

SERVICE DATE

AUG - 3 1994

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)	
SAN JUAN EXPRESS, INC.)	DOCKET NO. TS-940956
for a Cease and Desist Order)	SECOND SUPPLEMENTAL ORDER
.)	ON PREHEARING CONFERENCE

A prehearing conference was held on July 28, 1994, pursuant to due and proper notice to all parties before Review Judge C. Robert Wallis. Comments on or objections to this Order may be filed not later than August 17, 1994.

APPEARANCES: Bradley Stam, attorney, Seattle, represents petitioner/complainant, San Juan Express, Inc.; William Grady, attorney, Seattle, represents respondent Mosquito Fleet Enterprises, Inc.; Romney Robert Brain and Kenneth Hobbs, attorneys, Seattle, represent respondents Yachtship CruiseLine, Inc. and Glacier Bay Lodge, Inc.; David W. Wiley, attorney, Bellevue, petitioned for intervention on behalf of Jack L. Harmon, d/b/a Arrow Launch Service; Russell W. Pritchett, attorney, Bellingham, petitioned for intervention on behalf of Belairco, Inc. and San Juan Island Shuttle Express, Inc.¹; Ann Rendahl, assistant attorney general, Olympia, represents the Commission Staff.

PETITIONS TO INTERVENE: No objections were voiced to Mr. Harmon's, Belairco's or Shuttle's petitions to intervene, which were granted.

PROCEDURAL MATTERS:

1. Commission Staff has no position on the issues at present but reserves the right to take a position.

2. The parties will submit to the Commission an original and 13 copies of any document they file and will also submit any document longer than five pages in electronic form, in any version of WordPerfect up to 6.0. Because of the expedited schedule, when last-minute filings are necessary they may be made by telefaxcimile, if hard copies are filed the following day, although the material due August 17 is expected to be timely filed in hard copy. August 17, when stated, is a deadline. Parties are encouraged to file sooner than that if doing so is feasible.

¹This party will also be referred to as "Shuttle".

3. The parties reviewed the status of the superior court litigation. That litigation has been stayed to allow the parties to pursue the issue with the Commission. An order of stay has not been entered but is circulating, among the parties to the superior court litigation, in draft form. The order will offer flexibility to the parties to seek that the stay be lifted if they are dissatisfied with the Commission process or the length of time needed for the Commission to complete its process. **PLEASE NOTE:** The petitioner/complainant is requested to file a copy of the Superior Court Order with the Commission when it is entered, and provide a copy to each party who does not have one.

4. The Commission identified the matter as appropriate for brief adjudication in light of the nature of the issues raised in the petition/complaint and the speed and flexibility offered in the brief adjudication process. No party objects to use of the brief adjudicative process for this proceeding. No notice is legally required to be made on any person who is not a party to the proceeding.

The parties will consider whether they will waive an initial order and allow the record to be presented directly to the Commissioners for decision. Each party will state in a filing by August 17th whether it will waive an initial order.

5. The complainant intends to present a memorandum to the Commission on August 17th, and to include in that memorandum material responding to the answers. Other parties may also file prehearing memoranda on August 17th; doing so is optional. The parties will file post-hearing memoranda within one week after the brief adjudication, but need not repeat any prehearing arguments. Instead, they may cite any prior statements.

6. Change of schedule: The parties agree that the Brief Adjudication previously scheduled for August 2, 1994 has been rescheduled to August 19, 1994. The Brief Adjudication will be held in the Commission's Kent office hearing room and will begin at 9:00 a.m.

7. Agreed facts: The Commission's Order of July 20, 1994 asked the parties to explore preparation of an agreed statement of facts. Mr. Grady indicated in a written submission that an agreed statement of facts would be nearly impossible, and at the conference explained a consensus among the principal parties that the limited time before the adjudication offers insufficient opportunity for parties to do the preparation needed to prepare an agreed statement of facts. At the presiding officer's request, Mr. Stam agreed to convene the parties to discuss ways to expedite the brief adjudication by pursuing agreement on subjects or statements and reducing the need to cross-examine witnesses.

Because of the nature of this proceeding, its emphasis on the legal issue or issues rather than factual disagreements, the parties' joint desire for an expedited order, and the limited hearing time available, the parties are encouraged to offer evidence in summary or narrative form, preferably in writing upon agreement; to focus on the points that are relevant to the issues raised in the complaint and essential to support the legal theories they advocate; and to minimize evidence of limited relevance, to eliminate duplicative or repetitive evidence, and to secure agreement as to the nature of testimony to be presented, all in ways that will eliminate the need for unnecessary evidence and cross examination. The parties' discussions will allow a focusing of issues and will allow respondents to focus their responding evidence.

The respondents may present relevant evidence of operations of other businesses similarly situated. They will do so in a way that is not repetitive or redundant and are instructed to explore with other parties, and encouraged to use, written or summary statements when possible. Intervenors Belairco and Shuttle intend to present evidence but will coordinate the presentation with petitioner to minimize duplication. Intervenor Harmon does not intend to present evidence but intends to brief the legal issues presented, after the hearing, in light of the record.

PLEASE NOTE: Any party who intends to present evidence at the August 19 adjudication is requested to file with the Commission on or before August 17 a list of witnesses, a one-sentence description of the testimony to be offered by that witness, an explanation of why the subject is within the issues of the complaint if that explanation is necessary, and a copy of the witness' statement if the statement has been prepared. Parties are also requested to include a copy of any documentary evidence they intend to offer. thirteen copies of witness statements and documentary evidence need NOT be filed. The parties are then requested to be prepared to identify objections they may have to the distributed material during the opening moments of the adjudication.

8. List of issues: The parties will prepare a list of issues and present it to the Commission not later than August 17, 1994.

9. Legal memoranda may be presented not later than August 17, 1994. Each party will make a post-adjudicative submission within one week after the brief adjudication, but need not repeat any argument made in a prehearing memorandum. The parties will address the statutory basis for the Commission's substantive decision and also whether the Commission has the authority to enter a cease and desist order upon complaint (or petition) of a third party or whether it may use that remedy only when it initiates a proceeding.

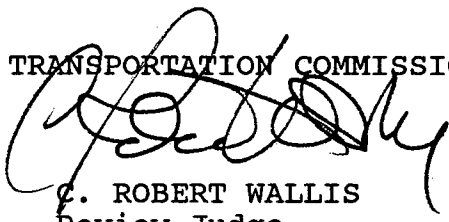
10. Any objections to this Order should be filed in writing not later than August 17 and will be addressed at the adjudication on August 19. Unless modified at the adjudication, the adjudication will be governed by this Order.

AMENDED NOTICE OF BRIEF ADJUDICATION

The Brief Adjudication previously set by the Commission for August 2, 1994, has been rescheduled as follows: Friday, August 19, 1994 at the Commission's Kent office, Meeker Square, 1313 West Meeker Street, Suite 121, Seattle, Washington, beginning at 9:00 a.m.

DATED at Olympia, Washington and effective this 3rd day of August 1994.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



C. ROBERT WALLIS
Review Judge