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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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4 In re Application of TC-110733 of) DOCKET TC-110733
5 EXCALIBUR LIMOUSINE LLC)
6 d/b/a SEATTLE GREEN LIMO)
7 For a Certificate of Public Convenience)
8 and Necessity to Operate Motor)
9 Vehicles in Furnishing Passenger and)
Express Service as an Auto)
Transportation Company)

10

PREHEARING CONFERENCE, VOLUME I

11

Pages 1-20

12

ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

13

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1:46 P.M.

15

AUGUST 3, 2011

16

17 Washington Utilities and Transportation Commission
18 1300 South Evergreen Park Drive Southwest, Room 108
19 Olympia, Washington 98504-7250

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A P P E A R A N C E S

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ADMINISTRATIVE LAW JUDGE:

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FOR WASHINGTON UTILITIES AND
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FOR THE PROTESTANT, SHUTTLE EXPRESS, INC.:

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OLYMPIA, WASHINGTON, AUGUST 3, 2011

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1:46 P.M.

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P R O C E E D I N G S

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JUDGE TOREM: Let's be on the record in Docket

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TC-110733. It is Wednesday afternoon, August the 3rd. It's now

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a little after 1:45.

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This is the application of Excalibur Limousine, LLC.

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My name is Adam Torem. It's spelled T-o-r-e-m. I'm the

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Administrative Law Judge assigned to preside over this hearing

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today on behalf of the Washington Utilities and Transportation

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Commission.

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We are convening in Room 108 at the Commission's

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headquarters in Olympia. We waited until 1:45 because the

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Applicant has not yet made an appearance. We are waiting to see

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if someone out at the lobby is going to be this person or not.

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In the meantime, we're going to take appearances from

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those who are here. Let's start with Commission Staff.

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MR. TRAUTMAN: Thank you, Your Honor. Gregory J.

21

Trautman, Assistant Attorney General, for Commission Staff. My

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address is 1400 South Evergreen Park Drive Southwest, Olympia,

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Washington, Post Office Box 40128, area [sic] code 98504.

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My telephone number is 360.664.1187. My e-mail

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address is gtrautma@utc.wa.gov. My fax number is 360.586.5522.

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1 JUDGE TOREM: All right. Thank you, Mr. Trautman.
2 The Protestant is here.

3 MR. ROWLEY: Good afternoon, Your Honor. John
4 Rowley, President of Shuttle Express. It's R-o-w-l-e-y. And we
5 are at 800 Southwest 16th Street in Renton, Washington.

6 JUDGE TOREM: And I think we have the rest in the
7 protest itself that was filed, Mr. Rowley, and you've got all
8 the contact information already in the record, so --

9 MR. ROWLEY: Right.

10 JUDGE TOREM: -- I won't have you read that back.

11 At this point we were expecting to see someone from
12 Excalibur Limousine, I'm presuming Kevin Williams. He was the
13 one that filed the application back on April 26th of this year.
14 He was seeking passenger service using his limousines by
15 reservation only for King County hotels between a couple of
16 cruise ship piers, No. 66 and 91.

17 From what I was able to glean from what was in the
18 records and management filings, the docket was published -- the
19 transportation docket was published on June the 7th and included
20 this application, and, Mr. Rowley, your company filed a protest
21 on July the 5th.

22 Mr. Trautman, is there any indication that that
23 protest is not timely?

24 MR. TRAUTMAN: Uh...

25 JUDGE TOREM: I think it's 30 days we needed to have

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1 it in?

2 MR. TRAUTMAN: We don't have any -- the Staff has no
3 objection to the timeliness; however, we do have -- we do
4 believe that the protest is not well-taken for lack of standing,
5 and I can explain that if you would like.

6 JUDGE TOREM: Okay. We may or may not get to that
7 issue today, depending on whether there's going to be standing
8 of any sort to take in the application.

9 MR. TRAUTMAN: Do you want me to just indicate
10 briefly so that -- for the record, the basis?

11 Well, the Staff has -- the Staff has reviewed the
12 protest and reviewed the certificate of Shuttle Express that was
13 filed with that, and as we've carefully reviewed the existing
14 authority, none of the authority that the Staff can see covers
15 the routes in question. It covers several routes to and from
16 various airports and various points within King, Snohomish, and
17 in some -- perhaps other counties, but there is -- there's no
18 existing authority in the certificate to go from the hotels to
19 the piers, and, therefore, we believe there would be lack of
20 standing under the protest statute.

