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1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

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4 In the Matter of the                   ) Volume I  
Applications of                   ) Pages 1-48  
5                   )                   )  
Dutchman Marine, LLC, d/b/a       ) Docket No. TS-001774  
6 Lake Washington Ferry Service, )  
for Authority to Provide        )  
7 Commercial Ferry Service;       )  
  )  
8 Seattle Ferry Service, LLC,       ) Docket No. TS-002054  
for Authority to Provide        )  
9 Commercial Ferry Service; and   )  
  )  
10 Seattle Harbor Tours Limited     ) Docket No. TS-002055  
Partnership, for Authority to    )  
11 Provide Commercial Ferry        )  
Service.                            )  
12 \_\_\_\_\_)                   )

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14                   A hearing in the above matter was  
15 held on March 7, 2001, at 1:33 p.m., at 1300  
16 Evergreen Park Drive Southwest, Olympia, Washington,  
17 before Administrative Law Judges DENNIS MOSS and  
18 WILLIAM E. HENDRICKS.

19

20                   The parties were present as

21 follows:

22                   SEATTLE HARBOR TOURS, by Gregory  
J. Kopta, Attorney at Law, Davis, Wright, Tremaine,  
23 LLP, 2600 Century Square, 1501 Fourth Avenue,  
Seattle, Washington, 98101.

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Barbara L. Nelson, CSR  
25 Court Reporter

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1 SEATTLE FERRY SERVICE, by David A.  
Wiley, Attorney at Law, Williams, Kastner & Gibbs,  
2 Two Union Square, 601 Union Street, Suite 4100,  
Seattle, Washington 98111-3926.

3  
4 DUTCHMAN MARINE, by John M. Hugg,  
Attorney at Law, 2101 Fourth Avenue, Suite 2400,  
Seattle, Washington 98121-2320.

5  
6 CITY OF SEATTLE, by Gordon B.  
Davidson, Attorney at Law, 600 Fourth Avenue, Tenth  
Floor, Seattle, Washington 98104. (Appearing via  
7 teleconference bridge.)

8 CITY OF BELLEVUE, by Siona  
Windsor, Attorney at Law, 11511 Main Street,  
9 Bellevue, Washington 98009. (Appearing via  
teleconference bridge.)

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11 THE COMMISSION, by Sally G.  
Johnston, Assistant Attorney General, 1400 Evergreen  
Park Drive, S.W., P.O. Box 40128, Olympia, Washington  
12 98504-0128.

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1                   JUDGE MOSS: We'll be on the record. Good  
2 afternoon, everyone. My name is Dennis Moss. I'm an  
3 Administrative Law Judge with the Washington  
4 Utilities and Transportation Commission. I will be  
5 co-presiding in this proceeding with Judge Tre  
6 Hendricks, who is sitting to my right.

7                   We have a number of matters of business to  
8 take up today in the applications of Dutchman Marine,  
9 that's number TS-001774, we have Seattle Ferry  
10 Service, TS-002054, and Seattle Harbor Tours Limited  
11 Partnership, which is TS-002055.

12                   Our basic agenda this afternoon will be  
13 that in a moment, when I finish speaking, we'll take  
14 appearances of counsel or other party  
15 representatives, including those who are  
16 participating via the teleconference bridge line. I  
17 want to then take up the request for consolidation  
18 that we have received, and I have two of those. And  
19 of course the Commission, under its own statute and  
20 rules, would consider consolidation anyway, so we  
21 will take up that question. That will perhaps  
22 simplify the next item on the agenda, which is  
23 petitions to intervene, protests, whatever they've  
24 been styled, and they have been variously styled.  
25 Any motions by the parties, we'll take that up.

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1 We'll discuss the issues to some degree or another,  
2 and at that point, I think Judge Hendricks will pick  
3 up the agenda at that point and take up the process  
4 and procedural schedule issues, including discovery  
5 and other matters and any other business that may be  
6 appropriate for us to consider in a prehearing  
7 conference today.

8           So with that, why don't we just segue  
9 directly into the question of appearances. And we'll  
10 start with those here in the room, and then we will  
11 take the appearances of those who are with us by  
12 electronic means. Mr. Kopta, why don't you start us  
13 off.

14           MR. KOPTA: Thank you, Your Honor. Gregory  
15 J. Kopta, of the law firm Davis Wright Tremaine, LLP,  
16 on behalf of Seattle Harbor Tours Limited  
17 Partnership. Your Honor, would you like full  
18 address?

19           JUDGE MOSS: Yes, since this is our first  
20 prehearing conference, let's do make a matter of  
21 record the street address of your firm, your  
22 telephone, your fax and your e-mail.

23           MR. KOPTA: My address is 2600 Century  
24 Square, 1501 Fourth Avenue, Seattle, Washington,  
25 98101-1688. My telephone number is 206-628-7692; fax

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1 number 206-628-7699; e-mail, gregkopta@dwt.com.

2 JUDGE MOSS: Okay. Thank you very much.

3 Let me just check something with you here. Of  
4 course, I have information on all of you from various  
5 sources, some of which will remain mysterious to you.  
6 But I have another number for you, 622-3150. Is that  
7 your direct line?

8 MR. KOPTA: That is the general firm line.

9 JUDGE MOSS: Okay. So you gave me your  
10 direct line. That's what I was trying to clarify.

11 MR. KOPTA: That is correct.

12 JUDGE MOSS: Thank you very much. All  
13 right. Mr. Wiley, you're sitting next. Why don't  
14 you go ahead.

15 MR. WILEY: Yes, Your Honor. David W.  
16 Wiley, with the law firm of Williams, Kastner and  
17 Gibbs, PLLC, Suite 4100, Two Union Square, 601 Union  
18 Street, Seattle, Washington, 98101-2380. Our phone  
19 is 206-628-6600; our fax is 206-628-6611; my direct  
20 line is 206-233-2895; and my e-mail address is  
21 dwiley@wkg.com. I'm appearing today on behalf of  
22 Applicant Seattle Ferry Service, L.L.C.

23 JUDGE MOSS: Thank you. Yes, sir.

24 MR. HUGG: Thank you, Your Honor. My name  
25 is John Hugg, law firm of Bauer, Moynihan and

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1 Johnson. I'm here today on behalf of Dutchman  
2 Marine, L.L.C. The address is 2101 Fourth Avenue,  
3 Suite 2400, Seattle, Washington, 98121. General firm  
4 line is 206-443-3400; I have a direct line of  
5 206-605-3229; I have a fax number of 206-448-9076;  
6 and an e-mail of jmhugg@bmjlaw.com.

