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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION
2
3 In the Matter of)
4 Application No. B-79418 of)
5 SEAN MCNAMARA d/b/a PACIFIC SEA) Docket No. TS-060061
TAXI) Volume I
6 For a Certificate of Public)
7 Convenience and Necessity to)
Operate Vessels in Furnishing)
Passenger Ferry Service.)
8
9 In the Matter of)
10 Application No. B-79421 of)
11 PACIFIC CRUISES NORTHWEST, INC.,) Docket No. TS-060133
12 d/b/a VICTORIA SAN JUAN CRUISES) Volume I
13 -----) Pages 1 - 49
To Transfer All Rights under)
Certificate B-120 in the name)
of San Juan Island Shuttle)
Express, Inc.)

14 A prehearing conference in the above matter
15 was held on March 31, 2006, at 9:33 a.m., at 1300 South
16 Evergreen Park Drive Southwest, Olympia, Washington,
17 before Administrative Law Judge DENNIS MOSS.

18
19 The parties were present as follows:
20 PACIFIC SEA TAXI by SEAN MCNAMARA, 2501
Franklin Street, Bellingham, Washington 98225;
21 telephone, (360) 393-7123.
22 PACIFIC CRUISES NORTHWEST, INC., and ISLAND
MARINER, by DAVID W. WILEY, Attorney at Law, Williams
23 Kastner & Gibbs, 601 Union Street, Suite 4100, Seattle,
Washington 98101; telephone, (206) 233-2895.
24
25 Kathryn T. Wilson, CCR
Court Reporter

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WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by MICHAEL FASSIO, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504-0128;
telephone, (360) 664-1192.

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TS-060061 VOL. I 3/31/06

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

2 JUDGE MOSS: Good morning, everybody. My
3 name is Dennis Moss, and I'm an administrative law
4 judge for the Washington Utilities and Transportation
5 Commission. We are convened today in a joint
6 prehearing conference. It is the first prehearing
7 conference in two dockets. The first is the matter of
8 Application No. B-79418 of Sean McNamara, doing
9 business as Pacific Sea Taxi, for a certificate of
10 public convenience and necessity to operate vessels in
11 furnishing passenger ferry service, Docket No.
12 TS-060061.

13 The other matter is that of Application No.
14 B-79421, Pacific Cruises Northwest, Inc., doing
15 business as Victoria San Juan Cruises, to transfer all
16 rights under Certificate B-120 in the name of San Juan
17 Island Shuttle Express Inc., and our docket is
18 TS-060133.

19 The first order of business is to take the
20 appearances of those that will represent the parties.
21 Mr. Wiley has been with us for awhile so he knows the
22 drill. This is Mr. Fassio's first procedure live
23 before the Commission, and he represents the staff, and
24 Mr. McNamara, I don't know if you've appeared in a
25 proceeding here before or not.

0004

1 In terms of the appearances, what I'll ask
2 you to do is give your name, your business that you
3 represent, the business address, telephone number, fax
4 number and e-mail, and we record all that and then I'll
5 distribute a list to the parties that will include the
6 information for everyone, so if you would go ahead and
7 enter your appearance.

8 MR. MCNAMARA: My name is Sean McNamara,
9 doing business as Pacific Sea Taxi. Address is 2501
10 Franklin Street, Bellingham, Washington, 98225. Phone
11 number is (360) 393-7123. E-mail is sean@pstaxi.com.
12 Fax is the same as the home phone number.

13 JUDGE MOSS: Mr. Wiley, go ahead.

14 MR. WILEY: David W. Wiley, Williams Kastner
15 and Gibbs, Suite 4100, Two Union Square, 601 Union
16 Street, Seattle Washington, 98101. My phone number is
17 (206) 233-2895. My fax number is (206) 628-6611. I'm
18 appearing today in Docket TS-060133 as counsel for the
19 applicant transferee Pacific Cruises Northwest, Inc.,
20 doing business as San Juan Cruises, and I'm appearing
21 in Docket TS-060061, the Application of Sean McNamara
22 as counsel for protestants Pacific Cruises Northwest,
23 Inc., and Island Mariner, Inc., and my e-mail,
24 dwiley@wkg.com.

25 JUDGE MOSS: Mr. Wiley, I would like to get

0005

1 your business card, and I will want to include your
2 physical address in the representatives list. Is
3 anyone here for San Juan Island Shuttle Express? No,
4 Mr. Goodman is not here?

5 MR. WILEY: He may be participating on the
6 conference bridge for all I know, but he will be at the
7 hearing on the transfer.

8 JUDGE MOSS: Mr. Goodman, are you on the
9 telephone line? Apparently not. For staff?

10 MR. FASSIO: Good morning, Your Honor. I'm
11 Michael Fassio, assistant attorney general,
12 representing Commission staff. My street address is
13 1400 South Evergreen Park Drive Southwest, PO Box
14 40128, Olympia, Washington, 98504. My phone number is
15 (360) 664-1192. My fax is (360) 586-5522, and my
16 e-mail is mfassio@wutc.wa.gov.

17 JUDGE MOSS: I'll just remind everyone to
18 speak at a measured pace today so that our court
19 reporter can get it all down. Mr. Wiley did mention
20 that he is representing Pacific Cruises Northwest and
21 Island Mariner as protestants in the matter concerning
22 Mr. McNamara's Application, and I'll mention as well
23 that Mr. McNamara in turn is Protestant in Pacific
24 Cruises Northwest application, so we have protestants
25 on both sides. In that connection, we have before us

0006

1 today a motion by Pacific Cruises, and that's
2 exclusively by Pacific Cruises?

3 MR. WILEY: Your Honor, in the capacity as
4 transferee, it is.

5 JUDGE MOSS: As a motion to strike your
6 protest, Mr. McNamara, have you seen that?

7 MR. MCNAMARA: Yes, and I have read it.

8 JUDGE MOSS: I have also read it, Mr. Wiley.
9 I think we can hear from Mr. McNamara to see if he has
10 any response, and then if you have any last word, we
11 can hear that, and then if Mr. Fassio has something he
12 would like to tell us, we will hear from him as well.

13 So Mr. McNamara, you have an opportunity to
14 respond to the motion and tell me anything you want to
15 concerning its contents and its assertions that would
16 promote your interest in being a protestant in the
17 Pacific Cruises docket.

18 MR. MCNAMARA: Well, it was a long document
19 and a lot of it I didn't understand, but what I got out
20 of it was that I supposedly didn't service the protest
21 to Mr. Drew Schmitt personally or Mark Goodman,
22 personally. I called down here, and this is new to me,
23 and I assumed that since Mr. Wiley was representing
24 Drew or Pacific Cruises Northwest that the protest
25 should go to him, because everything that I've received

0007

1 has been from him and not from Drew. So that was one
2 of the things in there.

