 for the sake of Aqua Express or for Kitsap Transit, but
25 really for the sake of the people who want that service,

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1 who are willing to pay for that service, and really move
2 it into the private sector. I think it's a great
3 example, not to get into philosophy of government, where
4 the private sector can provide a service that the public
5 wants, demands, and is willing to pay for in a cost
6 effective fashion that also relieves the State of a
7 responsibility which is really outside of our main
8 mission in transportation, which is auto ferries, and
9 which we will continue to operate in Washington.

10 So with that, I think that's all that I had
11 today. I would be happy to answer any questions you
12 have about the process that we went through in the
13 legislative arena to get where we are today.

14 And one caveat I should mention, we are
15 currently operating a passenger only ferry to Vashon
16 Island with State dollars. That run is only funded
17 through the course of the current fiscal cycle that we
18 have in Olympia. And also in the senate budget this
19 last year they did cut that run out or phase it out in
20 July or September in various versions of the senate
21 budget, clearly I think indicating a desire to get out
22 of that run. We kept that one going because it provided
23 a service that wasn't available in other means to get
24 from Vashon to downtown Seattle, you have to go through
25 the other route, but there were -- there were other

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1 routes available. So we do have one run currently
2 operating, but I think clearly the legislature
3 demonstrated and DOT has demonstrated and Washington
4 State Ferries has demonstrated that they do not want to
5 continue to operate that one either.

6 So with that, I would be happy to answer any
7 questions you may have today.

8 CHAIRWOMAN SHOWALTER: Any questions from the
9 attorneys?

10 MR. IGLITZIN: Not from the union, thank you.

11 MR. WILEY: Not from the applicant, thank
12 you.

13 MR. SELLS: No questions, thank you.

14 MR. TROTTER: I have no questions.

15

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

17 BY CHAIRWOMAN SHOWALTER:

18 Q. I have one question. For the Vashon ferry,
19 what is the source of funds there?

20 A. Flex dollars, soft dollars. Our basic -- boy
21 it's a long answer. All transportation taxes that are
22 not gas tax are available for other types, so it might
23 be coming from, oh, let me see, what do we got out
24 there, the car tax, we have 1/10 of 1% sales tax on
25 automobiles that comes in for transportation. It could

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1 be various -- I could give I guess a specific answer to
2 you, but I don't have it on the tip of my tongue right
3 now where our actual fund source is. It's the Motor
4 Vehicle -- it's the -- oh, shoot, it's called the, not
5 the Motor Vehicle fund, it's the --

6 Q. The MVET?

7 A. No, not our MVET.

8 Who can help me out there?

9 Multimodal account, thank you very much, it's
10 in the multimodal account, which accounts for those
11 other sources.

12 Q. One other question, since your purview is the
13 entire state transportation system and budget, do you
14 have any concerns about the impact of this passenger
15 only ferry on the Department of Transportation, or do
16 you see it as complimentary?

17 A. I think a positive impact on the Department
18 of Transportation actually. We were losing money I mean
19 operating POF service, I mean fare box recovery in the
20 40% range to operate passenger only ferry. So by not
21 providing that service, we actually save a lot of money
22 in the Department of Transportation.

23 And I think your competition with the
24 Bremerton auto run really isn't there, because we are
25 also subsidizing those riders right now actually, so the

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1 Bremerton run where you pick up that extra fares, but I
2 see them complimentary, not in competition even on the
3 Bremerton run. If you look at the other runs that we
4 aren't currently serving, there are routes that will be
5 served that don't even have an option potentially, so it
6 could help out I think. I see no competition between
7 the two.

8 CHAIRWOMAN SHOWALTER: Thank you.

9 COMMISSIONER HEMSTAD: You just answered the
10 question that I was going to ask, so I have no others.

11 COMMISSIONER OSHIE: I have no questions,
12 thank you.

13 CHAIRWOMAN SHOWALTER: Well, thank you very,
14 very much for coming today.

15 REPRESENTATIVE ERICKSEN: My pleasure, it's
16 my first trip into this building as a matter of fact in
17 six years in the legislature, so it's a -- I appreciate
18 the tough and difficult task that you folks have, and I
19 wish you luck as you work your way through this process.

20 CHAIRWOMAN SHOWALTER: Thank you.

21 JUDGE RENDAHL: Thank you.

22 We'll be off the record for a few minutes.

23 (Recess taken.)

24 JUDGE RENDAHL: Mr. Trotter, you're
25 continuing your cross-examination of Mr. Tougas.

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1 MR. TROTTER: Yes, thank you, Your Honor.

2

3 Whereupon,

4 DAVID TOUGAS,

5 having been previously duly sworn, was called as a

6 witness herein and was examined and testified as

7 follows:

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

9 BY MR. TROTTER:

10 Q. Please refer to Exhibit 19. In the selling
11 general and administrative section you show taxes,
12 property and other. Does that include revenue sensitive
13 taxes like the State B&O tax?

14 A. It does include B&O tax.

15 Q. And you also include in the middle column,
16 second to last line, depreciation. Is that based on the
17 \$922,000 vessel value or what value?

18 A. Yes, it -- actually that caption should say
19 depreciation and amortization. We are depreciating the
20 vessel straight line over 10 years for book purposes,
21 and we are also amortizing the organization costs over
22 15 years.

23 Q. And what's your salvage value?

24 A. Zero.

25 Q. Turn to Exhibit 17, second page, and you show

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1 a total year one figure there of \$1.13 Million in the
2 right-hand side of the page.

3 MR. IGLITZIN: I'm sorry, what Exhibit was
4 this?

5 MR. TROTTER: 17, page 2.

6 CHAIRWOMAN SHOWALTER: What label row?

7 JUDGE RENDAHL: This is the year end total.

8 MR. TROTTER: There's only one row of figures
9 on the second page of Exhibit 17, second page.

10 BY MR. TROTTER:

11 Q. Do you see the \$1.13 Million figure?

12 A. Okay.

13 Q. What comprises that figure? We tried to make
14 the numbers from the prior page add to it and could not.
15 Could you explain?

16 A. I would need to go back into the program to
17 figure out. This came off an Excel spreadsheet, and I
18 would have to go back and find out what the formula
19 said.

20 JUDGE RENDAHL: Would you like to make a
21 record requisition?

22 MR. TROTTER: Yes, just the numbers that go
23 into the figure on page 2, the total figure. And if
24 those numbers don't appear on page 1, tell us where they
25 do appear.

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1 JUDGE RENDAHL: Did you get that, Mr. Tougas?

2 THE WITNESS: Okay, I'm not exactly sure

3 what --

4 BY MR. TROTTER:

5 Q. Okay, let me just do it very briefly. Turn

6 to page 1 of Exhibit 17.

7 A. Okay.

8 Q. And you show three quarters of the way on the
9 right-hand column a total fare revenue of \$927,000. Do
10 you see that?

11 A. Okay.

12 Q. And then on the second page you show a total
13 of \$1.13 Million for a year one total revenue. And we
14 just simply did not understand how you got from the 927
15 to the 1.13, and if you can explain it now, please do
16 so.

17 A. Oh, okay. I would have to go back and check
18 the records.

19 MR. TROTTER: Okay, so as Record Requisition
20 Number --

21 JUDGE RENDAHL: 3.

22 MR. TROTTER: -- 3, I would ask you to
23 provide the figures that went into the 1.13 million
24 figure on page 2 of Exhibit 17, and cite the source of
25 those figures.

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1 Those are all my questions, thank you.

2 JUDGE RENDAHL: Thank you.

3 Any questions, I guess, Mr. Iglitzin, you had
4 a few follow-up questions.

5 MR. IGLITZIN: I do very briefly.

6 JUDGE RENDAHL: Or we're going to go to the
7 Bench first.

8 MR. IGLITZIN: I'm sorry.

9 JUDGE RENDAHL: Okay, I'm sorry, Chairwoman
10 Showalter, do you have any questions for Mr. Tougas?

11 CHAIRWOMAN SHOWALTER: Mr. Tougas, it appears
12 to me you have been on that stand a very long time, and
13 every question I might have had has been asked and
14 answered, thank you.