21 And we would remark -- we'd note a very similar case
22 that involves Shuttle Express and Sea-Tac Airport, and it was an
23 order issued by the Commission in Docket TC-091931. It was
24 Order No. 5, the final order, and served on April 14th of this
25 year. And that case is remarkably similar. It was technically

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1 deemed not a protest, but that in that case, it was deemed to be
2 an intervention. But the policy -- the policy interest or the
3 policy matters expressed by the Commission are identical, and
4 that was the case where SeaTac Shuttle was seeking authority
5 regarding whether they could provide service and vehicles no
6 larger than seven-passenger vans.

7 SeaTac Shuttle intervened and protested against it.
8 The Commission said, Well, if SeaTac Shuttle does not have
9 authority to do the service in question, then they essentially
10 don't have a substantial enough interest to intervene and they
11 would not be specifically harmed and that their -- they can't
12 simply intervene to ensure legal compliance or compliance with
13 the laws.

14 The Commission held that allowing of that would
15 provide too great an opportunity to strategically employ
16 Commission processes in pursuit of personal goals --

17 (Reporter interruption for clarification.)

18 MR. TRAUTMAN: -- and Staff believes the same policy
19 is in play here regarding the protest rule, which is 480-30-116,
20 which likewise requires protesters to specify the reasons for
21 the protest and specify their interest in the proceeding.

22 So the position of the Staff is that the protest
23 should be dismissed on that basis.

24 JUDGE TOREM: Okay. I'm going to have Mr. Rowley,
25 perhaps, respond to that, but I think the underlying issue we

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1 have is we have an application that's been protested. We have
2 an application that would need to have some form of proof of the
3 Applicant's ability to handle this in the first place, so to me
4 the threshold issue today before me is where's the Applicant and
5 if the Applicant does show up, there would be a burden of proof
6 on the Applicant regardless of the protest to go forward.

7 Is the Staff's position that the application can
8 proceed if the protest is stricken without an Applicant being
9 here today?

10 MR. TRAUTMAN: Right. Staff has not analyzed it yet,
11 but had there been no protest, there would be no hearing. But
12 applications can still be reviewed and are reviewed by Staff for
13 fitness and ability to serve on a regular basis, though it would
14 not go through a hearing.

15 JUDGE TOREM: Okay. Mr. Rowley, then I think that
16 the Commission Staff is asking me to rack and stack the issues
17 differently.

18 We can look at the protest itself first, and then
19 deal with the application because it may have -- even if he's in
20 default here, the hearing is only being held, if I understand,
21 Mr. Trautman, because of the protest?

22 MR. TRAUTMAN: Correct.

23 JUDGE TOREM: And the Staff would have been able to
24 review this with Mr. Williams and determine if they would find
25 him fit and able to provide the service without an

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1 Administrative Law Judge forcing all of the issues onto a record
2 formally, but it would have been an informal review; is that
3 right, Mr. Trautman?

4 MR. TRAUTMAN: Yes.

5 JUDGE TOREM: So I don't know that I want to decide
6 the issue of the protest and whether you have standing or not
7 today, but if you want to respond to that, we might be able to
8 set up a motion hearing or something in the next couple of weeks
9 or if -- longer, if timeliness for you is required, take more
10 time to do some research.

11 It may also be the question of interpretation of the
12 certificate, and there may be a difference of opinion on that.
13 And if that's the case, then the Commission will have to make a
14 formal interpretation as to what's covered by the language in
15 the certificate, something that's perhaps, you know, a
16 difference of reasonable minds.

17 I have read through enough of these certificates to
18 know they're not always clear depending on how you read them.
19 If I recall correctly, some of the issues that came up in -- if
20 it's the same case -- TC-091931. There were different readings
21 of certificates presented to me at the initial order stage, if
22 that's the same case. I don't remember the docket, but -- I'm
23 seeing nodding heads that, yes, they were.

24 So what that certificate actually says -- I don't
25 know if it's been fully adjudicated, Mr. Trautman, by the

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1 Commission -- to say, Yes. This is a map, and this is the only
2 place that Shuttle Express operates, and these are the areas
3 it's excluded from. But there were --

4 MR. TRAUTMAN: Are you referring to the other case?

5 JUDGE TOREM: In the other case or in any other
6 adjudication because I'm simply concerned that there were
7 arguments in that case, if I recall, and that record would
8 reflect any arguments over which areas Shuttle Express's
9 authority did or didn't include the limitations on the vans, and
10 where you've had merging certificates, how that did or didn't
11 impact their full areas of operation and authority.