3 And then the other one mentioned that I don't
4 have a certificate yet so that I don't have a right to
5 protest it. However, my application was filed ten days
6 before their application to transfer in which there is
7 a need for the service, and I finally stepped up and
8 put an application in, and I think it's trying to get
9 put down really quickly by other companies.

10 JUDGE MOSS: Mr. Fassio, do you have anything
11 to contribute?

12 MR. FASSIO: I do have a couple of things.
13 The WAC's, I think it's 480-07-110, say that the
14 Commission can modify the application of procedural
15 rules in individual cases if it's consistent with the
16 public interest, and I think in light of the fact that
17 Mr. McNamara is a pro se party here, it's somewhat
18 unreasonable to expect that he would know every single
19 rule in the WAC with regard to service of process, and
20 in commercial ferry contact, the rules aren't clear on
21 this. There is something in the WAC 480-51-040 that
22 says a protest must be filed with the Commission, and
23 the transportation docket references these particular
24 rules and doesn't reference any other rules in the
25 WAC's for the procedure to file this.

0008

1 So I think Mr. McNamara in filing it with the
2 Commission and filing it with Mr. Wiley substantially
3 complied with this, and even in looking at the rules
4 under 480-07, the rule says the copy of the protest
5 must be served on the applicant, and Mr. McNamara
6 noticed that Mr. Wiley was representing applicant
7 Pacific Cruises Northwest in this case, so I think it
8 was reasonable for him to expect that he was the proper
9 party to serve it with.

10 And one thing on the substantive issues, I
11 think Commission staff agrees that Mr. McNamara has
12 brought forward valid issues in his protest, and also
13 by virtue of the fact he did have a pending application
14 before the Commission, it appears he does have a
15 substantial interest in this proceeding.

16 JUDGE MOSS: Mr. Wiley, do you have any
17 response to this?

18 MR. WILEY: Yes, I have some comments. First
19 of all, I want to respond to the Applicant's
20 characterization of procedural issues. As you saw in
21 our motion to strike, there were two bases procedurally
22 for invalidating this protest. One was, of course, the
23 failure to serve on the Applicants, and the
24 Commission -- as you noted, I've had some years here,
25 and I know the Commission is very -- recognizes pro se

0009

1 litigants in terms of their procedural rights and does
2 make some concessions in that regard. However, it also
3 is very clear about the importance of adhering to the
4 procedural rules that this Commission promulgates.

5 The issue of service on the Applicant in this
6 matter was very clear, and there is no dispute that
7 particularly the Applicant Transferor or the person who
8 owns the property right right now was never notified.
9 My client, the Transferee, was not notified either, but
10 we assumed arguendo that that was less critical in the
11 terms of the procedural deficiencies than the failure
12 to serve the applicant certificate holder.

13 In addition to that, as you saw in the
14 motion, there was no compliance with the certificate of
15 service requirement, which the Commission has
16 historically put much emphasis in because it's the
17 prima facie completion of the process. Both
18 Mr. McNamara and counsel for the Commission talk about
19 filing, but they don't talk about service, and the
20 Commission in its procedural rules, and I cite them in
21 the motion, is very clear to bifurcate the procedural
22 compliance. It's one thing to file a protest, and WAC
23 480-51-040, as counsel says, does talk about filing
24 protest, but there is also service requirements that
25 the Commission is very clear must be adhered to.

0010

1 Now, I cite in my brief a case from the early
2 1990's where the Commission said it affects the
3 substantial rights of the party if there is an error in
4 service, and that's clearly what has happened here.
5 Whether an H&K Trucking also dealt with any prejudice,
6 they didn't find there was any prejudice on a time
7 period, but they looked to the fact, and the quotation
8 is at Page 5 of the motion: "Where the substantial
9 rights of a party are affected by an error in the
10 pleading or other document filed with the Commission,
11 that error should not be overlooked, notwithstanding
12 the rule on liberal construction." So whether or not
13 there was a filing of this protest does not vitiate the
14 requirement to serve the protest, and clearly, the
15 substantial rights of a party are implicated by a
16 failure to serve.

17 The other line of discussion that we've
18 raised in this proceeding, and I think it's very
19 important for you to focus on that, is really whether
20 the interest of Mr. McNamara is a substantial interest
21 protected by the Commission, vis-a-vis standing rights
22 in this proceeding, and I'm talking about the
23 substantive right issue. It is clear that Mr. McNamara
24 has solely an application for permanent authority
25 before this Commission. That is the bear title that he

0011

1 brings to this proceeding.

2 As noted, the Commission has looked at this
3 in terms of an apples and oranges comparison in
4 previous application cases and disallowed somebody who
5 holds a temporary permit from protesting a permanent
6 authority, and I cite to that case -- I believe it's
7 the ENA Couriers' case. So it's clear that this
8 applicant holds less title than the temporary applicant
9 in the ENA Couriers' case and is before us trying to
10 deny the transfer.

11 Now, that is over and above the issues that
12 we talk about in terms of the disparate statutory
13 schemes and different statutory standards we are
14 dealing with here. Clearly the issues in a transfer
15 proceeding not only in the contemporaneous applications
16 that I cite but in an analysis of the statute are
17 entirely different, and in 81.84 we are dealing, Your
18 Honor, with a very, very limited entry statute. This
19 is not a case of a motor carrier applicant. This is
20 not the case of even a solid waste carrier applicant,
21 and I have not been cited to any cases where the
22 Commission has recognized the right of an applicant who
23 holds no authority from the Commission, no certificate
24 whatsoever, blocking or impeding the transfer of an
25 existing authorized certificate in essentially a

0012

1 monopoly service area.

2 So the issues that Mr. Fassio alludes to that
3 are raised in the Protest as I decipher that are not
4 material issues in a transfer proceeding save for the
5 viability of the property rights sought to be
6 transferred, and what I'm saying is there has been a
7 confusion of the standards for transfer with the
8 standards for a complaint proceeding under WAC
9 480-51-150, and you should not in ruling on this
10 motion, Your Honor, confuse those two issues because
11 dormancy and abandonment is addressed by a separate
12 procedural rule of the Commission and is based on a
13 separate statutory provision, which is RCW 81.84.060.

14 So I don't want the issues that are raised at
15 least peripherally by Mr. McNamara's protest to be
16 confused with the forum that we are in in the Pacific
17 Cruises' application, which is transfer of an existing
18 property right. Certainly a transferor must establish
19 that the property right is viable, that he held out to
20 provide the service, and that it's transferable on that
21 basis. Once that analysis is made, Your Honor, you go
22 to fitness, willingness, and ability of the transferee,
23 but those are the issues. The issues that Mr. McNamara
24 raises and Mr. Fassio seems to think are valid to be
25 raised by Mr. McNamara are issues of a different

0013

1 statutory proceeding and a different regulatory
2 proceeding, and they are based on a complaint brought
3 by the party where a certificate holder has due process
4 rights to defend the viability of the permit.
5 Different issue, different statute, and if Staff
6 believes that's a valid issue, as I say in a footnote
7 in the Motion to Strike, it's better situated to
8 address those issues on the record on transfer than a
9 mere application for authority in essentially an
10 exclusive territorial grant area.