15 THE WITNESS: Thank you.

16 COMMISSIONER HEMSTAD: And I have no further
17 questions.

18

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

20 BY COMMISSIONER OSHIE:

21 Q. Mr. Tougas, perhaps -- I have a couple
22 questions, we can maybe clear the record. You just --
23 you testified in response to a question from counsel for
24 IBU that the discounted monthly ticket was
25 approximately, for fare between Kitsap and Seattle, was

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1 approximately \$106. And when I looked at the exhibit,
2 it seemed like you were multiplying the trips per day,
3 which is 21.2 or 3 or something like that, by \$5 to
4 reach that figure. And is \$5 the fare to go from Kitsap
5 to Seattle and return?

6 A. No, it is not, and you're exactly correct. I
7 was trying to multiply on the go, and you're correct, I
8 made a mistake there. And so it should be double that,
9 so \$212 then for the monthly pass.

10 Q. Approximately, okay, thank you.

11 In response to questions from counsel for the
12 Commission, Mr. Trotter, there was some questions with
13 regard to the relationship with ACNT, the partnership,
14 and the financial institution which I guess is
15 Foundation Bank. And really my question is the loan
16 from Foundation Bank, is that a loan to Aqua Express or
17 a loan to ACNT who owns the vessel by which the loan is
18 secured?

19 A. The loan is to Aqua Express. Again, the bank
20 is aware of the plan that both entities will be merged
21 into one, and at this time the, you know, the -- well,
22 the loan is to Aqua Express, and the vessel is the
23 security for the loan.

24 Q. And there's -- other than the vessel, which
25 is owned by ACNT; is that correct?

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1 A. Again, I'm not sure exactly whose name is on
2 the title at this time.

3 Q. I believe you did testify to that. Other
4 than the vessel then, since that is the security for the
5 loan, I believe you testified that there is no other
6 partner guarantee for that loan; is that true?

7 A. That is correct.

8 COMMISSIONER OSHIE: Okay, I have no further
9 questions, thank you.

10 JUDGE RENDAHL: I have no questions, so to
11 you, Mr. Iglitzin.

12 MR. IGLITZIN: Thank you.

13

14

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

16 BY MR. IGLITZIN:

17 Q. In response to Mr. Trotter's questions you
18 indicated that Aqua Express is expecting another two,
19 well, actually another three payments of \$30,000 apiece
20 from I take it that's from Four Seasons?

21 A. Correct.

22 Q. Of which one of those payments is indicated
23 as accounts receivable, as part of the accounts
24 receivable on Exhibit 15?

25 A. Correct.

0291

1 Q. Will Aqua Express have additional costs
2 associated with the lease of the vessel to Four Seasons
3 in the period of time coming up where it's going to be
4 getting those additional checks, or is that simply Aqua
5 Express waiting for the checks to come in the mail?

6 A. The only costs are normal costs of ownership
7 of a vessel, primarily interest to the bank, but they
8 have no -- it's a bare boat charter, and so all costs of
9 operating the vessel and returning the vessel to Seattle
10 will be incurred by Four Seasons Marine Services.

11 Q. I believe you testified that Aqua Express is
12 paying interest to the tune of \$25,000 a year right now?

13 A. Correct.

14 Q. So are there any costs other than the
15 interest costs to the bank?

16 A. Depreciation, which is a non-cash expense,
17 but --

18 Q. I'm just trying to find out any other cash
19 expenses that Aqua Express can anticipate having to make
20 with regard to the vessel over the next two months while
21 it's --

22 A. No.

23 Q. Second question, are there any, are there in
24 existence any other balance sheets, audited or
25 otherwise, of Aqua Express either dated prior to or post

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1 June 15th?

2 MR. WILEY: Your Honor, I assume that
3 question acknowledges the fact that the application was
4 filed with a balance sheet that's subsequently been
5 revised by this exhibit.

6 JUDGE RENDAHL: I think, Mr. Iglitzin, you
7 need to clarify what you're asking for.

8 MR. IGLITZIN: Of course.

9 BY MR. IGLITZIN:

10 Q. What we have seen is some financial
11 information on the application dated April 8th, 2004,
12 showing a negative balance of \$3,500. We have seen a
13 document entitled interim balance sheet, Exhibit 15,
14 showing what it shows. My question is, are there any
15 other -- are there in existence any other balance
16 sheets, interim balance sheets or audited documents,
17 which would be showing the financial information about
18 Aqua Express, the corporate entity Aqua Express?

19 A. There have not been any balance sheets
20 prepared separately, no.

21 MR. IGLITZIN: Thank you, those are the only
22 questions I have, and then I do have some requests, some
23 document requests.

24 JUDGE RENDAHL: Okay. As you had asked
25 yesterday I understand for financial statements from the

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1 partners, and I understand that's what you wish to renew
2 right now.

3 MR. IGLITZIN: I wish to renew that. In
4 addition, I wish to request a copy of the loan agreement
5 between Aqua Express and Foundation Bank.

6 JUDGE RENDAHL: Okay.

7 MR. IGLITZIN: I would be happy to give an
8 explanation for why I think those are appropriately
9 disclosed, or it may be already evident to you and I
10 won't waste your time.

11 JUDGE RENDAHL: Okay, let's be off the record
12 for one minute.

13 (Discussion off the record.)

14 JUDGE RENDAHL: Just to clarify, what exactly
15 are you asking for, the financial information from the
16 partners will be Record Requisition Number 4, and what
17 is it that you're asking for?

18 MR. IGLITZIN: Basic, and I apologize, I'm
19 not an accountant, and perhaps Mr. Tougas could even
20 explain what types of documents partnerships would
21 normally have, but I'm envisioning a basic balance sheet
22 showing assets and liabilities of each of the four
23 principals.

24 JUDGE RENDAHL: Okay. And then you're asking
25 for the loan agreement from Foundation Bank, which would

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1 be Number 5. And what I would like to do is have the
2 redirect from Mr. Wiley and postpone any argument on
3 these requests until after Mr. Deardorf testifies, if
4 that's acceptable.

5 MR. IGLITZIN: That's fine, thank you.

6 JUDGE RENDAHL: Because I don't believe we
7 need Mr. Tougas for that decision.

8 MR. IGLITZIN: That's fine.

9 JUDGE RENDAHL: Okay.

10 Mr. Wiley, please go ahead.

11 MR. WILEY: Two questions, Your Honor.

12

13

14

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

16 BY MR. WILEY:

17 Q. First of all, Mr. Tougas, you have had many
18 opportunities to talk about the cost of the vessel and
19 the improvement valuation. I don't recall you giving
20 any market valuation of the vessel for the record.
21 Would you please provide that based on your knowledge.

22 A. I first want to qualify this by saying that
23 I'm not a marine surveyor, which is the name they give
24 to people that do evaluations. However, in the last
25 couple of years we have bought seven or eight vessels

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1 that are similar to the Aqua Express, and based on the
2 experience of buying these various vessels, I would
3 estimate the value of the Aqua Express to be between \$2
4 Million and \$3 Million, probably around \$2 1/2 Million.

5 Q. Thank you. Do you have Exhibit 5 in front of
6 you? It's the Certificate of Inspection.

7 A. Yes, I have the Certificate of Inspection.

8 Q. Would you please indicate for the record who
9 the registered owner is listed as on Exhibit 5?

10 A. Aqua Express, LLC.

11 MR. WILEY: Thank you, no further questions.

12 JUDGE RENDAHL: Okay, I believe we're done
13 with Mr. Tougas, let's be off the record. Mr. Tougas,
14 you're excused, thank you very much. We'll be off the
15 record and bring Mr. Deardorf up, thank you.

16 (Discussion off the record.)

17 JUDGE RENDAHL: We're now ready to take the
18 testimony of Mr. Deardorf. Mr. Wiley, please go ahead.

19 MR. WILEY: Did you want to swear the
20 witness, Your Honor, or have you already done that, I'm
21 sorry.

22 JUDGE RENDAHL: I have not done that.

23 MR. WILEY: Okay.

24 JUDGE RENDAHL: So why don't I do that.

25 Mr. Deardorf, if you could state your name,

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1 full name, and address, work address, on the record,
2 please, and then I will swear you in.

3 THE WITNESS: Okay. My name is Raymond
4 George Deardorf. My work address is 2911 Second Avenue,
5 Seattle 98121.

6 JUDGE RENDAHL: And could you please spell
7 Deardorf.

8 THE WITNESS: It is D-E-A-R-D-O-R-F.

9 JUDGE RENDAHL: Thank you. Please raise your
10 right hand.

11 (Witness Raymond Deardorf was sworn in.)

