

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In re Application TS-121395

Docket TS-121395

Pacific Cruises Northwest, Inc. d/b/a
San Juan Cruises

APPLICANT'S RESPONSE TO
MOTION TO DISMISS APPLICATION

1 Pursuant to WAC 480-07-380(c), Applicant, Pacific Cruises Northwest, Inc., ("PCNW"), 355 Harris Avenue, Suite 104, Bellingham, WA 98225, responds to protestant Sean McNamara d/b/a/ Bellingham Water Taxi's ("McNamara") Motion to Dismiss Application TS-121395 served December 11, 2012.

2 As indicated in McNamara's Motion to Dismiss, the above application was filed on or about August 24, 2012 and Notice of the application was published in the Commission's Docket August 31, 2012. Along with the Protestant's application, these matters have been consolidated for hearing now set for January 31, 2013 and February 1, 2013 before Administrative Law Judge Adam Torem and the Commission in Olympia, Washington.

3 A prehearing conference was convened on the consolidated applications in Olympia on November 6, 2012 before the Administrative Law Judge where various scheduling and other procedural matters were determined.

4 RCW 81.84.020(1) clearly establishes a requirement for commercial ferry applications that the Commission has the power:

..., *after notice and an opportunity for a hearing*, [to] issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate any terms and conditions as in its judgment the public convenience and necessity may require;... [*Emphasis added*].

This statutory requirement clearly envisions presentation of evidence on the public convenience and necessity requirement which is the primary focus, in addition to applicant fitness issues, of the hearing.

5 Nevertheless, the Protestant now moves for dismissal because of failure to produce evidence of shipper support alluded to as a caveat in the application which obviously relates to applications which remain unprotested after docketing which the Commission would still be required to evaluate for evidence of need even in light of its unprotested status.

6 WAC 480-51-030 is the definitive rule on application submissions to the Commission and nowhere in WAC 480-51-030 is there a requirement by rule that shipper support statements be submitted with an application. Again, the practice at hearings, of which applicant has had considerable experience before the Commission, is that evidence of need is presented and cross-

examined at the hearing. Protestant is certainly aware of this practice and has filed this Motion without cause.

- 7 Moreover, Applicant intends to fully comply with the Prehearing Conference Order which controls this proceeding and will disclose prospective witnesses on the public convenience and necessity issue under the current deadline imposed by the Prehearing Conference Order. No Motion to Dismiss is appropriate until and unless that initial requirement is not complied with. Moreover, admonitions or staff instructions on applications are not determinative or otherwise superseding of Commission rules or statutes on certificate applications. The application policy alluded to by the Protestant is also expressly conditional on its face.
- 8 Finally, WAC 480-07-395(4) is also pertinent to this issue. The Commission affords liberal construction to pleadings and submissions before it and to grant Protestant's Motion at this preliminary stage of the proceeding would be both contrary to rule and the public interest in prematurely foreclosing applicant's due process rights to present evidence in support of its commercial ferry certificate application at the public hearing now scheduled in this proceeding.
- 9 PCNW therefore asks that Protestant McNamara's Motion to Dismiss be denied.

DATED this 12th day of December, 2012.

Respectfully submitted,

PACIFIC CRUISES NORTHWEST, INC.,



By: Drew M. Schmidt, its President

CERTIFICATE OF SERVICE

I hereby certify that on December 12th, 2012, I caused to be served the original and nine (9) copies of the foregoing document to the following addresses via first class mail, postage prepaid to:

David Danner, Executive Director and Secretary
Policy and Legislative Issues
Washington Utilities and Transportation Commission
PO Box 47250
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Olympia, WA 98504-7250

I certify I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via e-mail to: records@utc.wa.gov.

I also certify that I have served via email and first class mail the foregoing document on:

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Signed at Bellingham, Washington this 12th day of December, 2012.



Drew M. Schmidt