7 JUDGE MOSS: That's bnj?

8 MR. HUGG: Bm, as in Michael .

9 JUDGE MOSS: Oh, Moynihan, bmjlaw.com.

10 Thank you.

11 MR. HUGG: Thank you.

12 JUDGE MOSS: Why don't we go ahead with  
13 those in the room. Ms. Johnston.

14 MS. JOHNSTON: Sally G. Johnston, Assistant  
15 Attorney General, appearing on behalf of Commission  
16 Staff. My street address is 1400 South Evergreen  
17 Park Drive, S.W., Olympia, Washington, 98504. My  
18 telephone number is 360-664-1193; my fax number is  
19 360-586-5522; and my e-mail address is  
20 sjohnston@wutc.wa.gov.

21 JUDGE MOSS: And you get your full last  
22 name in there? I know we had it set to nine, I  
23 guess. I was thinking it was seven letters'  
24 limitation. All right. Just want to be sure I get  
25 it right. All right. And then on the telephone for

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1 the City of Seattle?

2 MR. DAVIDSON: Before I do that, can I get  
3 a clarification of the fact that number is -- for the  
4 email address, is there any punctuation between the S  
5 and the Johnston?

6 JUDGE MOSS: No, it's just  
7 sjohnston@wutc.wa.gov.

8 MR. DAVIDSON: And her first name?

9 JUDGE MOSS: Sally. And I'm glad you  
10 mentioned that. Let me interrupt you for a second.  
11 It is important for those in the room to try to speak  
12 loudly and directly into the microphones, because  
13 just as we have a few problems hearing them,  
14 sometimes they may have difficulty hearing us. So  
15 let's do pull the mikes up to facilitate that. So  
16 with that, go ahead, Mr. Davidson.

17 MR. DAVIDSON: Thank you. That was  
18 particularly true with respect to Mr. Hugg. I could  
19 not -- he kept cutting out every now and then.

20 JUDGE MOSS: All right. He'll pull that  
21 microphone up closer to him and that will help.

22 MR. DAVIDSON: Again, my name is Gordon  
23 Davidson. I'm an Assistant City Attorney with the  
24 City of Seattle. The office address is Seattle Law  
25 Department, 10th Floor Municipal Building, 600 Fourth

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1 Avenue, Seattle, 98104. The general office telephone  
2 number is 206-684-8200; my direct line is  
3 206-684-8239; the office fax number is 206-684-8284.  
4 My e-mail address is gordy.davidson@ci -- which is an  
5 abbreviation for city -- .seattle.wa -- the  
6 abbreviation for Washington -- .us.

7 JUDGE MOSS: All right. Thank you, Mr.  
8 Davidson. And for the City of Bellevue, Ms.  
9 Windsor.

10 MS. WINDSOR: Yes, my name is Siona  
11 Windsor. I represent the City of Bellevue. Our  
12 address is 11511 Main Street, Bellevue, Washington,  
13 98009. Our phone number here is 425-452-6829; our  
14 fax is 425-452-7256; and my e-mail address is s --  
15 like in Sam -- windsor -- with no punctuation between  
16 those two -- @ci.bellevue.wa.us.

17 JUDGE MOSS: All right. Is there anyone  
18 else present who wishes to enter an appearance today?

19 MR. DAVIDSON: Can Ms. Windsor clarify,  
20 does she have a D in her last name?

21 MS. WINDSOR: Yes, W-i-n-d-s-o-r.

22 MR. DAVIDSON: Thank you.

23 JUDGE MOSS: All right. I believe that  
24 completes our appearances, then. I appreciate  
25 getting the full information. And we'll pass that on



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1 to our Records Center to ensure that everyone  
2 receives appropriate service.

3 All right. We have a couple of requests  
4 for consolidation, and rather than go into any  
5 details on that, I think everyone is familiar with  
6 the consolidation rule. It does appear to me that it  
7 would be appropriate for there to be consolidation in  
8 these proceedings, and I would simply ask, then, if  
9 there's anyone who has a contrary view to that they  
10 would like to express to the Bench at this time?

11 There apparently is no argument on the  
12 point, and so we will order that these three dockets  
13 be consolidated and go forward on that basis.

14 As I mentioned, that may simplify things  
15 somewhat in that one of the artifacts of  
16 consolidating proceedings is that a participant in  
17 one is necessarily a participant in all. So we won't  
18 have to worry about who's filed this particular  
19 intervention or that particular intervention. You  
20 will all be participating or have full party status  
21 to the extent your petitions are granted in the  
22 consolidated proceeding. So there may be some  
23 nuances that we have to consider in that regard, but  
24 in terms of the participation question, at least, I  
25 don't think that we do have to consider those

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1 nuances, if they exist.

2           Now, I think, in terms of the principal  
3 parties, then, of course they are all here by right,  
4 and so we don't really have to take those individual  
5 matters up. Staff is here by a matter of statute.  
6 So really what we need to take up are the petitions  
7 to intervene/protests, if you will, of the City of  
8 Bellevue and the City of Seattle.

9           And these parties have filed written  
10 petitions and so we have those and have those in  
11 mind. I won't ask for argument in the affirmative,  
12 but rather ask whether there's any objection to the  
13 intervention and participation by the City of  
14 Bellevue? All right. How about in the case of the  
15 City of Seattle?

16           Apparently there is no opposition to the  
17 intervention and participation of these two cities,  
18 and it does appear to the Bench, on the basis of the  
19 written petitions, that these parties do have an  
20 interest in the proceeding and that their  
21 participation will be in the public interest.  
22 Therefore, the petitions to intervene will be  
23 granted.

24           Let me just ask if there are motions by any  
25 parties that we need to take up today? Apparently

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1 there are none.

2           Let's talk a little bit about the issues.

3 I'm not sure in what particular order we need to take  
4 things up. Of course, the fundamental issues that  
5 the Commission must consider in these types of  
6 applications are whether the public convenience and  
7 necessity require the services for which application  
8 has been made and the question of fitness, which we  
9 have typically construed in these cases to include  
10 both the concepts of financial fitness, which must be  
11 demonstrated by certain evidence, certain showings,  
12 as laid out in the statute and the rules, although of  
13 course those are not exclusive matters. You may  
14 present additional evidence in support of financial  
15 fitness.

16           And then we generally consider the matter  
17 of regulatory fitness, which is a somewhat broad and  
18 ill-defined category, I suppose, but in some cases  
19 becomes relevant, particularly when we have extension  
20 applications, and I believe at least one of these is  
21 an extension authority. That's Seattle Ferry  
22 Service, isn't it?

23           MR. WILEY: Yes, Your Honor.

24           JUDGE MOSS: So Seattle Ferry Service  
25 already has some authority on one or more of these

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1 routes. I have read these applications, but,  
2 frankly, I sat down and tried to map it all out on my  
3 little map of Washington and it quickly became  
4 obscured with multi-colored inks. So I wasn't -- I  
5 can't say that I have my mind entirely around who's  
6 applying for what today, but what authority does  
7 Seattle Ferry Service currently have, Mr. Wiley? Is  
8 it one route or multiple routes?

