

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

In re Application No. B-079240 of	)	DOCKET NO. TS-031996
	)	
PACIFIC CRUISES NORTHWEST,	)	
INC., d/b/a VICTORIA SAN JUAN	)	
CRUISES	)	ORDER NO. 01
	)	
For a Certificate of Public	)	PREHEARING CONFERENCE
Convenience and Necessity to	)	ORDER
Provide Commercial Ferry Service	)	
	)	
.....	)	

1 **NATURE OF PROCEEDING.** Docket No. TS-031996 is an application by Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises (PCN or the Applicant) for a certificate of public convenience and necessity to provide passenger-only ferry service between Bellingham and Friday Harbor, Washington.

2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington on June 15, 2004, before Administrative Law Judge Karen M. Caillé.

3 **APPEARANCES.** David W. Wiley, Williams, Kastner & Gibbs PLLC, Seattle, Washington, represents the Applicant, Pacific Cruises Northwest. Polly McNeil, attorney, Summit Law Group, LLC represents Protestant San Juan Island Shuttle Express, Inc. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).<sup>1</sup> Contact information provided at the conference for the parties’ representatives is attached as Appendix A to this order.

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<sup>1</sup> In formal proceedings, such as this case, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding

4 **PROTESTANT.** San Juan Island Shuttle Express, Inc. filed a timely protest to the docketed application.

5 **PETITIONS FOR INTERVENTION.** No written petitions to intervene were filed, nor did anyone petition to intervene orally at the prehearing conference.

6 **ISSUES.** The parties discussed several legal issues and agreed that these issues should be presented in the form of a motion or motions. Among the issues discussed were the following:

- Must Applicant demonstrate that Island Mariner Corp., which provides passenger ferry services similar to what is sought by Applicant, has failed or refused to furnish reasonable and adequate service, or has failed to provide the service described in its certificate, when Island Mariner Corp. does not protest the application?
- Is the applied-for territory served by the Protestant? The Commission granted Protestant a temporary discontinuance of service conditioned on Protestant resuming service should an immediate need arise for commercial ferry service. The discontinuance of service has lasted for three years. Under these circumstances, is there an appropriate time frame for examination of Protestant's service, and if so, what is it?
- What is the effect on entry based on the 2003 amendment to RCW 81.84.020, Application—Hearing—Issuance of certificate—Determining factors, which adds subsection (4) which requires the commission to “consider and give substantial weight to the effect of its decisions on

public agencies operating, or eligible to operate, passenger-only ferry service.”

- Is the application deficient, and should the application proceeding be stayed because the application does not include a pro forma financial statement of operations as required by WAC 480-51-030? The parties agreed that Applicant could cure this deficiency by filing its pro forma by June 30, 2004.

7 **PROCEDURAL SCHEDULE.** The parties agreed upon a procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B, and incorporated into the body of this Order by this reference. **The evidentiary hearing will be held on September 22 and 23, 2004 in Bellingham, Washington. One of the days the hearing may be held in Friday Harbor to accommodate witnesses who will testify on the need for the Applicant’s proposed service. Parties will be notified by separate notice of the location and start time of the hearing.**

8 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file with the Commission **an original plus 8** copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

9 All filings must be mailed or delivered to the Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

- 10 An electronic copy of all filings must be provided by e-mail delivery to <[records@wutc.wa.gov](mailto:records@wutc.wa.gov)>. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).
- 11 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Pursuant to WAC 480-07-145(6), the presiding officer may grant parties a one-day extension of the paper-filing requirement, allowing electronic submission of documents with the Commission on the filing deadline. Parties may only submit documents electronically with the Commission in this proceeding with the permission of the presiding officer. If, at any time during this proceeding, parties are authorized to file documents with the Commission electronically under WAC 480-07-145(6), Parties must submit the document to [records@wutc.wa.gov](mailto:records@wutc.wa.gov), and file **an original, plus 8** paper copies, of the document with the Commission by the following business day.
- 12 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at (360) 664-1142.
- 13 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 17th day of June, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KAREN M. CAILLÉ  
Administrative Law Judge

**APPENDIX A**

**PARTIES' REPRESENTATIVES  
DOCKET NO. TS-031996**

<b>COMPANY</b>	<b>REPRESENTAIVE AND ADDRESS</b>	<b>PHONE</b>	<b>FACSIMILE</b>	<b>E-MAIL</b>
<b>Pacific Cruises Northwest d/b/a Victoria San Juan Cruises</b>	<b>DAVID W. WILEY Williams, Kastner &amp; Gibbs PLLC Two Union Square 601 Union Street Suite 4100 Seattle, WA 98101-2380</b>	<b>206-233-2895</b>	<b>206-628-6611</b>	<a href="mailto:dwiley@wkg.com"><b>dwiley@wkg.com</b></a>
<b>San Juan Island Shuttle Express, Inc.</b>	<b>POLLY L. MCNEIL Summit Law Group, LLC 315 Fifth Avenue South Suite 1000 Seattle, WA 98109</b>	<b>206-676-7040</b>	<b>206-676-7041</b>	<a href="mailto:pollym@summitlaw.com"><b>pollym@summitlaw.com</b></a>
<b>Commission Staff</b>	<b>JONATHAN THOMPSON Assistant Attorney General 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128</b>	<b>360-664-1225</b>	<b>360-586-5522</b>	<a href="mailto:jthompo@wutc.wa.gov"><b>jthompo@wutc.wa.gov</b></a>
<b>Administrative Law Judge</b>	<b>KAREN M. CAILLÉ Washington Utilities and Transportation Comm'n 1300 S. Evergreen Park Dr. SW P.O. Box 47250 Olympia, WA 98504-7250</b>	<b>360-664-1136</b>	<b>360-664-2654</b>	<a href="mailto:kcaille@wutc.wa.gov"><b>kcaille@wutc.wa.gov</b></a>

**APPENDIX B**  
**PROCEDURAL SCHEDULE**  
**DOCKET NO. TS 031996**

<b>EVENT</b>	<b>DATE</b>	<b>INTERVAL</b>
Company's Pro forma financial statement of operations	June 30, 2004	—
Parties will exchange letters that list the information they seek from each other to prepare their motions. Information listed may include request for information from 3 <sup>rd</sup> party, Island Mariner, which is not a party to this proceeding.	July 7, 2004	7 days
Motions on the various legal issues	August 3, 2004	27 days
Responses to the Motions	August 31, 2004	28 days
Ruling on Motions	September 10 or 13, 2004	10 or 13 days
Evidentiary hearing in Bellingham/Friday Harbor	September 22-23, 2004 (Location and Time TBD and separate notice provided)	12 or 15 days
Initial post-hearing briefs	To Be Determined, may not be necessary.	—
Post-hearing reply briefs	To Be Determined, may not be necessary.	—