11 So for all those reasons, Your Honor, both
12 substantive and procedural, the motion to strike, I
13 think, is valid, and I would ask that you strike the
14 Protestant, Mr. McNamara.

15 JUDGE MOSS: Thank you. I'm going to jump
16 around on us a little bit on the points raised. Let me
17 ask you first, Mr. Wiley, you suggested there toward
18 the end that the Transfer Application will be
19 considered under a different standard than, for
20 example, Mr. McNamara's application, but I wonder about
21 that. I looked at the various certificates, BC-10,
22 BC-95, and BC-120, and it seems to me there is an
23 identity with respect to the service under BC-95 and
24 the service under BC-120, with the exception, perhaps,
25 of Obstruction Pass.

0014

1 That being the case, we are confronted with a
2 situation in the Transfer Application where there is
3 already authority for this service, so why won't you be
4 held to the same standard? Why won't you be held to
5 the standard to show that Island Mariner is not
6 providing the service in accordance with the
7 requirement of the statute?

8 MR. WILEY: Two reasons. First of all, a
9 transfer proceeding by statute addresses the existence
10 of a property right. If your question initially goes
11 to the fact that there is existing overlap in some of
12 those routes, I would agree. The reasons for why
13 overlap was authorized by the Commission is not
14 something that I know specifically. There may not have
15 been an objection by the existing certificate holder at
16 the time of the Application, and I know in Pacific
17 Cruises' circumstance that Island Mariner did not
18 protest. What the circumstance was when Island Mariner
19 was originally issued its certificate, I'm not aware of
20 in terms of whether there was overlap.

21 The Commission has said, and I cite to the
22 Rood, Arrow Launch case, the Commission has said in the
23 circumstances of commercial ferry authority that
24 sometimes more than one applicant can be authorized to
25 serve the same territory, and in that case in 1990,

0015

1 both Balarco and Arrow Launch Service was authorized to
2 service a single termini, which was Bendovi Island. So
3 the Commission has recognized even under the Ashbacker
4 analysis that more than one certificate can be issued
5 under 81.84.

6 JUDGE MOSS: We have that very situation
7 here. We have Pacific Cruises, and actually, two other
8 carriers at the moment. We have Island Mariner and we
9 also have San Juan whatever it is.

10 MR. WILEY: Shuttle Express, Inc.

11 JUDGE MOSS: And that's the one you are
12 hoping to assume the interest on, so certainty that's
13 the case. Let me ask you about San Juan Island Shuttle
14 Express. I take from the pleadings they are not in
15 business.

16 MR. WILEY: They are not currently providing
17 service, yes. Whether they have held out to provide
18 service in the years past is an evidentiary issue that
19 will be -- that testimony will be adduced on, and we
20 will have a showing by Mr. Goodman as to what he has
21 done to market service under that certificate, what he
22 has done in terms of having a boat, which he had, what
23 sort of orders he got from the Commission to allow
24 discontinuance, etcetera.

25 JUDGE MOSS: As I understand the initial

0016

1 order in the case, I believe it was last year, Docket
2 TS-031996, which was Pacific Cruises' application for
3 authority, I understand at that time, from the order I
4 understand that San Juan Island Shuttle Express was out
5 of business. That was the language that was used. So
6 I don't know how much of an evidentiary issue there is
7 going to be in light of that observation unless there
8 is something that's happening between the time of that
9 order and today.

10 MR. WILEY: I'm not sure in terms of the
11 timing, Your Honor, but there will be evidence that
12 will be adduced through the testimony of Mr. Goodman.

13 JUDGE MOSS: Sure. We will get into that as
14 we get more into the substance of the case, but it was
15 something that struck me when I was doing my background
16 research for this morning's conference.

17 This is sort of an interesting area, I have
18 to say, both in terms of its geography and in terms of
19 the transportation service history in the area, and I
20 read with some interest the initial order to which I
21 just referred because it did involve the grant of
22 authority to a third carrier for essentially the same
23 route; although on an interesting basis, I thought,
24 that being that the service was in its form different;
25 that is to say, it was an express service between

0017

1 Bellingham and Friday Harbor as opposed to the existing
2 service, apparently the only one viable at the time
3 being Island Mariner, and that involving, I want to
4 say, whistle stops.

5 MR. WILEY: Flag stops.

6 JUDGE MOSS: It strikes me as we look at
7 these two dockets where we may be looking at something
8 similar in the sense that the service that Mr. McNamara
9 has asked for authority to provide could be shown to be
10 in form materially different. We will have to await
11 more process to make any such determination, but it's
12 certainly a possible outcome, and there is a lot of
13 other issues we would have to consider as well.

14 I'll start in terms of the substantive
15 objection that you raise, Mr. Wiley. First of all, I'm
16 not going to grant your motion, and I'll tell you why.
17 On the substance of it, it strikes me that to the
18 extent Pacific Cruises Northwest has an interest in
19 protesting Mr. McNamara, that virtually by itself
20 demonstrates that Mr. McNamara has at least a
21 corresponding interest in protesting what Pacific
22 Cruises seeks to do.

23 The authorities are presented as ones that
24 would be in conflict, so I do know that Mr. McNamara
25 filed his application on January 10th, and then we have

0018

1 Pacific Cruises coming in on January 20th. Did Pacific
2 Cruises initiate this request, or did San Juan Island
3 put this certificate up for sale?

4 MR. WILEY: San Juan Island put it up for
5 sale.

6 JUDGE MOSS: How did they advertise that?

7 MR. WILEY: I don't know, Your Honor.
8 Typically in this business, it's a word of mouth, like
9 contact between the principles.

10 JUDGE MOSS: Is this just a coincidence of
11 timing?

12 MR. WILEY: We will have testimony we knew
13 nothing about Mr. McNamara's application whatsoever.

14 JUDGE MOSS: Be that as it may, the
15 Application was pending at the time that the Transfer
16 Application was made, and I do see at least the
17 identity of interest to the extent that with the one is
18 implicated, surely the other by mere image is
19 implicated.

20 I did read the cases that you cited in your
21 motion, and I was not persuaded that they are
22 sufficiently precedential that we need to follow them
23 heedless to the practicalities of the matter and
24 heedless to the fact that we do have a pro se in one of
25 these cases.