9 MR. WILEY: Yes, it's one route, Your  
10 Honor, between the North Lake Union/Fremont area and  
11 the South Lake Union area. That's the terminus of  
12 the proposed route, as well. And I believe Mr.  
13 Kopta's client has authority, as well.

14 JUDGE MOSS: Ah. Go ahead, Mr. Kopta.  
15 Tell me about that.

16 MR. KOPTA: Yes, Seattle Harbor Tours  
17 Limited Partnership also has authority to operate  
18 between University of Washington and the South Lake  
19 Union area. It was a docket that was consolidated  
20 and settled between my client and Mr. Wiley's client.

21 JUDGE MOSS: And when was that?

22 MR. KOPTA: That was last year sometime, as  
23 a matter of fact.

24 JUDGE MOSS: I see. So old hands at this  
25 Lake Union ferry service application business, are

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1 we?

2 MR. KOPTA: Well, Mr. Wiley and I are  
3 getting used to being down here together.

4 JUDGE MOSS: All right. And then the  
5 Dutchman Marine application is a new application that  
6 overlaps these two existing services and then is for  
7 some additional routes, as well, as I understand it.

8 MR. HUGG: It is a new application, but I  
9 don't believe it necessarily overlaps with either of  
10 those two routes that were just mentioned. Those are  
11 over Lake Union, and Dutchman Marine's proposed  
12 routes are over Lake Washington.

13 JUDGE MOSS: Ah. So nobody has authority  
14 into Bellevue or Renton or --

15 MR. KOPTA: One of the members of the  
16 Seattle Harbor Tours Limited Partnership, Argosy, has  
17 a certificate across Lake Washington, between  
18 Kirkland and Seattle.

19 JUDGE MOSS: And is that part of the  
20 certificate for which extension authority is being  
21 sought? I just want to be clear on where we are.

22 MR. KOPTA: Yeah. Well, that's why I  
23 didn't raise it before, is because Argosy is not  
24 technically the party here today. They are one of  
25 the -- it's the general partner in Seattle Harbor

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1 Tours Limited Partnership, so it is a party in  
2 interest as a practical matter, but as a legal  
3 matter, it's Seattle Harbor Tours Limited Partnership  
4 that is the entity that is seeking the authority in  
5 this docket.

6 JUDGE MOSS: I don't want to dwell overly  
7 long on this, but the reason this is important to all  
8 of us is this is one of those nuances I was talking  
9 about, another issue in the proceeding, to the extent  
10 we do have existing routes for which others are now  
11 applying is the question of the satisfactory service  
12 or the level of service, I forget the exact language  
13 in the statute and the rule, but it's essentially --  
14 I think in the best cases we call it service to the  
15 satisfaction of the Commission. I've got the statute  
16 here and I can look it up, but I see the nods of  
17 affirmance, so everybody knows what I'm talking  
18 about. So that's another issue we have to take up if  
19 there is, in fact, that sort of overlap.

20 So I'm trying to determine now, and I'll  
21 just ask the question directly, do we have that kind  
22 of overlap? Mr. Hugg has suggested there may be no  
23 overlapping aspect to the matter.

24 MR. KOPTA: Well, just to respond to your  
25 first question, there's no service that's currently

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1 being provided over that route.

2 MS. WINDSOR: Who's speaking, please?

3 MR. KOPTA: This is Greg Kopta, on behalf  
4 of Seattle Harbor Tours. There is no service  
5 currently being provided across Lake Washington.  
6 There is a certificate, but there's not service being  
7 provided pursuant to that certificate. But I agree  
8 with you that there is an issue in terms of extent to  
9 which one party can ask that it be granted the  
10 overlapping authority. I guess even before we get to  
11 that is whether or not this is overlapping authority,  
12 because as I understand Dutchman Marine's  
13 application, it is between various points on the east  
14 side of Lake Washington and the City of Seattle and  
15 Leschi area, whereas the application that my client  
16 has filed is for those same three points on the  
17 Eastside and the University of Washington.

18 So one issue, and it was certainly  
19 something that we managed to settle amicably in the  
20 last case over Lake Union, is whether there is  
21 overlapping authority or whether there is  
22 potentially some room to have certificates to both or  
23 maybe perhaps all three carriers. But to add to the  
24 list of issues while I have the microphone --

25 JUDGE MOSS: You and Mr. Wiley are doing a

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1 good job of sharing.

2 MR. KOPTA: -- is the notion of what  
3 happens when -- assuming that we have overlapping  
4 applications and are not able to figure out some  
5 resolution to allow everybody to have what they've  
6 asked for -- on what basis can or should the  
7 Commission choose between those completing  
8 applications.

9 Although the statute seems to contemplate  
10 that that may be the case, at least when someone has  
11 an existing certificate and someone comes in and asks  
12 for a new one, there really doesn't seem to be  
13 anything in the statute, nor am I aware of anything  
14 in prior Commission cases that has established what  
15 criteria the Commission will use in determining  
16 whether to award the certificate to one of the  
17 applicants or not at all. And so I think certainly,  
18 from our point of view, and we can discuss this  
19 further, if you'd like, a threshold question is  
20 what's the standard. I mean, assuming that all of us  
21 can demonstrate what we need to in terms of financial  
22 capability and regulatory fitness or technical  
23 expertise or whatever's subsumed within the threshold  
24 requirements of being entitled to a certificate, then  
25 how does the Commission pick between the three of



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1 those.

2 JUDGE MOSS: Okay. Mr. Wiley, do you have  
3 something to add?

4 MR. WILEY: Yes, Your Honor. Dave Wiley,  
5 for Seattle Ferry Service. I would join a lot of  
6 what Mr. Kopta said in terms of what we're faced with  
7 this statute. I would also add that -- and you  
8 analogized to the bus application. That would also  
9 apply. That standard about service to the  
10 satisfaction of the Commission applies to solid waste  
11 applications, as well.

12 But here we have a little bit, as you  
13 termed it, a different nuance. And that is, with  
14 these kind of applications we don't necessarily have  
15 existing service. It's not like solid waste, where  
16 everybody needs to get it removed. These are  
17 applications involving routes on, at least in recent  
18 times, new areas. So the concept of service to the  
19 satisfaction of the Commission takes on a little bit  
20 different analytical lines in this kind of  
21 application.

22 We're also dealing with a statute that  
23 appears to be, as I recall my real estate law from  
24 law school, sort of a race statute, in that, you  
25 know, whoever's the first to file can conceivably

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1 lock up a route and, under the statute, block  
2 competitive applications in the future. So there are  
3 different issues of need that are raised under that  
4 kind of circumstance that might not be raised if  
5 there's a clear existing service provider. So that's  
6 another issue.