12 That wasn't reached in that case, but it was
13 certainly discussed and presented, and it raises in my mind the
14 question of whether your interpretation of Shuttle Express's
15 certificate is the service they think they're authorized to
16 provide because the nature of their protest says otherwise.

17 MR. TRAUTMAN: I understand, Your Honor. I don't
18 think the issue you're describing -- certainly it's not
19 reflected in the final order.

20 JUDGE TOREM: No. I think it was maybe discussed in
21 the initial order, and you'll find it in the record as to how
22 SeaTac Shuttle characterized authority held by Shuttle Express,
23 then Shuttle Express characterized their own authority. It
24 didn't -- it turned out to be a deciding factor in that case at
25 the initial or the final order level, but it certainly was an

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1 issue that there -- what I'm suggesting, I guess, in a long way,
2 is there may be room for factual disputes here which would
3 require a hearing on what exactly is the standing of the
4 Protestant today.

5 So, Mr. Rowley, based on the protest, can you give me
6 a quick recitation of -- I believe your protest said that you
7 already provide the service or could provide the service, and if
8 there's capacity, you would provide the service or would want
9 to.

10 Can you explain again the basis of the protest
11 hearing now what Mr. Trautman's presented as suggesting that
12 there's no standing?

13 MR. ROWLEY: Yeah. We believe that we do have
14 standing as our certificate has -- as written. We are currently
15 providing service from the hotels to the piers as indicated in
16 our tariff, and we certainly have more capacity to add more
17 service if required.

18 JUDGE TOREM: Mr. Trautman, if they're currently
19 providing the service and it's not authorized by the
20 certificate, what's the Commission's position on that?

21 MR. TRAUTMAN: I think the Commission's position
22 would be that filing of a tariff is not sufficient. The
23 authorization has to be granted in the certificate.

24 And the fact that a tariff may have gone through on
25 one business day's notice does not therein and thereafter

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1 substitute for having to have authority in the certificate.

2 JUDGE TOREM: Okay. And what's the Commission's
3 Staff's recommendation on how to proceed, then? Should that
4 particular issue be set for briefing?

5 MR. TRAUTMAN: Well, I don't know that that would
6 be -- I'm not sure that should be incorporated into -- well,
7 into this docket. If that's the conclusion of the Commission,
8 that would not involve Excalibur.

9 JUDGE TOREM: Well, I guess we're here for
10 Excalibur --

11 MR. TRAUTMAN: That's right.

12 JUDGE TOREM: -- who's the only party who's not in
13 front of us today.

14 MR. TRAUTMAN: That's right.

15 JUDGE TOREM: And yet I guess I'm asking you: Is
16 there going to be a motion for default whether it's --
17 Mr. Rowley could certainly make one to hold Mr. Williams and
18 Excalibur in default.

19 Will the Commission Staff be joining in such a motion
20 or opposing such one or abstaining when Mr. Rowley's given the
21 opportunity to do so?

22 MR. TRAUTMAN: Well, let me take a second.

23 Right. We would not support the motion for default
24 because our position is there shouldn't be standing for the
25 protest in the first place. We would abstain from the motion.

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1 The Staff's position is that the Excalibur petition
2 can be -- can be held outside of the hearing that was set up
3 solely for the protest, which the Staff believes there is no
4 standing for.

5 JUDGE TOREM: Okay. Is there anything else from the
6 Staff before I turn back to Mr. Rowley on the issue of
7 Excalibur's failure to appear today?

8 MR. TRAUTMAN: No.

9 JUDGE TOREM: Okay. So, Mr. Rowley, we've
10 established some issues that may or may not prove relevant on
11 the protest.

12 Did you have anything else you wanted to add other
13 than you think differently from the Staff about standing in the
14 protest?

15 MR. ROWLEY: No, other than to file a motion to ask
16 for default.

17 JUDGE TOREM: Okay. Well, we will just do that
18 verbally today. We don't need to file it.

19 But when I reviewed the prehearing conference order
20 while we were waiting at 1:30 --

21 MR. TRAUTMAN: Your Honor, can I make one point?

22 I guess the point being that we would abstain from
23 taking a position on the motion to default, but the Staff does
24 not believe that -- even if there's a default, the Staff does
25 not believe that would definitively preclude Excalibur from

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1 having their application reconsidered by the Staff.