12 JUDGE RENDAHL: Please go ahead, Mr. Wiley.

13

14 (The following exhibit was identified in
15 conjunction with the testimony of RAYMOND
16 DEARDORF.)

17 Exhibit 30 - 5/17/04 Letter to WUTC from Sam
18 Kuntz, WSDOT.

19

20

21

22

23

24

25

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1 Whereupon,

2 RAYMOND DEARDORF,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WILEY:

7 Q. Hi, Mr. Deardorf, could you please provide

8 your employer for the record.

9 A. I am employed by Washington State Ferries.

10 Q. How long have you been employed by Washington

11 State Ferries?

12 A. It will be 17 years this October.

13 Q. And what is your position with Washington

14 State Ferries?

15 A. I am the planning director.

16 Q. And how long have you been the planning

17 director?

18 A. I have been planning director for 13 years.

19 Q. And you are appearing today under subpoena

20 from the applicant, Aqua Express; is that correct?

21 A. That's correct.

22 Q. As planning director, what are your job

23 responsibilities just generally if you would tell the

24 Commission?

25 A. In a nutshell my duties are both short range,

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1 responsibility for short range planning, overseeing
2 service planning and scheduling, as well as longer range
3 planning, forecasting, determining what the system's
4 needs are going to be in the future, and also managing
5 the system's tariff structure.

6 Q. And as planning director of the Washington
7 State Ferry, can you tell us what the ferry system, how
8 it interrelates to the agency in which it is located,
9 please?

10 A. Washington State Ferries is a modal division
11 of the Washington State Department of Transportation.

12 Q. And the Washington State Department of
13 Transportation to the best of your knowledge is a State
14 agency, is it?

15 A. That is correct.

16 Q. Could you -- in what capacity do you engage
17 in systems planning and budgeting activities, and by
18 that I mean can you just generally describe what you do
19 for the ferry system?

20 A. As a -- in terms of the responsibility for
21 long range planning and service planning, I have
22 responsibility for proposing the number of service hours
23 by route, by vessel class, also to determine by various
24 means what future ridership demands are likely to be and
25 what that means in terms of facility and service needs

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1 in the future.

2 Q. In the context of that planning role that you
3 provide, have you looked at specifically the role of
4 passenger only ferries in the Washington State Ferry
5 System?

6 A. Yes, passenger only ferries have been a
7 component of Washington State Ferries' plan over the
8 last 10 or more years, close to 20 years.

9 Q. We had some testimony previously this
10 afternoon from a State legislator who referred to an
11 existing passenger ferry route that the Washington State
12 Ferry System provides, could you just give us a
13 thumbnail of where you have provided passenger only
14 service, where you have curtailed it, and where you're
15 currently operating it, please.

16 A. Washington State Ferries has operated 2
17 passenger only routes over the last 18 years starting in
18 1986 with a parallel service between -- a parallel to
19 the vehicle ferry between Seattle and Bremerton. That
20 service was suspended in early 1989 for budget reasons
21 and resumed again in 1990 and had continued up until
22 September of 2003. There also is a route between
23 Seattle, downtown Seattle, and the north end of Vashon
24 Island which began in April of 1990 and continues to
25 this day.

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1 Q. What is the future in terms of the
2 continuation of the Vashon passenger only ferry service
3 at present to the best of your knowledge?

4 A. That is in essentially the legislature's
5 hands. The legislature did budget authority to continue
6 operating the Seattle/Vashon passenger only ferry
7 through the 03/05 biennium; however, they did not
8 provide any money for capital funding for replacement of
9 equipment and so forth.

10 Q. Does that create logistical problems in terms
11 of the reliability of service if you don't have capital
12 funding for an existing route?

13 A. It will in the future if that condition were
14 to continue.

15 Q. Are you aware of certain developments both at
16 the ballot box level and in the State legislature that
17 have impacted the passenger only ferry provision of
18 service by your agency?

19 A. Yes.

20 Q. Could you give us a little bit of background.
21 We have some on the record already, but we would like to
22 hear it from your perspective in terms of what
23 developments politically have impacted both your job and
24 your agency's provision of service, please.

25 A. I will start at the beginning, and sorry to

0301

1 put you through some history that you might have heard
2 already. But the ferry system as I said was in the
3 passenger only business in the late 1980's and early
4 1990's in the Bremerton and the Vashon service areas.
5 These routes were in response in part to some long range
6 planning effort that had gone on in the ferry system in
7 the early 1980's that had identified those two corridors
8 for future development of passenger only. There was
9 further work done in 1989. The Puget Sound, what is now
10 called the Puget Sound Regional Council did something
11 called a West Corridor Study, which identified several
12 routes, studied several routes in the Puget Sound area
13 and identified some for further analysis.

14 In 1993 the transportation commission
15 commissioned a passenger only implementation plan which
16 laid out a blueprint for passenger only service operated
17 by the State for the Seattle/Bremerton route, expanding
18 the Seattle/Vashon route to include Southworth and also
19 Seattle to Kingston. Washington State Ferries was
20 embarked upon this implementation plan. We were
21 partially there with the addition of two new vessels,
22 the Chinook and Snohomish, to the Seattle/Bremerton
23 route, and Referendum 48 or 49, I'm losing track of the
24 referendum numbers here, which passed in November of
25 1998 provided funding to expand State service to both

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1 Southworth and Kingston.

2 However, the passage of Initiative 695 in
3 November of 1999 and the subsequent action of the State
4 legislature in the 2000 session removed the Motor
5 Vehicle Excise Tax source from Washington State Ferries,
6 upon which not only was the expansion of passenger only
7 service dependent, but also a large amount of the core
8 preservation and service program. And since then the
9 Seattle and -- the Seattle/Bremerton and Seattle/Vashon
10 routes were trimmed back to be weekday only by the year
11 2000 legislative session, and in 2003 the legislature
12 approved ceasing the Seattle/Bremerton service all
13 together in September of 2003 and extended the Vashon
14 passenger only through June of '05.

15 Q. And with that bit of history, is that the
16 only planned passenger only ferry service either current
17 or prospective that you can attest to as the director of
18 planning by the Washington State Ferry System at the
19 present time?

20 A. If I could ask a clarifying question to that.

21 Q. Sure.

22 A. And in the context of Washington State
23 Ferries providing --

24 Q. Correct.

25 A. We have no budget authority by the State

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1 legislature to operate anything other than the service
2 that we are operating right now. We are budgeted to the
3 service hour by vessel class, by route, by the
4 legislature, so it's very specific.

5 Q. Based on your testimony, is it true that
6 because of economic constraints alone that passenger
7 only ferry service to be provided by the Washington
8 State Ferry System has been de-emphasized or otherwise
9 constrained?

10 A. Washington State Ferries was in a position
11 where it had to make up a significant amount of the
12 revenue that was lost from the Motor Vehicle Excise Tax,
13 and it was done through a combination over the last
14 several years of both higher fares and reducing service
15 that did not produce much fare bucks revenue in return.
16 So services like the passenger only route, which have a
17 very low fare box recovery rate, were a prime example of
18 what could be removed from service and save the state
19 operating money and in future capital money and not
20 result in a significant loss of fare box revenue.

21 Q. So in other words, you have implemented those
22 changes relating to higher fares and reduction of
23 service?

24 A. Correct.

25 Q. You mentioned in your recap a 1993 study, and

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1 I'm wondering, it sounds like you have specifically
2 looked at passenger only ferries at least about a decade
3 or a little more or so, is that really the last time you
4 engaged in a definitive type study or -- regarding
5 passenger only ferry service?

6 A. That was the last time a study was
7 commissioned by the transportation commission. However,
8 since then we had been continually updating as
9 additional information became available, and the
10 conditions in which we operate change also, both in
11 terms of overall ridership and costs and so forth.

12 Q. Did you at that time in 1993 look at the
13 launch of any new passenger only ferry service,
14 specifically Vashon Island, and study its impact on the
15 rest of the system?

