

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

In the Matter of the Petition of)	DOCKET TS-090424
)	
SAN JUAN EXPRESS, INC.,)	
)	ORDER 02
Petitioner,)	
)	
Relating to Discontinuance of)	DENYING MOTION FOR
Commercial Ferry Service Authorized)	CONTINUANCE
by Certificate of Convenience and)	
Necessity No. BC-117)	
.....)	

MEMORANDUM

- 1 On March 23, 2009, San Juan Express, Inc. (San Juan or Company), filed with the Washington Utilities and Transportation Commission (Commission) a petition requesting the Commission grant a temporary discontinuance of service between Friday Harbor and Seattle, Washington, beginning May 22, 2009, returning to service on May 21, 2010.

- 2 This matter came before the Commission at its open meeting on May 14, 2009. On May 15, 2009, the Commission entered Order 01—Order Granting Temporary Discontinuance of Service; Setting Matter For Hearing. The Commission specifically authorized a temporary discontinuance of service from May 22, 2009, for a 30-day period ending June 22, 2009.

- 3 On May 19, 2009, the Commission gave notice that it would convene a hearing in this matter on June 9, 2009, at 9:30 a.m. The purpose of the hearing is to address concerns about whether San Juan’s request for a temporary discontinuance of service should be granted, or alternatively, whether the Commission should cancel the Company’s certificate or the Company should relinquish its certificate to allow another carrier to provide service.

4 The Commission also gave notice that it would convene a hearing on the afternoon of June 9, 2009, to provide an opportunity for members of the public to give oral or written comments to the Commission concerning San Juan's petition.

5 On May 27, 2009, San Juan filed a letter requesting a continuance of the hearing. The Company stated three bases for its request:

1. San Juan's attorney, Mr. David Wiley, will be out of the country until Monday, June 1, 2009. The Company asserts it "will have had no opportunity to review and prepare for a Hearing by June 9, 2009."
2. San Juan's Controller, Ms. Darci Haustveit, will be out of the country and, according to the Company: "In light of the increasing focus on financial viability issues and historic cost of service analyses, her testimony is very material to the applicant's case/petition."
3. Mr. Darrell E. Bryan, President and CEO of San Juan's parent corporation, Clipper Navigation, Inc., wishes to attend a meeting of the Passenger Vessel Association at the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee in Washington, D.C. on June 10, 2009. San Juan states that Mr. Bryan's participation "is critical due to the importance of the issues on the agenda." According to San Juan's request, Mr. Bryan received notice of the meeting on May 26, 2009.

6 The first two bases cited by San Juan were known to the Company on May 19, 2009, the date the Commission issued its notice of hearing. Were these compelling reasons for the Company to request a continuance, the Commission would expect to have heard so well before May 27, 2009, when San Juan filed its request. Thus, the request appears to be prompted principally by the third reason cited by San Juan.

7 It is not clear from the Company's request why Mr. Bryan's personal participation in the meeting of a user fee advisory committee is essential or even somehow more important than attendance at the Commission's hearing. While the Commission may honor preexisting commitments or compelled appearances of key company personnel in other fora when setting its hearing schedule, the meeting San Juan describes is neither. Mr. Bryan could arrange for a stand-in, for participation in the meeting by telephone, or even for his morning appearance at the Commission's hearing with

afternoon travel to Washington, D.C. On the other hand, if he elects to participate personally in the meeting in Washington, D.C. and not be available at the Commission on June 9, 2009, arrangements can be made to hear his testimony telephonically, if it is essential to his Company's case.

- 8 Returning briefly to the question of counsel's availability, the Company's outside counsel should have adequate time to prepare for a half-day hearing between the date of his return on June 1, 2009, and the scheduled hearing date, which is eight calendar and six business days later, on June 9, 2009. The issues presented do not appear to be at all complex. Mr. Wiley also has colleagues in his firm who can assist him, if necessary.
- 9 Concerning the question of witness availability, the Commission does not anticipate the need for extensive or detailed testimony considering the circumstances of this case. It is unclear at this time whether there will be any need for testimony from Ms. Haustveit. If the Commission determines at hearing that testimony by the Company Controller is essential, her testimony can be taken at a later date.
- 10 In light of these considerations, the Commission finds that San Juan has not established good cause to grant a continuance of the previously noticed hearings.
- 11 In connection with San Juan's request that the hearing be continued "until sometime after 23 June" we remind the Company that the Commission granted authority for a temporary discontinuance of service only through June 22, 2009. After June 22, 2009, if the Company is not providing service, it will be out of compliance with its certificate. Thus, even were there good reason to postpone the hearing, it does not appear to be in San Juan's own best interest to continue the hearing date to a time that would place the Company out of compliance and at risk for financial penalties.

ORDER

12 THE COMMISSION ORDERS that San Juan's request for a continuance of the hearing date in this matter is denied.

DATED at Olympia, Washington, and effective June 1, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission, Administrative review may be available through a Petition for Review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.