7           And then the third one, and I've dealt with  
8 this in other commercial ferry applications, is the  
9 whole concept of same territory or district, which  
10 the statute refers to and which we grappled with in a  
11 case up in the San Juan Islands, where my client  
12 applied for Roche Harbor and the existing service  
13 provider served Friday Harbor, and the question was  
14 was that in fact the same territory or district that  
15 the existing certificate provider served.

16           So here we're dealing with much more  
17 densely populated areas, and that analysis may be  
18 very, very different in metropolitan areas. So I see  
19 a lot of issues here, and obviously we haven't seen  
20 any evidence yet, but this is, as you suggest, a case  
21 filled with nuances.

22           JUDGE MOSS: Mr. Hugg, did you have  
23 anything to add on the issues that we're talking  
24 about?

25           MR. HUGG: Well, I believe most of the

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1 issues have been covered by Mr. Kopta and Mr. Wiley.  
2 I guess I don't have too much to add, other than that  
3 there is no existing service provider at this time.  
4 And my understanding is that there is a window of  
5 time in which to implement this, under the statute  
6 and the rules, of five years, and to my  
7 understanding, that was not done.

8         So I guess if that has not been done, is it  
9 possible to have that route forfeited or modified in  
10 some way or -- and certainly if it has not been  
11 implemented, does that allow the present arguable  
12 holder to preclude anyone else, as was mentioned as a  
13 possible issue. If they're already running a route,  
14 then they preclude other people. So since that is  
15 not the case, then I don't think there would  
16 necessarily be an issue with regard to absolute  
17 preclusion.

18         And then there is, of course, the issue of  
19 differing markets going to University of Washington  
20 and going to Leschi, so there may very well be  
21 sufficient ridership for both routes, if that is what  
22 the Commission so feels.

23         JUDGE MOSS: Okay. Ms. Johnston, are you  
24 eager at the oar over there to speak to these issues  
25 or --

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1 MS. JOHNSTON: I think we're going to go  
2 full circle here, except the issue that I planned to  
3 raise was the issue of the importance of having the  
4 real party in interest represented in this matter.  
5 And although in, I believe, Mr. Kopta's protest and  
6 motion for consolidation, he repeatedly states that  
7 Seattle Harbor Tours is the holder of the certificate  
8 authority for the Seattle-Kirkland route, that's  
9 actually incorrect.

10 And I believe Mr. Hugg even stated in his  
11 protest that Seattle Harbor Tours did obtain a right  
12 to initiate ferry service between Seattle and  
13 Kirkland. That's incorrect.

14 The Staff's records -- the Commission's  
15 records, I should say, indicate that Argosy LP is, in  
16 fact, the certificate holder for the Kirkland-Seattle  
17 run, and in Staff's view there are certain  
18 requirements that a certificate holder must satisfy.  
19 For example, these companies are required to maintain  
20 insurance in the name of the certificate holder and  
21 file annual reports with the Commission in the name  
22 of the certificate holder.

23 And so I guess I would like to hear a  
24 little bit more from Mr. Kopta as to why he thinks  
25 the Commission would have the authority to take

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1 action affecting Argosy's certificate authority in  
2 the Kirkland-Seattle run.

3 JUDGE MOSS: This is a point that I must  
4 confess a little puzzlement over myself, and I think  
5 it's a significant point, because of some of the  
6 issues you all have raised. And I think there are --  
7 I keep using the word nuance. There are some nuances  
8 and subtleties in the law here. Some of the points  
9 you've suggested about exclusivity, for example, and  
10 the racing notion, I think these are arguable points.  
11 I can't say that they're clearly decided anywhere or  
12 that I have a clear idea in mind about how they would  
13 come out, but they are points in this case, and then  
14 the matter's a little bit further complicated in the  
15 fashion that Ms. Johnston has raised.

16 So Mr. Kopta, maybe you could help us a  
17 little on this question of who the certificate holder  
18 is and whether they're here or not.

19 MR. KOPTA: Well, it is, as you say, a bit  
20 thorny when it comes to -- again, it really is a  
21 matter of legal entities and structures of legal  
22 entities. As I said earlier, Argosy is the general  
23 partner for Seattle Harbor Tours Limited Partnership,  
24 which was formed after Argosy had acquired actually  
25 an existing certificate from another entity that

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1 merged with Argosy, just to give you sort of the  
2 business background of this.

3           And because Argosy is the general partner  
4 and essentially controls the activities of Seattle  
5 Harbor Tours Limited Partnership, these are business  
6 people that sort of operate in terms of their  
7 business, as opposed to really not thinking about  
8 which hat they happen to be wearing. And so Mr.  
9 Blackman, John Blackman, who is the client  
10 representative, is the person who is representing  
11 both Seattle Harbor Tours and Argosy, and really  
12 personally doesn't distinguish between those two.

13           And I think perhaps in the pleadings that I  
14 filed, I succumbed to that same sort of sense, that  
15 it was really the same entity, and did not really  
16 track down what is the legal name on their  
17 certificate for the existing filing with the  
18 Commission. So I believe Ms. Johnston is correct,  
19 that Argosy is the certificate holder, but by the  
20 same token, Seattle Harbor Tours Limited Partnership,  
21 because it involves Argosy, is not seeking that same  
22 route, because Argosy already has it.

23           And so I suppose if it would be helpful to  
24 have Argosy as a party to this docket, that I could  
25 represent Argosy in that capacity and request that

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1 intervention, if that would make things simpler for  
2 the Commission Staff and everyone else when we try  
3 and wrestle through these issues.

4 MR. DAVIDSON: This is Gordy Davidson in  
5 Seattle. I'm wondering whether Mr. Kopta might be  
6 able to provide some documentation to the other  
7 parties regarding the organization of Seattle Harbor  
8 Tours Limited Partnership. It seems to me that any  
9 business that creates a limited partnership with  
10 another doesn't necessarily have to put all of its  
11 assets into the hands of or under the controls of the  
12 limited partnership, but can pick and choose assets.

13 I don't know whether Argosy tossed into the  
14 Seattle Harbor Tours Limited Partnership basket of  
15 assets the rights it secured by virtue of the WUTC  
16 authorization to operate a Kirkland to UW run. If it  
17 didn't, I wonder whether it's too late for Argosy to  
18 participate.

19 MR. KOPTA: Well, this is Greg Kopta. I  
20 don't know, as we sit here today, what is included in  
21 the partnership and what is solely Argosy, so I can't  
22 answer that question. But since we're all sitting  
23 here today talking about intervention and prehearing  
24 conferences or the point where intervention is  
25 appropriate, that's why I have offered to have Argosy

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1 intervene in this proceeding, just to make sure that  
2 we have all of the parties who have any interest in  
3 this particular matter before the Commission, so that  
4 there isn't a concern with respect to making sure  
5 that somebody's not here that needs to be here. And  
6 as we develop the record in this case, that's  
7 certainly one area that we can try and clarify to the  
8 satisfaction of the City of Seattle and any other  
9 party that seeks that kind of information.