2 JUDGE TOREM: And so everyone else in the room is
3 clear by what you mean on that, if this docket is dismissed and
4 held -- they're held in default on an initial order of dismissal
5 as entered, there would have to be a separate filing and a new
6 docket assigned and a new advertisement in the docket; is that
7 correct?

8 MR. TRAUTMAN: I believe that's correct, yes.

9 JUDGE TOREM: So if he refiles --

10 MR. TRAUTMAN: Yes.

11 JUDGE TOREM: -- and the protest is then refiled
12 through the new application, we'll be back for another
13 prehearing conference?

14 MR. TRAUTMAN: If the Commission doesn't make a
15 decision or doesn't render a decision on whether the protest is
16 well-taken.

17 I mean, the Staff -- as we have said, the Staff would
18 independently pursue the issue of the authority -- or the issue
19 of whether Excalibur should be deemed fit, willing, and able.

20 (Reporter interruption for clarification.)

21 MR. TRAUTMAN: I don't know if I'm making that clear
22 or not, but -- because Your Honor is suggesting if there's a
23 refile, there could be another protest.

24 Well, unless the Commission decides that there isn't
25 standing for the protest, in which case the application would be

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1 considered by Staff independently as Staff has done in other
2 applications.

3 Is Your Honor asking about the authority -- authority
4 regarding the -- regarding Excalibur, or the authority for
5 Shuttle and how that's going to be resolved?

6 JUDGE TOREM: The docket before me is about
7 Excalibur.

8 MR. TRAUTMAN: Excalibur only.

9 JUDGE TOREM: If there's a separate issue to be taken
10 up from this -- hypothetically, if I take Mr. Rowley's motion
11 and your abstention and I read the prehearing conference order
12 that says, Notice is given. If you fail to attend, you may be
13 held in default, Excalibur is the party that's going to held in
14 default today, and then this docket will go away.

15 There will be no other issues for me to take up as to
16 Shuttle Express, and whether the protest they file now or later
17 or ever again is relevant until I have a docket in which to
18 discuss that. I don't think that I want to get into the
19 business of giving an advisory opinion on an illusory, you know,
20 case. There's nothing here to decide.

21 If Mr. Williams got the prehearing conference notice,
22 paid his fee, and knew he was under some obligation to appear
23 today and doesn't, I think I understand that he can be held in
24 default.

25 There's no -- you've had no contact with him --

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1 MR. TRAUTMAN: Right.

2 JUDGE TOREM: -- since the application has been
3 filed; is that correct?

4 MR. TRAUTMAN: As far as I know, that's correct. But
5 had there been no protest filed, then he would not have had to
6 appear. His application could have been considered by the
7 Staff.

8 JUDGE TOREM: I certainly understand that. But once
9 a protest is filed, whether it has merit or not, it doesn't say
10 on its -- if Mr. Rowley filed a clearly frivolous protest just
11 to cause this to happen, perhaps there would have been a motion
12 filed in advance to strike the hearing and have it dismissed.
13 But that wasn't filed.

14 What you're telling me today, and I think we've come
15 to agreement, is there have to be some factual issues
16 established to support your argument. It's not by matter of law
17 that they don't have standing. It's a factual question and then
18 a legal question if they have a substantial interest.

19 MR. TRAUTMAN: That's what -- that's what the Bench
20 is saying, yes.

21 JUDGE TOREM: And I think we'd have to have a legal
22 decision, findings of fact and conclusions of law --

23 (Cell phone rings.)

24 JUDGE TOREM: -- that tell us whether or not the
25 Commission staff's position is correct.

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1 You've cited to a case with analogous issues, but are
2 you saying that's precedent for this case?

3 MR. TRAUTMAN: Well, on that, I would say it would
4 control if the certificate authority reads as we contend, as the
5 Staff believes it reads.

6 JUDGE TOREM: And I'm --

7 MR. TRAUTMAN: And I'm not sure that requires an
8 extensive factual hearing to review -- to review the authority
9 that's set forth in the certificate.

10 JUDGE TOREM: I'm simply suggesting that whether it's
11 an extensive fact-finding hearing or not, you would ask me to do
12 that today and have that hold up to make sure there's
13 essentially a preventive order from future protests regarding
14 this particular routing. I would have to make some kind of
15 decisive map and otherwise figure out what Shuttle Express's
16 certificated territory is, and, therefore, we have a filter upon
17 any future Shuttle Express protests that come in and say, Do
18 they fit this map, and if they don't, they have no standing.