0019

1 Also, I would say that there is some conflict
2 in the rules themselves. Perhaps not conflict, but
3 should we say ambiguity, in that while there are rules
4 concerning the service of these things on the
5 applicants, there is also a rule that says, where
6 counsel has appeared, the service must be upon counsel,
7 and that's also a rule of ethics for those who are
8 members of the bar.

9 I also note that in Pacific Cruises'
10 application, Pacific Cruises is the only applicant
11 identified on the face of the Application. If you dig
12 on through there and get back to the appendix, both San
13 Juan Island Shuttle Express and Pacific Cruises are
14 shown as applicants on the appendix at the end of the
15 Application, but on its face, it only identifies
16 Pacific Cruises as the applicant.

17 So if Mr. McNamara failed to serve San Juan
18 Island Shuttle Express, that oversight is
19 understandable in light of the face of the Application
20 and in light of the fact that you are indicated,
21 Mr. Wiley, as counsel who will appear for the applicant
22 as part of the Application. So I think all of these
23 things militate against your procedural arguments. To
24 the extent there is any technical violation here, I
25 think the practicalities and realities of the situation

0020

1 as I have described them overcome those, and I would
2 not rule on the basis of those.

3 As far as the point you make concerning the
4 Application -- you refer to the case of ENA Couriers
5 concerning the temporary operating authority point -- I
6 did read that case as well, and I have to say there are
7 two points there I think are salient. One is that it
8 was not the Commission's ruling. That statement in the
9 Order is clearly dicta, and the other point is that
10 order relied on a WAC that was repealed. So in both
11 senses, I'm not persuaded that that authority is viable
12 authority, so I don't think that's right.

13 Moreover, I think it's clear that
14 Mr. McNamara wishes to develop an economic interest
15 through commercial ferry service as described in his
16 application, and I think it's clear that Pacific
17 Cruises as protestant and Island Mariner as protestant
18 to his application will argue that the existence of
19 their authorities, and that would include the new
20 authority that Pacific Cruises seeks, are in conflict
21 with what he seeks to do, and for that reason, his
22 application should be denied, and that would mean he
23 could not do the business. So I think he also has an
24 interest just in that sense. So for all of those
25 reasons, I'm going to deny your motion and allow

0021

1 Mr. McNamara to protest in Docket No. TS-060133 to
2 proceed.

3 And that brings me to the next question in my
4 mind, at least, which is whether we should consolidate
5 these proceedings, and I'll hear from the parties on
6 that subject. Certainly we can do that on the
7 Commission's own motion. I want to consider it because
8 we might gain some considerable efficiency by
9 proceeding in that way. Mr. Wiley, I'll ask you first
10 what you think about consolidation.

11 MR. WILEY: While I realize there are parties
12 in common, I totally oppose consolidation. First of
13 all, I think that your rendition of the comparability
14 of interests misses one of the points, which is if you
15 look at the Becker Trucking case that's cited at Page 7
16 of my motion to strike, what we have here with Pacific
17 Cruises is an applicant transferee, which is an
18 entirely different interest than an applicant for new
19 authority.

20 An applicant transferee has an interest
21 that's in jeopardy. As the Becker case says, if they
22 don't protest, they are out in terms of the timing
23 under the 30-day rule, so it has automatic standing.
24 In other words, I think you've put an apples and
25 oranges comparison of standing together to invest an

0022

1 applicant for new authority with far more standing than
2 the rules of statute or case law give. And by the way,
3 I agree that the ENA Couriers case was cited under
4 different procedural rules that may have changed, but I
5 think the principle about a lack of authority versus
6 some authority to protest a transfer is still valid and
7 still very much relevant, which is also why I oppose
8 consolidation.

9 I think it would be an error to consolidate,
10 as the Buckman sanitary case speaks of very
11 specifically, and I think if you go to that case law,
12 which I'm sure you've already touched upon, that a
13 transfer proceeding and a new entree proceeding should
14 not be consolidated because of the disparate statutory
15 issues. That's why I don't agree their interests are
16 parallel at all, because Pacific Cruises Northwest is a
17 proposed transferee. It is the applicant in the
18 Commission's forms, and I think Staff will concur that
19 the Commission's forms have historically put a
20 transferee as the applicant in the form. The reference
21 to the transferor is towards the end of the
22 application, and that's because the transferee is the
23 one who has the formative and hopeful, maybe precatory
24 interest in the certificate that the transferor is
25 trying to divest itself of, but I don't think it would

0023

1 be legally correct to consolidate because of the
2 disparate statutory issues on a transfer versus a new
3 application.

4 JUDGE MOSS: The issue is if there are
5 sufficient issues in common to make it a worthwhile
6 thing to do, not whether there is some disparate issue
7 that might militate the other direction.

8 MR. WILEY: Other than the parties and the
9 fact that these are both commercial ferry operations, I
10 don't see any -- and the Commission would have ruled in
11 the solid waste cases that I cite that the parties were
12 the same and the protestants were the same. One was a
13 transfer. One was a new applicant. Everybody was the
14 same; yet the Commission clearly ruled in that case it
15 would be error to consolidate those cases.

16 JUDGE MOSS: They used that word?

17 MR. WILEY: I believe they did. I don't want
18 to be quoting dicta versus a holding, Your Honor. I
19 don't have that case with me, but that was the most
20 direct precedent, and I believe Staff is familiar with
21 that case too.

22 JUDGE MOSS: I think consolidation is a
23 matter of discretion, so I would be surprised if the
24 Commission described it as error.

25 MR. WILEY: You may be right, but they do get

0024

1 to that decision by the rule.

2 JUDGE MOSS: Yes, we do get to make that
3 decision. Mr. McNamara, do you have anything to add
4 about whether we should consolidate these two
5 proceedings? There is almost no practical difference
6 between having a joint hearing and having a
7 consolidated hearing except that in a consolidated
8 hearing, the result might be a single order concerning
9 the outcome of both proceedings. It doesn't have to
10 be. Even in a consolidation, you can have separate
11 orders at separate times concerning the two
12 applications, and that's why I say as a practical
13 matter, there is very little difference between doing a
14 joint or a consolidated. It's a formality, and if you
15 don't have anything to say about it, that's fine too,
16 but if you have some thought on the subject, I would be
17 happy to hear it.

18 MR. MCNAMARA: I think absolutely they should
19 be consolidated for several reason. Mr. Wiley was
20 stating that Mark Goodman has a big interest in having
21 his certificate transferred because maybe monetarily or
22 something like that; however, he's not here and he
23 didn't protest. Pacific Cruises was the one that
24 protested and had the motion to strike today.