10 JUDGE MOSS: As I read the -- this is  
11 Dennis Moss speaking. As I read what you filed, Mr.  
12 Kopta, I came away from that with the understanding  
13 that whoever the certificate holder is who has this  
14 Seattle-to-Kirkland run wishes to and intends to  
15 participate to protect its interests in that existing  
16 certificate authority. Now, I see you nodding in the  
17 affirmative, so I'm assuming I read your papers  
18 correctly.

19 MR. KOPTA: You did indeed.

20 JUDGE MOSS: And Ms. Johnston, you are  
21 concerned with the -- let me put it in a question.  
22 Are you concerned with the perhaps a technical  
23 deficiency in the sense that you want that party to  
24 be -- the named party on the certificate to be a  
25 named party in the proceeding, or is there something



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1 beyond that that we need to be concerned about? That  
2 would be my concern.

3 MS. JOHNSTON: No, I think it's important  
4 that the certificate holder be represented and be a  
5 party to the proceeding. These cases, I mean,  
6 there's evidence by the papers filed in these  
7 dockets, it can oftentimes be confusing as to who is  
8 the certificate holder. And since transfers often  
9 occur and other things of that nature, I think it's  
10 important to be as precise as possible.

11 JUDGE MOSS: All right. Well, it seems to  
12 me that the solution here, particularly given the way  
13 that I read the papers and that that is indeed an  
14 accurate reading of the papers, would be to perhaps  
15 file an amendment that would clear up this technical  
16 issue. And you know, there sometimes are multiple  
17 named entities and layers and one thing and another  
18 involved, and just for purposes of clarity, I think  
19 it would be important to do that.

20 But, again, my understanding coming in here  
21 today was that this existing route was part of our  
22 case and that we would have to consider the issues  
23 related to what happens when people, other people  
24 apply for authority to operate along the same route  
25 or overlapping route, if you will, to that held by an

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1 existing certificate or that covered by an existing  
2 certificate. So I don't think I've heard anything  
3 here that changes the posture of the case. It simply  
4 clarifies who holds what.

5 MR. KOPTA: This is Greg Kopta again. I  
6 would agree with that, and I would note that we did  
7 make a supplemental filing with some additional  
8 information in support of the application that makes  
9 that distinction, based on a conversation that I had  
10 with Commission Staff over this very issue. That we  
11 tried to demonstrate that it is Argosy LP, Argosy  
12 Limited Partnership, that does hold the current  
13 certificate, not Seattle Harbor Tours Limited  
14 Partnership. So hopefully we can make sure that the  
15 record is clear on that point.

16 But, again, I would state that, to the  
17 extent that Commission Staff believes it would be  
18 useful for Argosy to be a party here, then we would  
19 ask for intervention status for Argosy in the  
20 consolidated proceeding.

21 JUDGE MOSS: Or another alternative, and  
22 I'll let you proceed as you choose, but another  
23 alternative would simply be to file something that  
24 would clarify the body of entities or the group of  
25 entities that your client includes, and to the extent

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1 that those -- they hold certificate authority that's  
2 relevant here, to identify that to the specific  
3 entity that is the official holder of that authority.  
4 So either way you want to -- I don't know that they  
5 need to separately intervene, is what I'm suggesting,  
6 although if that appears, once you've had a chance to  
7 sit with your client and go through the corporate  
8 organization and so forth, maybe that will be the  
9 better way to proceed. You can decide that.

10 MR. KOPTA: Yeah, we have identified the  
11 various interests in Seattle Harbor Tours Limited  
12 Partnership, their percent interest in the entity. I  
13 don't believe what we have provided in this docket,  
14 although I believe it was provided in the prior  
15 docket, was a copy of the partnership agreement that  
16 may set out at least the governing terms and  
17 conditions for the limited partnership.

18 Now, whether that addresses this particular  
19 issue, I don't know, but certainly we will do what we  
20 can to clarify it and ensure that if Argosy is not a  
21 party to this particular proceeding, that Seattle  
22 Harbor Tours is authorized to represent Argosy's  
23 interests with respect to the existing certificate.

24 JUDGE MOSS: Sure. That sounds good. I  
25 hope we don't have to get too deeply into the realm

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1 of general partnership law, which I recall unfondly  
2 from my days in oil and gas law. So let's hope we  
3 don't have to go there.

4 MR. KOPTA: I share your hope.

5 JUDGE MOSS: That and the occasional bar  
6 exam.

7 MR. KOPTA: That's right.

8 JUDGE MOSS: All right. Well, are there  
9 any other aspects of the issues in the case that we  
10 need to discuss today? Mr. Wiley, you have something  
11 for us?

12 MR. WILEY: Yes, one issue that was brought  
13 up by Mr. Hugg that I want to respond to just  
14 briefly.

15 JUDGE MOSS: Sure.

16 MR. WILEY: Because we've had this arise in  
17 previous commercial ferry cases where they're  
18 overlapping authority. I want to hear from the  
19 Assistant Attorney General, but I think I'm correctly  
20 reciting the law. And that is when we look at the  
21 adequacy of existing service, certainly whether  
22 somebody's providing service or has provided service  
23 is highly relevant to that issue, but the issue of  
24 whether we forfeit a dormant certificate isn't at  
25 issue in this type of application proceeding. That

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1 requires another proceeding under 81.84.060, and a  
2 separate complaint proceeding where the Staff is  
3 typically adverse to the certificate holder, and I  
4 don't think we should confuse that in this  
5 proceeding.

6           Certainly we put on evidence about whether  
7 the route's being operated or not, but our goal in  
8 that is not to cancel the certificate, because that  
9 has to be done separately under another procedural  
10 mechanism.

11           JUDGE MOSS: Okay. Anybody want to speak  
12 to that point?

13           MS. JOHNSTON: I would agree with that. I  
14 considered this issue, as well, and I think typically  
15 the Commission would file a complaint and order to  
16 show cause before forfeiting a certificate.

17           Your Honor, there is one other issue that I  
18 would like to raise, and that is I wanted to let the  
19 parties know that I do plan to contact a  
20 representative of Washington State Ferries concerning  
21 the request for waiver of the 13-mile restriction  
22 pursuant to WAC 480-51-050.

23           JUDGE MOSS: You said 13-mile. Has that  
24 been a change in the statute?

25           MS. JOHNSTON: Sorry, ten. Sorry.

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1           JUDGE MOSS: Not something that we might  
2 see on the front page of the Post Intelligencer if  
3 that had changed, but I thought it was ten miles.