16 A. In the 1993 study, no. We had done some
17 survey work a couple years earlier on the Vashon
18 passenger only route. The Seattle/Vashon passenger only
19 route was one of few examples of an entirely new ferry
20 route in Washington State Ferries' history, so it
21 provided a somewhat unique opportunity to come by a year
22 later and to survey the riders and to see where they
23 came from, whether -- yes.

24 Q. Was that your only opportunity to look at a
25 new route like that in a formal sense after you surveyed

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1 it and then with this task force sort of provide some
2 data?

3 A. In the -- I guess to answer your question,
4 it's the only completely new route that we have
5 implemented in the system.

6 Q. What did you see when you looked at that
7 Vashon route in terms of a new passenger only ferry
8 route, did you make any conclusions about where the
9 riders came from, you know, that sort of conclusion is
10 what I'm looking for?

11 A. Yes, we did ask the question in the survey,
12 and to help understand the answer, the Seattle/Vashon
13 ferry route goes from the north end of Vashon to
14 downtown Seattle in about 30 minutes, and it is a
15 service that's complimentary to the Vashon Island to
16 West Seattle car ferry, which takes about 15 minutes,
17 but then there's about a 20 to 25 minute drive or bus
18 ride from West Seattle to downtown. So what we asked
19 was, of the riders about a year after we started the
20 service, was what did you do before you took this
21 passenger only service which did not exist over year a
22 year ago, and the response was that about three quarters
23 of them were riders that came off of our existing
24 Fauntleroy to Vashon service, and about a quarter of
25 them were completely new to the system.

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1 Q. In other words, they hadn't ridden the
2 Washington State Ferry System before you offered the
3 passenger only ferry service?

4 A. Correct.

5 Q. Is that right?

6 A. Correct.

7 Q. You mentioned also in your testimony that the
8 Washington State Ferries at least at one stage over the
9 last decade was considering providing passenger only
10 service between Seattle and Kingston; is that correct?

11 A. That is correct.

12 Q. And what -- was that impacted by the funding,
13 what specifically happened so that you didn't offer that
14 service?

15 A. Well, to go back into the context in which
16 that service was being proposed and was in the process
17 of being implemented, you remember the 1990's were a
18 period of economic growth in this area. Our Washington
19 State Ferries ridership was on the upswing, and also we
20 had a what was then a dedicated tax source, the Motor
21 Vehicle Excise Tax, which the ferry system had had a
22 portion dedicated to it I believe since 1990.

23 Also the system was in an enviable financial
24 situation, not only did we have this tax source, but we
25 had been taking in revenues at a rate greater than we

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1 had been expending them, so we were in the position
2 where we had approximately \$70 Million to \$80 Million in
3 cash reserves, which gave us the flexibility to expand
4 services even though they may not be services that
5 returned very much on the fare box. So that was the --
6 that was the context of the 1990's, if you will, or the
7 mid 1990's.

8 You have to forgive me, I think I have
9 forgotten the gist of your question.

10 Q. My question went to the fact that you were
11 thinking of Kingston/Seattle as a viable route --

12 A. Yes.

13 Q. -- for the Washington State Ferries, and was
14 that impacted by the curtailment or cessation of funding
15 through these initiatives and referenda that you have
16 referred to?

17 A. Absolutely, it was what -- it was what
18 essentially pulled the rug out from -- the financial rug
19 out from under Washington State Ferries.

20 Q. And at one point certainly that was a new
21 service that you were considering offering?

22 A. That was at one point, yes.

23 Q. Could you tell us if you have studied -- have
24 you studied the impact of a Kingston/Seattle run by
25 private ferries at all?

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1 A. No, I have not.

2 Q. You have not looked at any private party
3 provider scenario; is that correct?

4 A. No.

5 Q. What is the Department's position with
6 respect to this application by Aqua Express? You're
7 familiar with the outlines of this application I assume
8 and have studied it, have you not?

9 A. I have reviewed it, and the Department's
10 response was that there was no opposition to the
11 application.

12 MR. WILEY: If I may approach the witness,
13 Your Honor.

14 JUDGE RENDAHL: You may.

15 MR. WILEY: I have an exhibit that I want to
16 show him.

17 JUDGE RENDAHL: You may.

18 MR. WILEY: Thank you.

19 BY MR. WILEY:

20 Q. Mr. Deardorf, calling your attention to the
21 exhibit that's been marked as 30 in this proceeding, can
22 you identify that letter from your Department, please.

23 A. Yes, it was a letter from Sam Kuntz, the
24 Chief Financial Officer of Washington State Ferries, to
25 the Utilities and Transportation Commission.

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1 Q. And were you involved in writing that letter
2 with Mr. Kuntz?

3 A. Yes, I was.

4 Q. Are you aware of the 2003 legislation with
5 respect to the removal of barriers to private operators
6 in passenger only ferry service?

7 A. Yes, I am.

8 Q. Do you view this application as consistent
9 with that change in law?

10 A. Yes, as an organization and personally, yes,
11 both, to both.

12 Q. If the WUTC were to deny this application,
13 are you aware of any public provider option for direct
14 service between Seattle and Kingston?

15 A. I am not aware of any such public operator.
16 Certainly Washington State Ferries is not in a position
17 to start service.

18 MR. WILEY: Thank you, no further questions.

19 BY MR. WILEY:

20 Q. Oh, excuse me, Mr. Deardorf, there's one
21 additional exhibit that I would ask you to identify and
22 just state for the record what it is.

23 A. Oh, this is a summary of the Department of
24 Transportation's budget for the 03-05 biennium that came
25 out of the '03 legislative session.

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1 Q. And this puts in context some of the capital
2 improvements and repair and maintenance and operating
3 budget items that you have referred to?

4 A. Correct.

5 MR. WILEY: No further questions, Your Honor,
6 I tender the witness and offer Exhibits 30 and 31.

7 JUDGE RENDAHL: Are there any objections to
8 Exhibits 30 and 31?

9 MR. IGLITZIN: Not from the union.

10 JUDGE RENDAHL: Thank you. Hearing no
11 objection, they will be admitted.

12 Let's turn to you, Mr. Iglitzin.

13 MR. IGLITZIN: Thank you.

14

15

16

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

18 BY MR. IGLITZIN:

19 Q. Good afternoon, Mr. Deardorf.

20 A. Good afternoon.

21 Q. I take it from your testimony that at some
22 point the State Ferries was contemplating setting up or
23 starting a passenger only ferry from Kingston to
24 Seattle?

25 A. That is correct.

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1 Q. And what kind of studies or analysis of such
2 a route did the State Ferries do?

3 A. There was a number of different analyses done
4 over the years. The first starting with the West
5 Corridor study from the Puget Sound Regional Council in
6 1989. We did a further study in 1993 with the passenger
7 only implementation plan directed from the
8 transportation commission. And we have done periodic
9 updates of forecasts of ridership on those particular
10 service expansions during those times when they were
11 being proposed.

12 Q. When you say periodic updates, how many
13 updates were there, and I'm asking you specifically
14 since this is what we're here for, updates or
15 projections or studies of the Kingston/Seattle ferry,
16 passenger only ferry service?

17 A. I think I have lost count of how many times
18 we have done it, because there have been -- we have --
19 we had to make different runs at it through various
20 legislative sessions. Probably the latest one that was
21 done was in preparation for Referendum 51, which was on
22 the September, or excuse me, November 2002 ballot. That
23 was the last time there was any State proposal to
24 implement a Seattle/Kingston passenger only run.

25 Q. And was this study or updated study done by

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1 your office?

2 A. Correct.

3 Q. And is it something that you could locate and
4 produce for us?

5 A. It's possible. Forecasts have a short shelf
6 life, so I can't guarantee I still have the
7 documentation for that, but I can make a try at tracking
8 it down.

9 Q. Can you tell us in a little bit more detail
10 with these studies, were these -- how was your
11 information updated?

12 A. We rely on a large scale transportation model
13 that has its roots in the overall regional
14 transportation model that's kept by the Puget Sound
15 Regional Council. We have developed a transportation
16 model from that that's more specific to the ferry
17 routes, and this allows us to test different service
18 attributes and different linkages, if you will, under
19 different service characteristics such as crossing time,
20 frequency, and fares. So that's typically what we use
21 at least as a starting point in analyzing travel
22 forecasts.