25 And I think consolidating them, there is

0025

1 quite a bit of information that I may have from running
2 boats for the last five years up there as to whether
3 he's been using his certificate or not, and how I
4 understand if it's not consolidated, would it just be
5 Pacific Cruises Northwest and San Juan Shuttle Express
6 in a hearing without me if it wasn't consolidated?

7 JUDGE MOSS: No. I've allowed your protest,
8 so you are and will be a party in the Pacific Northwest
9 Cruises' proceeding, and Mr. Wiley and his clients will
10 be participating in your proceeding under my ruling.

11 There are three possible outcomes, to answer
12 your question. In a consolidated proceeding, we will
13 have a single procedural schedule and a single hearing
14 schedule, and it's entirely possible that we will have
15 a single order at the end of everything, perhaps even a
16 single set of briefs if we want briefs.

17 If we do it on a joint basis, we would again
18 have a common procedural schedule; although, there
19 might be some differences in terms of the process
20 internal to the hearing in terms of discovery or what
21 have you. We might make some different accommodations
22 depending on what we can get resolved more quickly than
23 other matters that might take longer, and then the
24 third option would be to treat them wholly separately,
25 give them each their own procedural schedule and have

0026

1 two hearings and so forth.

2 So those are basically the three possible
3 outcomes. Let me ask Mr. Fassio if staff has any view
4 on the question of consolidation.

5 MR. FASSIO: The staff doesn't necessarily
6 have a particular view on the method of consolidation.
7 I think procedurally and practically, having two
8 separate proceedings on this may be duplicative because
9 I think a lot of the same issues that are going to come
10 up in the Application are also going to come up in
11 terms of witnesses and evidence in the Transfer
12 Application, so I think there is definitely some basis
13 there for consolidating the hearings on the fact that
14 the Commission has the discretion to consolidate
15 matters in which facts and issues are related.

16 Mr. Wiley does have a good point that the
17 Ashbacker and other cases he cites that this is not
18 necessarily competing applications for new authority.
19 One is a transfer and one is for new authority, so on
20 that legal basis, there is something there. So
21 Commission doesn't necessarily have a particular
22 viewpoint on this, but I think some form of
23 consolidation might be appropriate.

24 JUDGE MOSS: I don't mean to diminish the
25 point in recognition that one application is a transfer

0027

1 application and the other is an application for new
2 authority, and certainly there will be some differences
3 as we go forward with those two types of matters.

4 I'm not sure sitting here today just how much
5 overlap there may be in that regard. I did earlier
6 raise the question of whether the transfer applicant
7 might have to make the same showing as an original
8 applicant in the sense that there is another authority
9 out there that overlaps, and I'm not sure. That's a
10 question I haven't really considered carefully, and I
11 do want to give it more thought, and I'm sure counsel
12 will want to give it more thought as well.

13 It seems pretty clear to me that there is a
14 lot of overlap, while not in identity, between the two
15 cases. I do expect in terms of efficiency that we are
16 probably going to want to have a hearing up in
17 Bellingham to develop our record. We may want to have
18 a session out on Friday Harbor -- is that San Juan
19 Island, Orcas Island?

20 MR. WILEY: Are you talking about the new
21 application, Your Honor? We don't have a showing for
22 need that's required in the transfer, so we won't have
23 witnesses demonstrating need because we've already done
24 that when the permit was originally issued.

25 JUDGE MOSS: Right, but you did identify

0028

1 earlier that you would be developing some evidence, so
2 we would introduce that at the hearing and make that
3 part of the record at the hearing. So in that sense,
4 there will be a hearing in both proceedings, and all
5 I'm suggesting is that one is more efficient than two.

6 As far as the formalities of consolidation
7 are concerned, as I expressed earlier, I really think
8 as a practical matter it makes little difference. I've
9 done it both ways, and it seems to work out the same
10 regardless since we have the discretion in a
11 consolidated proceeding to move one thing on a
12 different track than the other.

13 So I think at this juncture I'll just leave
14 the proceedings unconsolidated in a formal manner, but
15 we should be considering some sort of a common schedule
16 to go forward, if for no other reason than the
17 convenience of the parties and the efficient use of
18 resources. We do have the same people involved in both
19 dockets. We do have the same staff involved in both
20 dockets, not to mention my time, which is a matter,
21 perhaps, of small significance but one that may be
22 important to me.

23 MR. WILEY: Your Honor, may I ask a question?
24 I share your concern about not wasting resources or
25 moneys. My concern, I think, goes to the more

0029

1 substantive issue, and I think Mr. Fassio was alluding
2 to this. I think it's clear under Commission case law
3 that we don't apply the contemporaneous application
4 rule, the Ashbacker, to a transfer and a new
5 application that are filed within 30 days of one
6 another. I don't think anybody is going to argue that
7 point.

8 My concern about consolidation is -- you are
9 not consolidating by your ruling, but I don't want that
10 issue lost in the forest of all the other arguments,
11 and I want to give you an example of one of the issues
12 that will arise in the new application that I don't
13 want to cloud or delay the transfer applicant.

14 That is the fact that, as you've just heard,
15 Mr. McNamara has been operating up there for five
16 years. That's going to be an issue in his new
17 application. It's a fitness issue, and we are going to
18 have evidence addressing that. I don't want that to
19 delay the consideration of the outcome of the transfer,
20 because as I said in my letter about asking for an
21 early prehearing conference, this is a seasonal
22 business generally, and we would like to get a hearing
23 on the transfer as soon as possible so that if the
24 Commission does grant a transfer, we can operate the
25 permit in this season.

0030

1 And my concern about consolidation with a new
2 entry application is that record is a lot more
3 protracted just by the nature of the beast. We've got
4 shipper witnesses, fitness, financial issues. It's
5 going to be a lot more protracted than a transfer
6 application, which typically take at most a day where
7 you have the transferor and transferee witness and you
8 address all the statutory issues. I'm real concerned
9 if we track them together, we are going to lose sight
10 of both the contemporaneous application rule and not
11 being applicable to these two types of proceedings, and
12 also just delay the resolution of the transfer
13 proceeding.

14 JUDGE MOSS: Several observations, Mr. Wiley.
15 One, I don't see any reason to protract either of these
16 dockets. They don't look to me to be very complicated,
17 and it seems to me we can have the development of
18 evidence proceed fairly quickly. If there were some
19 delay in Mr. McNamara's case as a result of his need to
20 produce live shipper witnesses, as is the case in an
21 application for authority, you will have to do that.
22 Then we could do that later, so to speak. I think we
23 can take up the other issues of fitness and so forth
24 without the necessity for the passage of much time.

25 As far as the urgency in getting the

0031

1 transfer, I'm frankly a little confused on that. As I
2 understand what's been filed today, Pacific Cruises and
3 Island Mariner are engaged in some sort of joint
4 operation whereby Pacific Cruises is furnishing a boat
5 or something like that, and that the authority that
6 Island Mariner has is being used in that sense. In
7 other words, they are providing this service between
8 Bellingham and Friday harbor with various flag stops;
9 is that right?