4           MS. JOHNSTON: In fact, if that had  
5 changed, I wouldn't have noticed. Thank you.

6           JUDGE MOSS: Yeah, that is a -- I'm glad  
7 you made that point, because I think although it  
8 might seem a little odd in this case, because we're  
9 talking about Lake Union, Lake Washington, the  
10 ten-mile rule is something we do have to consider.  
11 So yeah, Staff will be following up on that.

12           And let me ask just one more question  
13 before we turn the floor over here to Judge Hendricks  
14 for the remainder of the agenda. And that is the  
15 question of whether the parties see any need for  
16 early briefing on any of these legal points or  
17 whether we should just carry them through the case  
18 and resolve all these points at the end once we've  
19 had an opportunity for the evidence that we have to  
20 have in these types of proceedings.

21           MR. KOPTA: This is Greg Kopta. That  
22 raises a good point that I didn't fully make clear in  
23 what I had said before. I think certainly, to the  
24 extent that we are establishing or the Commission is  
25 establishing through this case the requirements or

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1 considerations that the Commission will take into  
2 account in determining which of three competing or  
3 multiple competing applicants for the same ferry  
4 route will be awarded a certificate, again, as Mr.  
5 Wiley states, it is an all or nothing kind of  
6 arrangement that locks in authority for a significant  
7 period of time.

8           And I think it makes sense to deal with  
9 that issue first, so that the parties know what kind  
10 of evidence that they need to present in addition to  
11 general financial and regulatory fitness at the  
12 hearing before having to, in essence, guess what are  
13 the sorts of things that the Commission believes  
14 would be relevant in determining who gets the  
15 certificate if there is an overlapping application,  
16 as there, at least on the face of it, seems to be  
17 here.

18           JUDGE MOSS: I'm hesitating just a bit, and  
19 I may want to give this some additional thought  
20 before reaching any final conclusion about it, but  
21 there's a point beyond which we cannot go in terms of  
22 establishing, if you will, a Commission policy on  
23 something like this or a set of standards from the  
24 Bench. We might very well do that effectively  
25 through a decision at the end, based on the evidence

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1 heard, but to do that in advance begins to push me  
2 into territory where I am a tad uncomfortable.

3           Typically, we might establish such  
4 standards by rule, for example, following our  
5 rule-making legislative type processes. To do that  
6 at the outset of a case such as this, as I say, makes  
7 me a bit uncomfortable, and I would want to give that  
8 some further thought on that particular aspect of  
9 your concern.

10           I recognize that there's not a great deal  
11 of authority, if you will, on the subject. Now, the  
12 Commission has previously, in some old cases, taken  
13 up competing applications, and you know, follows  
14 these principles that are referred to rather loosely,  
15 in my view, as an Ashbacher type of an analysis.  
16 This isn't really strictly speaking Ashbacher if  
17 we're not talking about a limited availability of  
18 frequencies on the band of electronic transmission,  
19 but it's certainly directionally similar in the sense  
20 that there's only so much public out there, there's  
21 only so much water between points A and points B, or  
22 point A and point B, and you know, in some instances,  
23 at least, only one service can be financially  
24 sustained by the available ridership, and so you do  
25 get into that kind of inquiry.



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1           The basic standard, of course, is like a  
2 number of standards in utility law. The public  
3 interest, the justness and reasonableness standard,  
4 and here we have the standard of the public  
5 convenience and necessity, which is one of those  
6 standards that is -- I believe it's one of the early  
7 -- maybe it's Hope or, what is it, Blue Field Water  
8 Works, one of those famous utility law cases, where  
9 the standard is described as an empty vessel into  
10 which substance must be poured.

11           This is a similar situation. But how much  
12 substance we might pour into the empty vessel up  
13 front, I'm not really sure. So counsel may have to  
14 plow this new ground themselves and we'll see what  
15 husbandry the Bench can bring to it in the final  
16 analysis, but I'm not sure we can really do much with  
17 that up front.

18           The question -- another legal point that's  
19 been raised by several of you is this idea of locking  
20 up a route. I'm not sure the statutes are entirely  
21 clear on that being the effect. I've been reviewing  
22 the statutes, of course, in anticipation of our  
23 conference today, and -- well, I don't suppose I  
24 should describe a piece of legislation as an empty  
25 vessel when the legislature's sitting, but let us say

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1 they are not entirely crystal clear.

2           And so again, you know, there may be some  
3 need to clarify that point. I'm not sure that we  
4 need to do it up front. I haven't heard anything yet  
5 that convinces me we need early briefing. It doesn't  
6 sound that, even if we did resolve a couple of these  
7 issues in sort of the nature of a declaratory order,  
8 if you will, advisory opinion, which we're not  
9 supposed to give, that it would necessarily bring the  
10 case to an earlier conclusion by -- in the nature of  
11 some sort of summary determination, which would be  
12 the goal of an early briefing, aside from the  
13 guidance type of goal that you mentioned, Mr. Kopta.

14           MR. KOPTA: And perhaps -- this is Greg  
15 Kopta again. To think about it from a different  
16 perspective, which may be whether or not it's  
17 appropriate to grant anyone a certificate at this  
18 time. One of the problems with the way that the  
19 statute is set up is that it seems to contemplate  
20 that only one person at a time is going to want to  
21 serve these particular routes, and the Commission's  
22 job is just to sort of, I guess, act as a in loco  
23 parentis for the market and say, Are you the kind of  
24 entity that would survive providing the kind of  
25 service that you are going to provide.

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1           Here we have two, or in some cases, three  
2 parties that are trying to get into a particular  
3 market that, by statute, unfortunately -- well, we'll  
4 assume, for purposes of this discussion, that there's  
5 only room for one, according to the legislature.

6           So the question then becomes is it  
7 appropriate for the Commission to fill that role of  
8 deciding which of the three applicants should receive  
9 this application or is it the role of the market. I  
10 mean, one of the things that you will see from the  
11 petitions to intervene from the City of Seattle and  
12 the City of Bellevue are concerns that they have with  
13 respect to what sort of city facilities are going to  
14 be used, what kind of impact on the infrastructure is  
15 going to be used, what sort of subsidies, if any,  
16 would be required to make any of these proposals  
17 viable.

18           And I am assuming, and I will let the  
19 cities speak for themselves, that they would rather  
20 be dealing with three different people in trying to  
21 negotiate and work these things out and come up with  
22 the best deal that they think for their citizens, as  
23 opposed to having the Commission determine who it is  
24 that they need to deal with over the next three to  
25 five to ten or however many years.

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1                   So I think it's possible that if the  
2 Commission were to look at the issue from that  
3 perspective, that it may adopt some threshold  
4 requirements or conditions that would show, at least  
5 to the Commission's satisfaction, that there has been  
6 some market activity, so that the cities would have  
7 an opportunity to work with an entity that they feel  
8 would be in the best position to offer the proposed  
9 service and to give them the kind of things that they  
10 need, and that, therefore, the Commission would say,  
11 None of you have demonstrated at this point that  
12 those sorts of preconditions exist, and therefore, we  
13 will not grant a certificate at this point, but will  
14 grant one at a later time, when these preconditions  
15 do exist.