23 MR. IGLITZIN: Your Honor, I would like to
24 make a formal records requisition from this witness if
25 he can in fact obtain or find copies of certainly the

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1 most recent update, oh, and plus I guess any earlier
2 studies that would be necessary to understand the
3 update. It sounds from the testimony that this update
4 would give us some insight into the actual community
5 need, the likely use by the community by passengers of a
6 passenger only ferry between Kingston and Seattle. It's
7 not so remote in time as to not I think be useful to us.

8 JUDGE RENDAHL: Okay, Mr. Deardorf, does that
9 make sense to you, what he's asking for?

10 THE WITNESS: Yes, it does. I would want to
11 add one comment though that our ridership estimates were
12 based on our proposed service attributes, so it was our
13 fares, our proposed schedule, and our proposed crossing
14 time.

15 (Discussion on the Bench.)

16 MR. WILEY: Your Honor.

17 JUDGE RENDAHL: Mr. Wiley.

18 MR. WILEY: I would like to make a formal
19 objection. I question the relevance of this records
20 requisition request. I don't think it has any bearing
21 on the financial evidence of the applicant.
22 Additionally, this witness is being produced solely to
23 show the impact upon an agency eligible to operate or
24 operating a ferry, a passenger only ferry system, not
25 for need. I specifically avoided questions of need, so

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1 I don't think this is a very relevant request or that it
2 will add anything to the record.

3 MR. TROTTER: Of course, a record requisition
4 is not -- doesn't necessarily mean it will be admitted
5 but it does appear that there has been no substantial
6 need for this evidence, obviously different fare
7 structure, different schedule, it's comparing apples and
8 oranges to this fare structure and this schedule. So
9 I'm just concerned that we're putting this person who
10 was under subpoena to some effort with no real relevance
11 to come of it.

12 JUDGE RENDAHL: Mr. Iglitzin.

13 MR. IGLITZIN: Well, I was actually trying to
14 save everyone time. I can ask further questions to
15 illicit further information about the studies. For
16 example, I think when we see the study or if
17 Mr. Deardorf has a recollection now and find out that
18 the anticipated fare structure was a cheaper ticket
19 let's say for a crossing, and if we can see what the
20 likely usage and in particular the extent to which
21 passengers are anticipated to switch from using say
22 Seattle/Bainbridge or Bremerton/Seattle, we could make
23 inferences that fewer passengers might use the service
24 if the tickets were more expensive or more passengers
25 might use it if it's less expensive. I think those are

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1 the kind of information from which we draw inferences
2 all the time.

3 But I guess first of all, the records
4 requisition, even if you were to think this only goes to
5 need, we're going to be getting to need soon enough, and
6 by the time this document was produced, it would be
7 produced in a timely fashion for the Commission to have.
8 I think it's hard not to say that a study done by
9 Washington State Ferries in 2002 relating to the
10 potential demand for Kingston/Seattle ferry service
11 isn't relevant to the Commission's job of determining
12 whether or not the criteria for -- including need or --
13 have been established by this applicant. Just on a
14 common sense level, it's probably among the best --
15 probably the only really solid evidence or systematic
16 evidence that we're going to have as to need.

17 But even as to the economic impact which
18 we're talking about today, we have heard testimony from
19 this witness that according to the one study the ferries
20 did of the Vashon passenger only ferry, three quarters
21 of the passengers on that ferry basically moved to using
22 the passenger only ferry from using another Washington
23 State Ferry service. So I don't want to be in a
24 position of us trying to guess, well, if that was true
25 of one route at Vashon, then we can just assume that

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1 three quarters of the people who are going to use the
2 proposed Aqua Express service are people who otherwise
3 would have been paying passengers on the Bainbridge or
4 the Bremerton ferries. If in fact there is evidence
5 from which we would learn that the number is actually
6 closer to one half or one quarter, then that suggests
7 that the economic impact on the Department and on the
8 State Ferries is less than it would be if the evidence
9 based on the State Ferries' research indicates that
10 fully four fifths of the passengers who will use the
11 Aqua Express service would otherwise be fare paying
12 passengers of the State Ferries. In order to be able to
13 do some basic math and say --

14 CHAIRWOMAN SHOWALTER: I think we have heard
15 enough of your rationale.

16 MR. IGLITZIN: Sorry.

17 CHAIRWOMAN SHOWALTER: My question is, if you
18 wanted to use this witness or any other witness for this
19 purpose, why haven't you called this witness or
20 requested this document and put on the evidence
21 yourself?

22 MR. IGLITZIN: Well, the IBU hasn't put on
23 any case --

24 CHAIRWOMAN SHOWALTER: I realize that.

25 MR. IGLITZIN: We haven't put our case on

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1 yet, and we have -- still have an opportunity at a later
2 date to identify the witnesses that we'll call, and it's
3 quite possible that if this records request is denied
4 that we would then list this witness as one of the IBU's
5 witnesses and pursue exactly that line. It seems like a
6 waste of time if frankly all we want at this point in
7 time from this witness is the State Ferries' studies for
8 us to then put him as part of our case in chief. But
9 it's a fair question, but it just seems so clear to do
10 it this way.

11 Frankly I didn't realize and I -- that the
12 applicant presenting the witness to the State Ferries
13 wouldn't be presenting all of the information reasonably
14 accessible about this proposed route. It seemed to me
15 that in the applicant's interest in having the
16 Commission be as fully informed as possible about what
17 we're talking about here that that would have been a
18 natural request for the applicant to make.

19 MR. TROTTER: Your Honor, if I could register
20 a comment at this point. Mr. Wiley indicated quite some
21 time ago that he intended to call a witness from the
22 Department of Transportation, and I believe in our very
23 first pre-hearing conference Mr. Iglitzin identified
24 potential witnesses that he was intending to call, and
25 yet none of the exhibits or -- there was certainly ample

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1 opportunity for Staff too to predistribute evidence on
2 those subjects. Now some subjects we didn't have that
3 opportunity, the specific ProFormas and so on came in
4 kind of at the last minute. But this evidence regarding
5 the Department of Transportation has been there since
6 the day this case began, so I think there is certainly a
7 concern that I have that people are going to be coming
8 up with evidence that could well have been presented in
9 the context of this hearing, which was of course the
10 whole point. So I think the Chairman's concern is, if
11 I'm hearing it correctly, is well taken. I guess we'll
12 cross the bridge when we come to it, but I don't see any
13 impediment for any party, including Staff, to put
14 forward these studies if we figured that they were
15 pertinent.

16 JUDGE RENDAHL: Mr. Wiley, did you have any
17 final comment?

18 MR. WILEY: Just, Your Honor, to reiterate
19 that I presented this witness for the statutory issue
20 that I have indicated, and I as counsel for the
21 applicant can direct what evidence I want in terms of
22 our showing, and I have done what I wanted to do with
23 this witness. I don't think this exhibit is at all
24 material to this hearing, particularly because of the
25 apples and oranges issue that Mr. Trotter originally

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1 raised.

2 JUDGE RENDAHL: Thank you, we'll be off the
3 record for a moment.

4 (Discussion on the Bench.)

5 JUDGE RENDAHL: In considering all the
6 parties' arguments on this issue, Mr. Iglitzin, while
7 this might be information that could be helpful to your
8 position, it is information that was available to you
9 possibly earlier in thinking about this. And given that
10 the witness is under subpoena and there is no counsel
11 here for the Department of Transportation and we do not
12 know how burdensome or if there's any sensitivity about
13 this information, at this point we're declining the
14 records requisition and sustaining the objection. But
15 you are welcome to pursue this on your own, and we're
16 not saying that it is not relevant at this time, but
17 just given our concerns about the information without
18 Mr. Deardorf being represented by State counsel, that's
19 our position at this time.

20 MR. IGLITZIN: Thank you.

21 If I could have just a moment.

22 Because I will probably be calling
23 Mr. Deardorf, I won't have any further questions for him
24 at this time.

25 JUDGE RENDAHL: Thank you.

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1 Mr. Sells.

2 MR. SELLS: I have no questions, thank you.

3 JUDGE RENDAHL: Mr. Trotter.

4 MR. TROTTER: Just a couple.

5

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

7 BY MR. TROTTER:

8 Q. Please turn to Exhibit 31, which is the 2003
9 legislative session transportation results. Starting
10 with the first page, the first half of the page appears
11 to be the funding sources for the Department of
12 Transportation; is that right?