19 That seems like it would be a proceeding where
20 Shuttle Express has more due process that should be offered to
21 them than today me simply saying, Sorry. I agree with
22 Mr. Trautman based solely on the assertion that he reads your
23 certificate differently than you do.

24 They have a property interest in this, and that's why
25 they're here to protect it. Whether they're right or not, I

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1 don't think I need to decide because the Applicant that wants to
2 potentially infringe on their territory, in their viewpoint,
3 hasn't deemed it worthy to show up today.

4 So whether he's inconvenienced and needs to be here
5 or not, that's the way due process rolls. And he has not played
6 his role in it, so I don't have an ability to take this matter
7 up and determine standing and have him argue what he wants, have
8 you argue what you want, and then give Mr. Rowley an option to
9 do that as well.

10 Mr. Williams has kind of taken that away from me, and
11 I don't know of a way to create a new artificial sub-docket on
12 the what-if docket that allows Shuttle Express to be told, No
13 more protest from you for future applications, whether from
14 Mr. Williams, or anybody else that wants to serve those piers.
15 I guess it's just not right. I'm not seeing this as something I
16 can decide today and preclude Shuttle Express in the future if
17 he refiles.

18 What I can do today is enforce the provision under
19 the Administrative Procedures Act about defaults. That's the
20 only thing that's -- you can abstain from it today, and you can
21 say, But for this, it wouldn't happen.

22 I suppose that in a rate case, but for the Commission
23 Staff arguing it should be suspended, PSE could raise rates all
24 day, any day.

25 We don't allow that to happen, so I'm not going to

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1 keep Shuttle Express from handling their protest without
2 Mr. Williams here to explain exactly what he wants. And it may
3 very well be that if Mr. Williams had shown up today, that the
4 three parties could sit around and discuss whether or not
5 there's an exclusion or misunderstanding. He can make his
6 position known as to why he thought this wasn't certificated
7 territory, and we could have a factual presentation on that.
8 He's just deprived me of the ability to do that, and I see the
9 issues in a different order; that default shows up first and
10 after that, there's nothing else to take up.

11 If the Commission wants to file its own complaint or
12 proceeding on whatever the process is to determine on facts what
13 Shuttle Express's current territory is, there must be a way to
14 do that, but I'd leave that up to Commission Staff. And if this
15 becomes a recurring issue where protests are coming in and
16 becomes something that's not just an advisory opinion for one
17 limousine company that doesn't care to come to Olympia, so be
18 it, but it won't be in this docket.

19 So my thought today is, Mr. Rowley, that since the
20 Commission is abstaining and there's no argument against the
21 motion -- it's clear that we've given Mr. Williams plenty of
22 time to show up -- I was going to clarify that we did not use
23 the bridge line today. It was not made available in the
24 prehearing conference order and was going to be in use by
25 another agency, the Energy Facility Site Evaluation Council.

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1 Their meeting is over, but the bridge line is not on. The
2 Record Center Staff was informed that if anybody called saying
3 they couldn't make it and they thought they could appear by
4 phone, to let me know, and they haven't done so, and it's now 40
5 minutes after the scheduled time of the hearing.

6 Mr. Trautman, is there anything else that you want to
7 be heard on from the Commission's perspective on the default?

8 MR. TRAUTMAN: No, sir.

9 JUDGE TOREM: Okay. So I'm going to grant the motion
10 for default. I will enter in writing a version of the initial
11 order of default. I will make probably a one-summary paragraph
12 in there that there was a record made as to the protest and
13 whether there's standing.

14 I'll leave that to the two parties if there's further
15 discussion off the record, but I'll make one note of that in the
16 initial order that goes out next week dismissing this docket and
17 just, again, stating that this argument was raised but not taken
18 up.

19 Anything else for today, then?

20 MR. TRAUTMAN: No.

21 JUDGE TOREM: All right. So at 12 minutes after two,
22 the motion for default is granted, and the order will be entered
23 in writing in the next week or so at the latest.

24 And we are adjourned.

25 (Proceeding concluded at 2:11 p.m.)

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C E R T I F I C A T E

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3 STATE OF WASHINGTON)
4 COUNTY OF KING) ss

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6 I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter
7 and Notary Public in and for the State of Washington, do hereby
8 certify that the foregoing transcript is true and accurate to
9 the best of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal
11 this 9th day of August, 2011.

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SHELBY KAY K. FUKUSHIMA, CCR

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17 My commission expires:
18 June 29, 2013

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