16                   So I think that, at least when viewed from  
17 that perspective, it is possible that, based on early  
18 briefing, there could be an earlier resolution of the  
19 case than if it were to go to a full-blown  
20 determination of all of the issues that are presented  
21 by the pleadings.

22                   JUDGE MOSS: Well, some argument along  
23 those lines could be brought forward, I suppose,  
24 through a motion to dismiss. I guess in terms of the  
25 legal analysis that we might consider, and I have

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1 thought through this very point, and the barrier I  
2 come up against is this five-year rule. I mean,  
3 frankly, looking at the applications and the protest  
4 and so forth in a light I perhaps am premature in  
5 looking at them in, but if we take all of the facts  
6 asserted as verities, just for the purposes of  
7 analysis, discussion and argument, it appears that no  
8 one is really going to be springing forward in the  
9 months after this proceeding is concluded and carting  
10 passengers from one city to another.

11           There appear to be, based on the  
12 interventions by the City of Seattle and the City of  
13 Bellevue, there appear to be certain arrangements  
14 that would have to be made with those entities before  
15 these services could be provided. Now, from a legal  
16 standpoint, those are not matters that concern the  
17 Commission. We don't get to decide that. We are not  
18 authorized to decide that, nor would it legally be a  
19 barrier, I suppose, to us granting a certificate  
20 authority that an entity needed additional  
21 authorities outside of our jurisdiction and did not  
22 have those in place.

23           In fact, I believe I've handled a case or  
24 two that involved that very sort of thing. And we  
25 plunged ahead and did our duty and then others took

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1 up their duties, in turn, presumably, and the planned  
2 service either did or did not occur. Something I  
3 never knew the answer to, now that I think about it.  
4 So it's not necessarily a bar to our going forward  
5 that there are these additional factors at play, at  
6 least as I sit here thinking about it today.

7           Again, keep in mind that my comments in  
8 these regards are preliminary, but I think it's good  
9 that we have this discussion of the issues and talk  
10 candidly about the lay of the land, as it were. I  
11 don't want us to be wasting our time. I don't think  
12 that's in anyone's interest. It's not in your  
13 interest, it's not in ours. And so I think perhaps  
14 the best forum or the best means by which some of  
15 these questions can be taken up, at least initially,  
16 would perhaps be in discussions among the parties  
17 outside the presence of the Bench.

18           And I gather from some hinting comments  
19 earlier that this sort of thing has occurred in prior  
20 applications and could perhaps occur again usefully.  
21 So I would encourage that to take place as the first  
22 cut, and then, if a party feels it is appropriate to  
23 bring forward a suggestion by motion, then we can  
24 consider more carefully and more fully some of these  
25 legal issues and whether they, in fact, would

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1 indicate a particular outcome at an early stage of  
2 the proceedings. I'm just not sure, frankly, and you  
3 know, this is interesting stuff. I enjoy this stuff,  
4 you know. This is what I do for a living. So if you  
5 all want to bring this stuff forward, bring these  
6 questions forward in the nature of motions or briefs,  
7 have at it, and Judge Hendricks and I will have a  
8 good time, I'm sure.

9 All right. Is there anything else we want  
10 to talk about in terms of the issues? I think we've  
11 certainly laid everything out, which is about as far  
12 as we get in a prehearing conference, on this  
13 particular agenda item.

14 All right. Then why don't I turn the floor  
15 over to Judge Hendricks, and he'll take us through  
16 some of our process and procedural questions and  
17 ascertain whether there's any other business we need  
18 to take up today, and perhaps we can get ourselves  
19 out of here to enjoy some of this beautiful  
20 springlike day.

21 JUDGE HENDRICKS: I guess we'll begin --  
22 you know, I want to find out if there's going to be a  
23 need for discovery, protective order, the nature of  
24 evidentiary hearings and a schedule.

25 Is there going to be any need for

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1 discovery, and to what extent are we going to need  
2 the discovery rules in 480-09-480 to be brought  
3 forth? Mr. Kopta.

4 MR. KOPTA: Yes, this is Greg Kopta. Thank  
5 you, Your Honor. As we sit here today, I think  
6 probably not. Again, I say that with some level of  
7 lack of confidence, because at this point we don't  
8 know the sorts of issues that the Commission is going  
9 to deem most important in terms of establishing who  
10 gets the certificate, if there is an overlap, as  
11 there seems to be.

12 So as I sit here, I can't think of anything  
13 that we could get through discovery of other parties  
14 that would bear on that issue. I think it's mostly  
15 each party needing to present the issue or present  
16 the evidence that it has within its control to try  
17 and make the best case that it can. So I don't think  
18 at this point we would be requesting the Commission  
19 to invoke the discovery rule.

20 MR. WILEY: Yes, I'm Dave Wiley. I'm  
21 always reluctant to invoke the discovery rule in  
22 transportation cases, because I think it's very  
23 expensive and it can protract. We have it in rate  
24 cases, but I just generally don't like it in  
25 certificate cases, which this is. I don't see



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1 anything that's unusual. All commercial ferry  
2 applications are rather unusual, I think. I don't  
3 see anything more unusual than any of the other  
4 overlapping ones we've had in the past.

5 The discovery rule does help in possibly  
6 streamlining the case, but if we have real active  
7 ALJs on that issue, I think we'll be fine.

8 JUDGE HENDRICKS: Mr. Hugg.

9 MR. HUGG: At this point, I don't see any  
10 reason to invoke the rule at this point. I would  
11 agree with Mr. Kopta on this point.

12 MS. JOHNSTON: Likewise. Commission Staff  
13 would agree.

14 JUDGE HENDRICKS: And do the Cities of  
15 Seattle and Bellevue concur?

16 MR. DAVIDSON: This is Gordy Davidson in  
17 Seattle. I didn't hear the response of Ms. Johnston  
18 and Mr. Hugg.

19 JUDGE HENDRICKS: I believe that both of  
20 them agreed that discovery wouldn't be necessary.

21 MR. DAVIDSON: Seattle is willing to agree  
22 with that.

23 MS. WINDSOR: So would Bellevue.

24 JUDGE HENDRICKS: Then we will not invoke  
25 the discovery rule at this time. And in the matter

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1 of a protective order, do any parties feel that there  
2 will be any need for that? Mr. Hugg, what --

3 MR. HUGG: At this time, I don't know of  
4 anything specifically that we would need to invoke  
5 that, but it is possible.