13 A. Right, over the -- over a ten year period,
14 correct.

15 Q. Okay. And I didn't see anything there for
16 fare revenue from the State Ferry System, did I miss
17 something?

18 A. In the -- on the back page there is --

19 JUDGE RENDAHL: When you say the back page --

20 THE WITNESS: Oh, I'm sorry.

21 JUDGE RENDAHL: -- you mean the last page?

22 THE WITNESS: Yes, excuse me, yes.

23 A. The ferry system's two year budget and plan
24 for beyond, two year being 2003-2005, and then the ten
25 year plan beyond, this is a listing of the expenditures.

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1 The capital budget is in the top box, which is \$182
2 Million for the biennium and then \$1.3 Billion for the
3 cumulative of the ten years. And then below in the
4 lower box in the second line is the 03-05 two year
5 operating and maintenance budget, \$314 Million and then
6 \$1.6 Billion for the ten year period. In terms of fare
7 box revenue, I don't see that broken out specifically
8 here. Going back to the second page you can see that
9 the Department's, the top box on the second page, the
10 Department's total operating budget is \$1 Billion,
11 \$1,031,000,000. It doesn't spell out specifically the
12 Washington State Ferries' operating budget there or its
13 fare box revenues, although that was the -- the
14 expenditures were on the back page. If I remember now
15 your original question, it was the fare box, you wanted
16 the fare box revenue for the biennium?

17 Q. I guess my question was where does fare box
18 revenue appear in Exhibit 31?

19 A. Okay. It would be part of what supports the
20 operating program. It's not culled out separately in
21 this document.

22 Q. But going to the last page of the exhibit in
23 the bottom box, second item, ferry system maintenance
24 and operation, the DOT in the shaded box there needs or
25 is budgeting to spend \$314.7 Million over the current

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1 biennium?

2 A. That's correct.

3 Q. And in terms of -- and would that be net
4 expenditures, so it would be net of revenues?

5 A. That's if I understand your question the fare
6 box revenues are a part of what funds that too. I
7 believe our latest forecasts for 03-05 is I think we're
8 taking in somewhere along -- we're forecasted to take in
9 somewhere along the line of about \$250 Million, maybe
10 255. I may not have the number exactly right going off
11 the top of my head. And that's the portion of the 314
12 that's funded from the fare box.

13 Q. Okay. So the approximate annual fare box
14 revenue for the State Ferry System is around \$250 to
15 \$255 Million?

16 A. No, it's half of that.

17 Q. Okay.

18 A. Annual would be \$125, \$126 Million.

19 Q. Very good, thank you.

20 And so staying with the last page, the actual
21 budget approved by the legislature for fiscal 2003, for
22 the biennium 2003 to 2005 is \$2.605 Billion, and the
23 operating budget is \$1.031 Billion?

24 A. That's correct.

25 Q. You mentioned you're an employee of

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1 Washington State Ferries and that the Washington State
2 Ferries is an operating division of Department of
3 Transportation?

4 A. Yes, a modal division specifically.

5 Q. And is it your understanding that the
6 Washington State Ferries is or is not a separate State
7 agency?

8 A. My understanding is that we are part of the
9 State agency called the Department of Transportation.

10 Q. If the Department of Transportation wished to
11 provide passenger only service between Kingston and
12 Seattle and it had the equipment and employees to do it,
13 just make that assumption, could it do that in the
14 current biennium?

15 A. No, we could not. We would need specific
16 legislative authorization to expend money on a specific
17 route.

18 Q. And you don't have that at this time?

19 A. We do not.

20 Q. Okay. What is your expectation with respect
21 to the Vashon passenger ferry beyond this biennium?

22 A. That truly is in the hands of the
23 legislature, and I don't care to speculate as to what --

24 Q. Are you aware of any commitments by the
25 legislature that that route will continue?

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1 A. I am not aware of any. I do know that it is
2 a topic of considerable debate in the Washington State
3 Legislature.

4 MR. TROTTER: That's all I have, thank you.

5 JUDGE RENDAHL: Thank you.

6 Any questions from the Bench?

7 CHAIRWOMAN SHOWALTER: I don't really have
8 questions, it's a little bit more of a comment, which is
9 this discussion on revenues, my take on this is that
10 there was a lot of discussion of budget expenditures or
11 proposed expenditures, which is not the same as
12 revenues. Presumably one's budget is backed up
13 somewhere by revenues, but this four page document is in
14 my view simply not a real list of revenue sources. It's
15 a very, very high level projection of mostly
16 expenditures, and it's relating to a funding package,
17 but that itself is not necessarily anything that's
18 comprehensive. So I guess I'm just stating that I think
19 some of the witness's answers may be not accurate in
20 terms of the questions that you were asking. Perhaps
21 this is inappropriate for me to say, but I want to
22 acknowledge that this document is not a revenue
23 document.

24 MR. TROTTER: If I might just ask a follow-up
25 question.

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1 BY MR. TROTTER:

2 Q. Let's go to page 2 of Exhibit 31 and look at
3 the top box. Does that show that the legislature has
4 authorized the DOT's operating budget at a level of
5 \$1.031 Billion?

6 A. Correct.

7 Q. And is it correct that the two lines above
8 that total for preexisting funding sources and new
9 funding package represents the revenue sources that will
10 be available, the sources of the revenue that will be
11 available to the Department to actually operate that
12 budget?

13 A. Correct, yes.

14 Q. And those are things like taxes and other
15 funding sources?

16 A. Right, and ferry fares would be a component
17 of that as well.

18 MR. TROTTER: Thank you.

19 JUDGE RENDAHL: Any other questions from the
20 Bench for Mr. Deardorf?

21 COMMISSIONER OSHIE: I have no questions.

22 JUDGE RENDAHL: Okay, and I have no questions
23 either, Mr. Deardorf.

24 Mr. Wiley, I'm going to turn to you if you
25 have any redirect.

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1 MR. WILEY: No, I don't, Your Honor.

2 JUDGE RENDAHL: Mr. Iglitzin.

3 MR. IGLITZIN: Thank you.

4

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

6 BY MR. IGLITZIN:

7 Q. Just following up on some of Mr. Trotter's
8 questions, he was asking about fare box revenue looking
9 at Exhibit 31. Correct me if I'm incorrect, but fare
10 box revenue does not in a given biennium affect the
11 service that the Department of Transportation provides;
12 is that correct?

13 A. The only -- the situation that could emerge
14 that it would would be if we did not meet our projected
15 fare box revenue.

16 Q. But if you didn't meet your projected fare
17 box revenue, that even in a given biennium, is it
18 possible that service cuts or price increases might need
19 to be implemented?

20 A. I would not care to speculate as to what
21 could happen after that. That would certainly be a
22 matter before the legislature.

23 Q. Given your experience over time, is it fair
24 to say that fare box revenue is an issue in determining
25 in future biennial budgets what services are provided at

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1 what cost to the public?

2 A. Our estimates of fare box revenue that we
3 take in are used in our budgeting process for
4 identifying how much comes from what source and how much
5 overall revenue that we would have to use in the system.

6 Q. But specifically it would also -- it's also
7 used in the planning process both by your department and
8 by the legislature in determining what services to
9 provide; isn't that correct?

10 A. It is used as part of an overall picture of
11 both fare box revenue and anticipated tax sources, to
12 answer that very question.

13 Q. But I believe you testified that with regard
14 to the passenger only ferry service that did exist that
15 was then suspended either temporarily or at least
16 currently that one factor was a low rate of fare box
17 revenue return for those particular services.

18 A. For the Washington State Ferry Services that
19 we provided with our operating cost structure and the
20 fares that we charged, yes.

21 Q. So it's fair to say that if there is a change
22 in the rate of fare box revenue return for a particular
23 service, that is something the planning department and
24 the Ferries, the Department of Transportation, would
25 have to consider in anticipating and planning future

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1 service that it's going to provide?

2 A. Well, we would need to take into account fare
3 box revenue as well as any other tax sources that we
4 have available to us in our planning the future course
5 of the system.