10 MR. WILEY: There are some additional flag
11 stops that aren't authorized on Island Mariner that San
12 Juan Island Shuttle Express Inc., has. I understand,
13 Your Honor, I'm not an expert on that issue, but that
14 is my understanding.

15 JUDGE MOSS: My concern here is the opposite.
16 The San Juan Island Shuttle Express includes flag stops
17 at Eliza Island, Sinclair Island, Blakely Island, and
18 Lopez Island. The Island Mariner certificate also
19 covers those four flag stops.

20 MR. WILEY: I'm told there is a reference to
21 the Orcas landing we don't have in the Island Mariner
22 certificate, so there are some select embarkation or
23 disembarkation points. They are substantially similar,
24 Your Honor --

25 JUDGE MOSS: You can see where I'm going on

0032

1 this. You all can as a practical matter provide the
2 service you are providing now.

3 MR. WILEY: With some exceptions.

4 JUDGE MOSS: I would say modest exceptions.

5 We are talking about landings versus islands, and there
6 is the Obstruction Pass point too that I noted earlier.

7 That certainly doesn't eliminate the interest
8 in proceeding expeditiously in getting these things
9 processed quickly, and we will do that, but at the same
10 time from a business perspective, I'm not as concerned
11 as I would be if there were no existing service being
12 satisfied.

13 MR. WILEY: The other concern, and he's not
14 here to speak for himself, but just in general with
15 transferrors, I think the interest that the emotional
16 and/or financial commitment to trying to maintain the
17 viability of a certificate is certainly of concern of
18 Mr. Goodman's, as I understand it, and you will hear
19 from him on that. He's not here and I'm not
20 representing him, but I'm representing the transferee,
21 and the Commission has historically been cognizant of
22 the property holder's interest who is trying to divest
23 himself, and the faster we can get that resolved, the
24 better for him.

25 JUDGE MOSS: Sure, but on the other hand,

0033

1 Mr. Goodman apparently in one of these papers either
2 represented himself or was represented on his behalf.
3 It seems to me it was in an affidavit or statement that
4 he appended to your motion that he would appear and
5 participate in these proceedings. He's not here today.

6 MR. WILEY: I think what we tried to say was
7 he will appear at the application hearing, not the
8 prehearing conference.

9 JUDGE MOSS: The fact that he's not here
10 today makes me less concerned with his repose. If he
11 was that concerned about it, he would be here and
12 representing his interest.

13 You are right. We will have to have evidence
14 on the viability of that certificate. I have some
15 concerns about that based on the facts that I've seen
16 plead. There will need to be more development in that
17 area so I can understand that point fully, as you know,
18 and you've mentioned several times yourself today.

19 I do think, considering everything we've
20 talked about today, that it would be appropriate at
21 this juncture to go forward with the common schedule,
22 and we can identify an early date for a hearing that
23 will give you, Mr. Wiley, an opportunity to develop all
24 your issues on the transfer, and Mr. McNamara, whatever
25 evidence you might want to put on opposing that would

0034

1 come in at that time.

2 This does not strike me as something that's
3 particularly fact intensive. It certainly involves the
4 development of some facts, but I don't see the need for
5 a lot of discovery. Indeed, everybody is sort of lined
6 up on your side, Mr. Wiley, and you should be able to
7 get the facts pretty easily without any motions for
8 protective order or anything. Mr. McNamara, do you
9 have shipper witnesses lined up at this point, people
10 who are willing to come forward and testify to the need
11 of this service?

12 MR. MCNAMARA: Absolutely, yes.

13 JUDGE MOSS: Could they be made available on
14 fairly short notice, within a month or six weeks?

15 MR. MCNAMARA: Yes. And something I want to
16 add to that, and I don't know how to break in --

17 JUDGE MOSS: You let me know you have
18 something to say and I'll let you say it.

19 MR. MCNAMARA: Pacific Cruises Northwest
20 already does operate, and they start in the middle of
21 May, I believe, and that some of the service from Mark
22 Goodman's permit that they are trying to acquire for
23 Orcas Island, Orcas Island hasn't probably been served
24 in at least five years since I've been in business even
25 though they do have the authority to stop there. That

0035

1 can come up in the future.

2 JUDGE MOSS: We would develop that as a
3 matter of evidence in the records. Anything else?
4 Mr. Fassio, you are leaning toward your mike?

5 MR. FASSIO: I think I would agree with the
6 idea of consolidating these in a joint process. Staff
7 has its own concerns about the viability of the
8 certificate and the dormancy issue of the certificate,
9 and I think the issue of whether territory is already
10 being served, and Mr. McNamara's certificate is germane
11 to that.

12 JUDGE MOSS: Can Staff develop its case in
13 four to six weeks?

14 MR. FASSIO: Yes, I believe.

15 JUDGE MOSS: That's the time frame we are
16 looking at. Mr. Wiley, I know you are going to be gone
17 for a period of time in April. Why don't we plan on a
18 hearing date in the sort of time frame I'm describing
19 there, and we will sort of do everything else around
20 that, and Mr. Wiley, I do want to tell you something
21 you already know, but for the benefit of the record, we
22 will get all of your evidence early, as I'm describing,
23 and there will be no impediment to an order following,
24 so I don't want you to leave with the impression that
25 I'm going to wait until everything in both dockets is

0036

1 done to take care of this transfer application. I will
2 do it as expeditiously as we can, so I do contemplate
3 we will end up having two orders in this; although they
4 may be fairly close in time. I wanted you to
5 understand that so you wouldn't feel as if you were
6 being prejudiced by the joint process here.

7 Today is March 31st, so we are looking at
8 sometime in May, I suppose. Let's be off the record.

9 (Discussion off the record.)

10 JUDGE MOSS: I've just indicated to the
11 parties the point that there are various procedural
12 vehicles by which the proceedings can be shaped as we
13 go forward. Mr. Wiley has expressed some concern about
14 the scope of the proceeding exceeding its statutory
15 bounds, and we would not want to let that occur and he
16 would not want to let that occur, so he might, for
17 example, file a motion in limine if someone proposes to
18 bring forward evidence that would be outside that
19 scope, and there are other procedural mechanisms as
20 well.

21 Not the least of which is some discussion
22 among the parties themselves concerning whether there
23 are issues that can be resolved or perhaps the entire
24 case can be resolved through some sort of negotiated
25 agreement, and we encourage that in all of our cases,

0037

1 and indeed, it has become our standard procedure in
2 prehearing conferences to establish a date for
3 settlement discussions in all cases, and this is in
4 response to a lot of discussion we've had with our bar,
5 and we think it's an appropriate thing to do, so we
6 will set that date, and it may bear fruit or it may
7 not.