6 MR. WILEY: I think Mr. Kopta and I went a  
7 round on that last time, and I think he now agrees  
8 with me that financial information cannot, in an  
9 application case, be subject to a protective order.  
10 And barring his argument to that, I would say I don't  
11 see any need for a protective order.

12 MR. KOPTA: This is Greg Kopta. I will  
13 clarify that while I may not agree with Mr. Wiley on  
14 that particular point, I will agree that this issue  
15 was raised in the prior proceeding, and my arguments  
16 notwithstanding, Mr. Wiley's interpretation was  
17 upheld. And at this point, we don't seek to  
18 relitigate that issue.

19 JUDGE HENDRICKS: Ms. Johnston.

20 MS. JOHNSTON: I heard about that, Mr.  
21 Kopta. We see no need for a protective order.

22 JUDGE HENDRICKS: Okay. And Ms. Windsor  
23 and Mr. Davidson.

24 MR. DAVIDSON: Agreed. I don't see a  
25 reason for it.

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1 MS. WINDSOR: I concur.

2 JUDGE HENDRICKS: All right. We'll move on  
3 to scheduling, then, the hearing, evidentiary  
4 hearings. And maybe first we can begin by deciding  
5 how many days or if it will just be one day or what  
6 you would expect this to take.

7 MR. KOPTA: This is Greg Kopta. Might I  
8 suggest that we have some informal discussions off  
9 the record before we talk about what days and that  
10 sort of thing?

11 JUDGE HENDRICKS: Sure. Why don't we go  
12 off the record for a moment to discuss that.

13 (Discussion off the record.)

14 JUDGE HENDRICKS: We'll be back on the  
15 record. After some discussion, we've come to a  
16 schedule to hold the hearing. The hearing will be  
17 conducted between the days of June 11th and June  
18 15th. On June 7th, the parties will provide witness  
19 lists. And on April 16th, and I believe that the  
20 consensus was an afternoon time of 1:00 -- the  
21 parties will convene a settlement conference, and the  
22 place for that conference, we will -- I guess we'll  
23 determine that in between now and then and in the  
24 prehearing conference order.

25 JUDGE MOSS: Let me jump in. I don't think

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1 we resolved off the record the question of whether  
2 you all wanted us to see if one of the other judges  
3 was available to assist you with your settlement  
4 discussions or whether you want to hold off on making  
5 that decision. We made the offer off the record that  
6 we could try to make someone available to help you in  
7 that fashion.

8 MR. KOPTA: This is Greg Kopta. I would  
9 think that that might be beneficial. It certainly  
10 seemed to work before. And given that there may be  
11 some legal aspects to this, as you had suggested  
12 earlier, Judge Moss, that the statutes are perhaps  
13 not crystal clear, and to perhaps give some educated  
14 gauge on what the Commission would be comfortable  
15 with from a legal perspective, it might be helpful to  
16 have an ALJ participating.

17 JUDGE MOSS: Okay. We'll talk among  
18 ourselves and see who might be available to do that,  
19 who would be best equipped to do that, and we'll make  
20 that contact known to you.

21 MS. JOHNSTON: Excuse me, Judge Hendricks.  
22 I just wanted to clarify for the record that both the  
23 settlement conference and the hearings in this matter  
24 will be held in Seattle.

25 JUDGE HENDRICKS: That's correct. Are

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1 there any other scheduling matters that we need to  
2 discuss on the record?

3           On the filings, we'll need an original,  
4 plus 11 copies for internal distribution at the  
5 Commission. Remember that all filings must be made  
6 through the Commission's secretary, either by mail to  
7 the Secretary at the Washington Utilities and  
8 Transportation Commission, P.O. Box 47250, 1300 South  
9 Evergreen Park Drive, S.W., Olympia, Washington, and  
10 the zip code here is 98504-7250.

11           MS. WINDSOR: Can you go through the  
12 address again, please.

13           JUDGE HENDRICKS: Yes, I'm sorry. Again,  
14 by mail to the Commission's Secretary at P.O. Box  
15 47250, 1300 South Evergreen Park Drive, S.W.,  
16 Olympia, Washington, 98504-7250. Did you get that?

17           MS. WINDSOR: Yes, thank you.

18           JUDGE HENDRICKS: Okay.

19           MS. JOHNSTON: That will be set forth in  
20 the prehearing conference order, as well, won't it?

21           JUDGE HENDRICKS: Yes, it will. We require  
22 that filings of substance, for example, testimony,  
23 briefs, motions or answers, include an electronic  
24 copy on a three-by-five-inch diskette in WordPerfect  
25 5.0 or a later format, Microsoft Word, and preferably

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1 also in ASCII or PDF format.

2 MS. WINDSOR: These are options, or are you  
3 saying in all these formats?

4 JUDGE HENDRICKS: No, they're options.

5 MR. DAVIDSON: Except for the fact of the  
6 electronic filing?

7 MS. WINDSOR: Right.

8 JUDGE HENDRICKS: Yes, that's right.

9 MR. DAVIDSON: It's my understanding --  
10 well, let me ask it, rather than a statement. You  
11 can accept an electronic filing through an e-mail  
12 transmittal, can you not?

13 JUDGE HENDRICKS: Yes, we can.

14 MS. JOHNSTON: May I just ask a question on  
15 that point?

16 JUDGE HENDRICKS: Yes.

17 MS. JOHNSTON: Is it your expectation,  
18 though, that hard copies will also be filed?

19 JUDGE HENDRICKS: Yes.

20 MS. JOHNSTON: So that motions, for  
21 example, can't --

22 JUDGE HENDRICKS: Yes, yes. Hard copies  
23 must be filed, and the electronic format that's  
24 required in addition may be filed by e-mail or on  
25 3.5-inch diskette. Service on all parties must be

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1 simultaneous with filing, and ordinarily the  
2 Commission doesn't accept filings by facsimile, so  
3 please don't rely on that without permission, which  
4 may be granted on request in extraordinary  
5 circumstances.

6           The Commission will enter a prehearing  
7 conference order. The prehearing order will include  
8 requirements for witness lists and exhibit lists to  
9 be submitted shortly before the evidentiary hearings,  
10 and I think I mentioned only the witness lists in  
11 discussing the prehearing June 7th date, and that  
12 also includes exhibit lists.

13           The order will remind parties that the  
14 Commission encourages stipulations both as to facts,  
15 under 480-09-470, and to issues that could be  
16 resolved via the settlement process, and we've had  
17 some discussion about that under our rules in WAC  
18 480-09-466 and 465. And the Commission should be  
19 advised of any progress that you make.

20           Is there anything else to come before the  
21 Commission today? Hearing nothing, the conference is  
22 adjourned.

23           MS. WINDSOR: Thank you.

24           MR. DAVIDSON: Thank you.

25           MS. JOHNSTON: Thank you.

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(Proceedings adjourned at 3:07 p.m.)