6 Q. And a sudden decrease in fare box revenue
7 would be one factor you have to take into account?

8 A. A sudden decrease in any of the factors
9 involved could and have resulted in changes, yes.

10 Q. Changes in what?

11 A. In service or in fares.

12 MR. IGLITZIN: Thank you.

13 MR. WILEY: One question based on that.

14

15

16

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

18 BY MR. WILEY:

19 Q. It's true, is it not, Mr. Deardorf, that
20 price increases by the Washington State Ferries are
21 subject to approval by the Washington Transportation
22 Commission, you can't implement them unilaterally, can
23 you?

24 A. That is correct.

25 Q. And similarly service levels and service

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1 augmentation or decreases typically are controlled by
2 the legislature in terms of expenditure appropriations;
3 is that correct?

4 A. That is correct.

5 MR. WILEY: No further questions.

6

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

8 BY JUDGE RENDAHL:

9 Q. I would just like to clarify, Mr. Deardorf,
10 you spoke earlier in your testimony of the
11 transportation commission, and you just spoke of the
12 Washington Transportation Commission, that's not a
13 reference to the Utilities and Transportation
14 Commission --

15 A. Yes.

16 Q. -- but the State Transportation Commission,
17 correct?

18 A. That is correct.

19 JUDGE RENDAHL: Okay, thank you.

20 I don't think there's anything further for
21 this witness. Mr. Deardorf, you're excused, and I do
22 hope you meet your destination on time.

23 THE WITNESS: Thank you.

24 JUDGE RENDAHL: Okay, we will be off the
25 record.

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1 (Discussion off the record.)

2 JUDGE RENDAHL: We have to address the
3 arguments on revenue, the records requisitions. Go
4 ahead, Mr. Iglitzin.

5 MR. IGLITZIN: Thank you. As I understand
6 the standard for the decision before the Commission, one
7 of the issues is that Aqua Express has to show a
8 demonstrated ability that it has the financial resources
9 to operate the proposed service for at least 12 months
10 based upon the submission by the applicant of a ProForma
11 financial statement of operations and that that's been
12 interpreted more broadly as being that the ability of
13 the applicant to be able to provide the proposed service
14 for 12 months is one of the issues before the
15 Commission.

16 What we have is an LLC, a company that has no
17 prior or current experience in providing any service.
18 The only service that this company has -- is currently
19 providing is leasing the vessel. It has a unaudited
20 balance sheet that has changed dramatically in the two
21 iterations we have seen from April to June, a limited
22 amount of cash which it seems to have -- even though we
23 know it started with \$500,000 in cash, it seems to have
24 burned through a lot of it already, and various
25 projections, the plausibility of which I will leave to

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1 another time to discuss.

2 It seems, however, that it is extremely
3 relevant in determining whether this applicant really
4 can function for a year, given the possibility that some
5 of its income projections will turn out to be unduly
6 optimistic and some of its expense estimates will turn
7 out to be also unduly optimistic, that we have before
8 the Commission some real evidence as to this applicant's
9 financial stability and ability to weather what I think
10 pretty much every startup business that's ever begun
11 with high hopes and optimistic projections has run into
12 problems that it did not anticipate. This applicant has
13 cited two sources of additional funding should it need
14 additional funding. And I think if you look at what
15 their monthly expenses are, you will see that it's very
16 likely that they will, in fact, at least as an initial
17 matter gone through the cash they have on hand. And if
18 their revenue stream does not materialize and
19 materialize fast, they will find themselves in an
20 economic hole.

21 And the testimony of Mr. Tougas was that
22 there are two things that they can -- that this
23 applicant can do. One is they got \$500,000 from the
24 bank, they can go back to the bank and get more money,
25 because the vessel which is collateral for the loan

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1 which is listed on the balance sheet which has been
2 presented to you as a document which you're supposed to
3 put some credence in but we're now told that actually
4 the value of the vessel as listed on the balance sheet,
5 Exhibit 5 I believe it was, Mr. Tougas, I'm sorry,
6 Exhibit -- well, it's in there somewhere, that
7 Mr. Tougas now says, well, actually the vessel is not
8 worth \$970,000, which is what he said on the balance
9 sheet, now the vessel is worth between \$2 and \$3
10 Million.

11 I think we all know if we have had any
12 experience with banks, the fact that your house might be
13 assessed a certain amount by the county doesn't mean,
14 for example the county, that the bank is going to lend
15 you that amount of money equal to that. I think it's
16 important if one option that the company is citing as a
17 basis for its financial ability is that it can go back
18 to the bank, I think we should take a look at the loan,
19 what the bank for example has assessed the vessel at or
20 what amount of money the bank has said -- there was no
21 testimony that there was a \$1 Million line of credit of
22 which the bank has provided \$500,000, all we have seen
23 so far is the bank has loaned \$500,000.

24 The fact that Mr. Tougas said that other
25 banks were eager also to lend money doesn't mean that

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1 other banks are going to be eager to put themselves in
2 the subordinate position to Foundation Bank once there
3 is already a \$500,000 lien on the vessel or that
4 Foundation Bank which was eager to lend \$500,000 would
5 be eager to lend another \$500,000.

6 If the applicant is not able to persuasively
7 show that it can go back to the well more times in terms
8 of the bank, then it is clear that what happens if this
9 applicant starts burning through money and its expense
10 rate which even under its own optimistic projections are
11 at several hundred thousand dollars a month, so the cash
12 it has on hand is not going to last very long when it
13 has to pay those expense, that Aqua Express will go back
14 to its principals, and that's where you run into the
15 issue, so that's not at all reassuring in terms of Aqua
16 Express's viability for two reasons.

17 First of all because the principals are
18 entitled to say no, and that's one issue which has to be
19 addressed by the Commission in terms of whether Aqua
20 Express has financial viability, but should the
21 Commission find that those principals are going to want
22 to provide financial support to Aqua Express for six
23 months or a year to get it through a period which those
24 principals might deem to be of temporary financial
25 distress, then the question is whether those principals

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1 actually have the financial resources.

2 Sitting here, I don't have any evidence to
3 present that they don't, but it's clearly the
4 applicant's burden to show that it has the financial
5 resources to operate the proposed services for a year.
6 Since Aqua Express clearly does not itself have those
7 financial resources, I think it's fair to allow it to
8 argue that it effectively has those resources because it
9 is owned by principals who have those resources, but I
10 think it's important to see some documentation of that.
11 Thank you.

12 JUDGE RENDAHL: Mr. Wiley.

13 MR. WILEY: Yes, Your Honor, why don't we
14 start, do you want me to address the bank loan records
15 requisition as well as the financial statement, or do
16 you want to take them one at a time? I can do both to
17 save time.

18 JUDGE RENDAHL: You can address them both.

19 MR. WILEY: Let's start with Records
20 Requisition Number 5, which I understand to be the loan
21 agreement with the bank. I am informed by my client at
22 the break that we will provide that records requisition,
23 do not have an objection.

24 With respect to the financial statement of
25 the members of the LLC, we do have a strong objection,

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1 Your Honor, for more than just one reason. Certainly
2 Mr. Iglitzin is correct the statutory showing required
3 is our burden. We have never shirked that burden, nor
4 have we avoided that, and we have presented testimony
5 and exhibits with that express statutory provision
6 firmly in mind.

7 That being said, we have also had testimony
8 today under oath about other sources of funds other than
9 just the bank loan, which are operations and
10 Mr. Tougas's statement with respect to other sources of
11 income and other interests of the principals in making
12 this a viable operation. More importantly though, the
13 reason that they are concerned about producing financial
14 statements is not so much relevance, which I agree it
15 isn't relevant in terms of the showing that we are
16 proffering here, but because they are potential
17 competitors in chartering and bare boat operations, they
18 have not exchanged financial statements amongst the
19 partners, and for competitive reasons they don't intend
20 to have each other see each other's financial
21 statements, because they are privately owned companies
22 who are in potential competition with one another for
23 charter operations.

24 As far as the requirement, there's no
25 requirement under the statute that principals of a

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1 partnership provide financial information to the
2 Commission. The Commission is very versed just in my 25
3 years of experience in practicing before the Commission
4 in dealing with startup investor owned utilities. They
5 look at startup entities all the time and weigh evidence
6 in terms of entry applications as to whether under the
7 statute the startup entity has met its financial burden.
8 That is not to be done necessarily by financial
9 statements of principals up the line. If these were
10 publicly owned companies, we would present 10-K
11 statements, and that would alleviate Mr. Iglitzin's
12 concern, but we have no intention of providing documents
13 that we're not required to under the statute that would
14 be anticompetitive when viewed by other partners.