8 We have discussed having our hearing early,
9 relatively speaking, and so we have set the date of May
10 18 for a full day's hearing in Seattle, and we will
11 follow that with a day in Bellingham on the 19th. The
12 purpose of the proceeding on the 18th will be focused
13 on the transfer application and the evidence
14 appropriate to that proceeding, and the focus on the
15 19th will be Mr. McNamara's application for new
16 authority and the witnesses and so forth appropriate to
17 that proceeding. We will discuss at the time of the
18 hearing whether there is any need for posthearing
19 written briefs or whether we will have oral argument or
20 whether we will have neither. We will see how
21 complicated things get.

22 It is appropriate to establish a date early
23 on as well for the parties to at least sit down
24 together and talk about these matters, and they can
25 discuss, perhaps, the resolution of one or more issues

0038

1 as to which there may not be any disputed facts. That
2 would at least simplify things, and it is possible the
3 parties may find some common ground upon which to
4 resolve the entire case, and Staff would be involved in
5 that as well. Mr. Wiley, when is it you are away?

6 MR. WILEY: April 12th through 21st.

7 JUDGE MOSS: In my view, it would be good if
8 you could get together for a meeting -- maybe you can
9 schedule a couple of hours or something and explore the
10 possibilities sometime prior to the 12th. Is that a
11 possibility for you, Mr. Wiley?

12 MR. WILEY: I will make it so, Your Honor.

13 JUDGE MOSS: Could you be available,
14 Mr. McNamara, within that time frame?

15 MR. MCNAMARA: Yes.

16 JUDGE MOSS: Mr. Fassio? Do you all want to
17 suggest a date to me, or should I pick one out?

18 MR. WILEY: The 7th?

19 JUDGE MOSS: That's a nice day. April 7th?
20 You all talk among yourselves off the record and decide
21 the logistics of how you want to do that recognizing
22 that Seattle is a fairly central location, not
23 perfectly central but fairly central. Again, the
24 wonders of modern telecommunications can assist in
25 these things too.

0039

1 MR. WILEY: If there is a chance of settling,
2 it's better to be in person than on the phone.

3 MR. FASSIO: I understand a lot of the staff
4 is going to be out of the office on April 7th.

5 MR. WILEY: Does that mean Bonnie?

6 MR. FASSIO: Yes.

7 MR. WILEY: We do need her.

8 JUDGE MOSS: What date works?

9 MR. WILEY: I've got the 6th.

10 JUDGE MOSS: Should we make it the 6th then?
11 Thursday the 6th, so I'll put that in the schedule.

12 I don't see that at this juncture we need to
13 establish any other procedural dates. Does everybody
14 have their facts lined up, or are you going to want to
15 ask other questions before we go into hearing. Do we
16 need to worry about discovery?

17 MR. MCNAMARA: Could you clarify discovery
18 for me?

19 JUDGE MOSS: Yes. Discovery is a process
20 whereby parties who need to have information from their
21 counterparties; in other words, Mr. Wiley's clients
22 may have been some information concerning their
23 operations that you think it's important to become part
24 of the record and that you don't really know the
25 information. So you could send them written questions

0040

1 asking for that information, and then they would have
2 obligations to provide it to you.

3 There are other forms of discovery, but that
4 is the most commonly used one at this commission is
5 just a set of written questions. They have to respond
6 within ten days, and if there is some confusion about
7 it, you all have to talk it about it and work it out.
8 If you absolutely cannot work it out, then you will
9 bring it to me and I will work it out for you. I don't
10 like that.

11 We have a good history in this particular
12 industry of parties cooperating and giving each other
13 what they need, and sometimes you have to understand
14 that you may be asked to provide information that you
15 might consider to be sensitive, financial information,
16 that sort of thing. The other side does have an
17 opportunity and a right to ask for that information,
18 and typically, it's important. The financial stuff is
19 important because that one of the express standards
20 under the statute is financial fitness.

21 So that sort of things come up, and you need
22 to be prepared for that as well. If there is something
23 that is particularly sensitive that you would be
24 concerned about getting out into the public, then we
25 can on request enter a protective order so that you can

0041

1 basically submit the information confidentially and it
2 will not become public. Mr. Wiley and his client will
3 get to look at it and Mr. Fassio and his client will
4 get to look at it, but it won't be publicly available.

5 MR. WILEY: Your Honor, at the risk of
6 evoking cynicism by a lawyer saying this, and I think
7 Bonnie will corroborate this, we have been very
8 concerned lately about the trend to invoke discovery in
9 transportation cases, which is unusual. As much as I
10 would like to see his financial documents ahead of time
11 and his exhibits, I am concerned about the cost that
12 has been incurring, and we historically have not done
13 it in transportation cases. I admit it slows things
14 down, but it does save money, in my opinion. I don't
15 know if Bonnie wants to chime in on this, but we have
16 both been somewhat concerned of the trend of late.

17 MR. FASSIO: I've heard too there has been
18 previous cases where discovery has been quite an issue.
19 From Commission staff's perspective, we have authority
20 to audit and inspect all the books. So Commission
21 doesn't need to invoke discovery rules in
22 transportation cases unless the parties --

23 JUDGE MOSS: Let's leave it this way. As you
24 all go back to your respective offices and start
25 outlining your respective cases and identify your needs

0042

1 for information, if you find that there is some piece
2 of information that you lack that you believe the other
3 side may have, then you can pick up the telephone and
4 give them a call and ask them for it, and we will
5 expect a good level of cooperation so as to avoid the
6 formalities of discovery, which can be expensive,
7 frankly.

8 For you, Mr. McNamara, since you are not an
9 attorney and you don't do this routinely, if you think
10 Mr. Wiley had procedural objections today, I can assure
11 you that in the context of a discovery dispute, he will
12 have many more. It gets complicated. We don't want to
13 put anybody to that unnecessary burden, so we will
14 leave this as an informal discovery principle for
15 today, and I don't anticipate any problems.

16 Again though, if there are any problems as
17 you go forward and you cannot resolve them by
18 discussing them among yourselves, which is a required
19 step before you bring it to me, then you bring it to me
20 and I will resolve it. I typically don't get
21 prehearing disputes anymore because people have learned
22 how little I like them. I think you all will work it
23 out.

24 I started to say before and perhaps I made
25 the point, I think we have all the procedural dates we

0043

1 need. Is there any other business the parties want to
2 bring to our attention today that we need to conclude
3 today? Apparently not. We have our basic process and
4 procedural schedule. There does not appear to be any
5 other business.