15 JUDGE RENDAHL: Any other comments from Staff
16 or Kitsap County on this record requisition?

17 MR. TROTTER: I will weigh in, Your Honor.
18 The statute that's pertinent here is 81.84.020 sub 2,
19 and it contains the minimum requirements of the
20 applicant, and Mr. Wiley is correct that financial
21 statements from the entities listed on Exhibit 2 are not
22 among them. Having said that, there's a statutory
23 minimum, and the section specifically says that. I
24 believe Mr. Wiley indicated he thought they were
25 relevant or if he said they were irrelevant, I believe

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1 they are marginally relevant.

2 The testimony was that the bank is available,
3 that there's no surprise to Staff that this asset is
4 listed at its historical cost plus improvements, that's
5 how it ought to be. There's nothing unusual about that.
6 That's in fact I believe generally accepted accounting
7 principles require it. It's also not surprising that it
8 may be leveraged in a loan context in excess of its book
9 value. Certainly the house that Mr. Iglitzin talked
10 about, a bank is going to certainly loan in an amount in
11 excess of the historical cost of the house and
12 especially if it's in a desirable area of Seattle,
13 that's not unusual. So that is probably a very
14 significant source of funding.

15 Also the operations of the company, there was
16 a lot of testimony on that, so the third line of
17 financial support would be the parents. There is an
18 operating agreement which requires capital to be input
19 under certain circumstances, and there are sanctions and
20 consequences, adverse financial consequences if they are
21 not.

22 Certainly any anticompetitive impacts, and I
23 am sympathetic to those, but presumably those could be
24 protected by a protective order where the principals in
25 these firms would not have access to them, but the

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1 Commission and the attorneys for the parties would be
2 the only ones that could see them. If that's not
3 acceptable to the company and they still decline to
4 produce them, then we would let the chips fall where
5 they may. As I say, I think they're relevant, I think
6 in the hierarchy of the evidence of this case they're
7 not particularly relevant. So if a protective order is
8 not satisfactory, it sounds like the applicant is
9 prepared to meet its burden without them, so be it. I
10 would just offer the protective order as a way to try to
11 break the log jam.

12 JUDGE RENDAHL: Mr. Wiley.

13 MR. WILEY: I can't say that I have discussed
14 that particular issue with the clients having just had
15 this request yesterday and hearing it repeated again
16 today. I would indicate to you that I will make -- I
17 will explain the Commission's rules on protective orders
18 and see if that's acceptable to them. I don't know if
19 it will be or not, but I certainly can explain the
20 mechanics of how it operates.

21 JUDGE RENDAHL: How many of the partners are
22 here in the room today?

23 MR. WILEY: Two.

24 JUDGE RENDAHL: Okay, I was just going to
25 suggest that we take a break and have you suggest that

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1 just so we get a firm answer from your client. So let's
2 be off the record for a few minutes.

3 (Brief recess.)

4 JUDGE RENDAHL: While we were off the record,
5 first let's hear from you, Mr. Wiley, as to what the
6 partners' response would be to a protective order.

7 MR. WILEY: I have only had a poll of 75%,
8 but it's unanimous that we will not produce the
9 financial statements.

10 JUDGE RENDAHL: Okay, thank you.

11 In considering the arguments that were made,
12 the information requested in Record Requisition Number 4
13 for the financial statements from the partners is
14 information that would be tangential at best to the
15 information that the applicant has submitted in its
16 case, and the applicant has the burden, as Mr. Trotter
17 suggested, to meet -- has the burden to meet the
18 requirements in the statute. If the applicant has
19 chosen not to provide that information, we let the chips
20 fall as they may. But again, this information appears
21 to be tangential, the operating agreement does spell out
22 what the partners have agreed to do, and we do not feel
23 that information is necessary, so Record Requisition
24 Number 4 is denied.

25 And I understand that the applicant has

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1 agreed to provide the loan agreement, so that Record
2 Requisition Number 5 is granted, and so you will need to
3 provide that information to Mr. Iglitzin according to
4 the Commission's rules for record requisitions. And if
5 that information, Mr. Iglitzin, you choose to put on the
6 record, then you need to make that request at the next
7 hearing.

8 Okay, I think we're ready for Mr. Bryan.

9 MR. WILEY: Thank you.

10 JUDGE RENDAHL: Okay, Mr. Bryan, you remain
11 under oath from yesterday.

12 So, Mr. Wiley, please go ahead.

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1 Whereupon,

2 DARRELL BRYAN,

3 having been previously duly sworn, was called as a

4 witness herein and was examined and testified as

5 follows:

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

7 BY MR. WILEY:

8 Q. Welcome back, Mr. Bryan. Yesterday we had
9 requests for customer surveys that you had performed in
10 conjunction with Clipper Navigation; is that correct?

11 A. Yes, sir.

12 Q. And you provided a matrix to this record
13 which was Exhibit 10, do you recall that?

14 A. Yes, sir.

15 Q. You also referenced an earlier survey that
16 Clipper Navigation had performed on the Kingston to
17 Seattle route; is that correct?

18 A. Yes, sir.

19 Q. And was that the 2000 survey that you
20 provided here today?

21 A. Yes, it is.

22 MR. WILEY: And, Your Honor, I believe that
23 has been previously identified as Exhibit 11?

24 JUDGE RENDAHL: That's correct.

25 BY MR. WILEY:

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1 Q. Mr. Bryan, is that in fact the survey matrix
2 accumulating the responses from the survey that you and
3 your employees performed in the year 2000?

4 A. Yes, it is.

5 MR. WILEY: No further questions, Your Honor.

6 JUDGE RENDAHL: Mr. Iglitzin, do you have any
7 questions based on Exhibit Number 11?

8 MR. IGLITZIN: Yes, just a couple more
9 questions about how the survey was done.

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

12 BY MR. IGLITZIN:

13 Q. Can you tell us how the survey was done?

14 A. Yes, sir. As I believe I may have indicated
15 yesterday, we created the survey in house, and the
16 distribution was made through the Kingston Chamber of
17 Commerce, through handouts at both the Bainbridge and
18 the Kingston ferry terminals and distributed, and once
19 again the survey was a self addressed envelope, and at
20 that time we felt more generous and it was a postage
21 paid survey.

22 Q. Which explains the high rate of return?

23 A. Yes.

24 Q. So I'm sorry, you handed the survey out at
25 the Kingston and Bainbridge terminals as well as other

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1 mechanisms?

2 A. Yes, sir. I should clarify, the Bainbridge
3 and Kingston Washington State Ferry terminals where we
4 were accessing Washington State Ferry customers as they
5 were boarding the vessel. And we -- distribution
6 through the Kingston Chamber of Commerce. I believe
7 Sunny Woodward, who was associated with one of the real
8 estate companies, and others through their businesses
9 helped to distribute them in the Kingston area.

10 MR. IGLITZIN: Thank you very much.

11 JUDGE RENDAHL: And that's it?

12 MR. IGLITZIN: That's it.

13 JUDGE RENDAHL: Okay, Mr. Trotter, do you
14 have any questions?

15 MR. TROTTER: No.

16 JUDGE RENDAHL: And Mr. Sells?

17 MR. SELLS: No, Your Honor.

18 JUDGE RENDAHL: Any questions from the Bench
19 on this?

20 Okay, thank you, Mr. Bryan, you are now done.

21 With that, are there any other issues we need
22 to discuss this afternoon before we proceed with our
23 public hearing on the 1st?

24 MR. IGLITZIN: Scheduling, and the
25 Commissioners obviously don't have to be in here for

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1 that, but we do have to talk about scheduling.

2 JUDGE RENDAHL: Okay, we'll be adjourned for
3 the day, we'll be off the record.

4 (Discussion off the record.)

5 JUDGE RENDAHL: Mr. Wiley, would you like to
6 offer Exhibit Number 11?

7 MR. WILEY: I would, Your Honor.

8 JUDGE RENDAHL: Any objections to admission
9 of Exhibit Number 11?

10 Hearing nothing, it will be admitted.

11 Thank you very much, we're adjourned for the
12 day.

13 (Hearing adjourned at 4:40 p.m.)

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