6 To the extent you file paper in this
7 proceeding, whether that be if you want to file
8 prefiled evidence or if we ultimately end up having
9 briefs or what have you, anything formal that you
10 submit in this proceeding, that will need to come
11 through our records center. You send it to the
12 executive secretary at our address, our street and PO
13 Box address, and you will need to send an original and
14 eight copies in this case. That's important. That's
15 for internal distribution. We have a number of people
16 that will be monitoring this docket and need to know
17 what's filed in it, so we will need an original and
18 eight. I will enter a prehearing conference order that
19 will outline all of this stuff. It's good to take
20 notes, but I will get that out next week.

21 MR. WILEY: Your Honor, my assistant always
22 argues with me about whether you or the office of
23 administrative hearing gets a separate copy. I say no
24 originally and the Commission distributes it, or are we
25 supposed to copy you as well on pleadings?

0044

1 JUDGE MOSS: The only time I ask to be
2 copied, and I just ask for a courtesy copy
3 electronically, is if there is some urgency with
4 respect to the time. Otherwise, I will get it next
5 day, typically. So if there is something that comes up
6 that is emergent that we need to resolve quickly, send
7 it to me as a courtesy, but it's not official until I
8 get a time-stamped copy anyway, but we make allowances.

9 Mr. McNamara, perhaps more for your benefit
10 than others, while there are a lot of formalities
11 involved in this type of thing and it looks a lot like
12 court and sounds a lot like court, we do try to be a
13 bit less formal, and we do try to be more flexible than
14 what you might encounter in that type of proceeding, so
15 you can call me and talk to me about process.

16 You can't talk to me about anything of
17 substance in the proceeding. You can't say, These guys
18 are doing thus and so. I can't hear that. That's
19 called ex parte contact and we can't have that kind of
20 communication, but you can call me if you have a
21 question about process or procedure, and Mr. Wiley and
22 Mr. Fassio are well familiar with that. Are there any
23 questions today?

24 MR. MCNAMARA: One question. All these
25 copies that I'm sending, do I need to send them to you?

0045

1 MR. WILEY: One copy.

2 JUDGE MOSS: I'm glad you raised that point
3 because it was part of Mr. Wiley's argument today
4 concerning procedural deficiencies, and I don't dispute
5 what he said. There were procedural deficiencies in
6 your protest to the extent there was no certificate of
7 service, for example.

8 The Commission's rules require that when you
9 file something in a proceeding, you serve it on all
10 other parties and that you attach to it a certificate
11 that says, I swear I served this on everybody today by
12 U.S. Mail or bank courier or whatever means you served
13 it, and that's what he was talking about when you
14 mentioned the certificate of service.

15 You can stop by our records center on the way
16 out where you will need to sign out anyway and ask them
17 for a copy of our procedural rules and they will
18 provide that to you. They are fairly lengthy, but you
19 will find that there are not many of them you need to
20 look at. Also, they are available on the Internet at
21 our Web site, which is wutc.wa.gov. Mr. Fassio?

22 MR. FASSIO: One question for the parties.
23 Do either of you intend to file any prefiled testimony
24 in this case or send a notice of expected witnesses for
25 all the parties?

0046

1 MR. WILEY: I can say, Your Honor, if I can
2 answer no, I don't like discovery. That tends to
3 increase the cost to the litigants, but I do think
4 Mr. Fassio has a very good point with respect to
5 witnesses in the new entry application. I would
6 request that you impose some sort of deadline as to the
7 notification of the witness, the number and names of
8 the witnesses who will be called by the Applicant.

9 JUDGE MOSS: That's a sensible suggestion,
10 and we've done that in other cases. I think we should
11 have an exchange of witness lists with respect to both
12 proceedings so we all have a sense of what's going to
13 occur and I can plan the hearing day better. So if we
14 are going to have a hearing on the 18th, I typically
15 ask for that sort of thing either the prior week or
16 certainly a few days prior. Did you have a specific
17 idea, Mr. Wiley, of which would be best from your
18 perspective in that way?

19 MR. WILEY: Possibly having witness lists
20 exchanged by Monday, May 15th is reasonable.

21 JUDGE MOSS: That's fine with me. So May
22 15th, the parties will exchange witness lists --

23 MR. WILEY: Including staff.

24 JUDGE MOSS: Do we need to exchange exhibits
25 before the hearing? Are we going to have a whole lot

0047

1 of exhibits? Mr. Wiley, you may have the most document
2 intensive.

3 MR. WILEY: I would think that we will have
4 some exhibits. I don't have a problem exchanging them
5 24 hours before the hearing, if that helps. I
6 certainly want the new entry applicant to do the same.

7 JUDGE MOSS: Everybody is going to operate
8 under the same rules. Let's say this then. Since we
9 are exchanging witness lists on May 15th, to the extent
10 parties have identified documents by then that they
11 intend to put on the record, go ahead and provide those
12 to the other parties. You would have to do that at
13 hearing anyway. Provide those in advance, and you
14 won't need to bring a separate set to the hearing, and
15 also provide them to me, and that way, I will have a
16 full set of exhibits, or probably nearly full, and I
17 can go ahead and mark them, and that will save time at
18 hearing.

19 I would prefer that all of this be done by
20 overnight courier. So when you send things out on the
21 15th, have it so it will be delivered by the morning of
22 the 16th. So use Federal Express or UPS one-day
23 service or whatever is out there.

24 MR. WILEY: I don't want to forget to ask you
25 to underscore -- you started and then I think we got

0048

1 interrupted -- I am concerned about service on the
2 transferor in this proceeding. I want to underscore
3 the importance of everyone serving Mr. Goodman. He is
4 going to be pro se, I understand it, and we are jointly
5 here today because of the prehearing conference.

6 JUDGE MOSS: I think it's appropriate that
7 Mr. Goodman be kept in the loop. So yes, despite the
8 fact that he's not here today and has not entered an
9 appearance, we will keep him in the loop. Does
10 everybody have his address?

11 MR. MCNAMARA: I can find it.

12 MR. WILEY: It's in the Certificate of
13 Service on the Motion to Strike, Your Honor.

14 JUDGE MOSS: I had already put him on the
15 list of parties' representatives that will be part of
16 the prehearing order, so you will all have that as
17 well. I suppose I have to ask on the record, does
18 Island Mariner, are they doing any service out there
19 independent of this joint service that's described?

20 MR. WILEY: I'm being told no.

21 JUDGE MOSS: Fine. Anything else? That will
22 conclude our business for today. I thank you all very
23 much for being here, and I look forward to working with
24 you to bringing these proceedings to a satisfactory
25 resolution on a fairly expeditious schedule, and I

0049

1 encourage you to work cooperatively among yourselves to
2 the extent appropriate to facilitate the smooth conduct
3 as we go forward, so thank you.

4 (Prehearing conference adjourned at 11:00 a.m.)

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