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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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\_\_\_\_\_ )  
In the Matter of Cancellation of ) Docket TS-080087

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Certificates of ) Volume I

5

DUTCHMAN MARINE, LLC (BC-126), )

6

SEATTLE HARBOR TOURS LIMITED )

7

PARTNERSHIP (BC-124) AND SEATTLE )

8

FERRY SERVICE, LLC (BC-123). )  
\_\_\_\_\_ )

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A brief adjudicative proceeding in the above-entitled matter was held at 1:36 p.m. on Tuesday, March 25, 2008, at 1300 South Evergreen Park Drive, S.W., Olympia, Washington, before Administrative Law Judge ADAM TOREM.

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The parties present were as follows:

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COMMISSION STAFF, by Jonathan Thompson, Assistant Attorney General, 1400 South Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504-0128.

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SEATTLE FERRY SERVICE, LLC, by Larry Kezner, Owner, 668 W. Emerson Street, Seattle, Washington, 98119.

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DUTCHMAN MARINE, LLC, by Daniel Dolson, P.O. Box 306, Bothell, Washington, 98041.

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Barbara L. Nelson, CCR

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Court Reporter

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

2 JUDGE TOREM: Good afternoon. It's Tuesday,  
3 March 25th, 2008. It's a little after 1:30 in the  
4 afternoon. My name is Adam Torem, it's T-o-r-e-m.  
5 I'm an Administrative Law Judge with the Washington  
6 Utilities and Transportation Commission.

7 This is Docket TS-080087. This is the  
8 matter of cancellation of certain ferry certificates.  
9 There are three parties to the original notice.  
10 First is Dutchman Marine, L.L.C., and their  
11 certificate number is BC-126. Second party  
12 originally listed in the caption was Seattle Harbor  
13 Tours Limited Partnership. They were BC-124. And  
14 the third and final Respondent is Seattle Ferry  
15 Service, L.L.C. They are BC-123.

16 When the notice of intent to cancel  
17 certificates was issued in mid-January of 2008,  
18 Seattle Harbor Tours did not seek a hearing, and  
19 their certificate, BC-124, will be cancelled for  
20 their lack of response to the original notice.

21 The two other parties did request the  
22 hearing, and that's what we're having today as the  
23 brief adjudicative proceeding. That's held under  
24 authority of Revised Code of Washington 34.05.482,  
25 and also under the rules of the Commission, that's

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1 Washington Administrative Code 480-07-610. This is a  
2 BAP, or a brief adjudication into alleged violations  
3 of Revised Code of Washington 81.84 and portions of  
4 Washington Administrative Code 480-51, the  
5 regulations governing commercial ferry services.

6           What I want to do, despite this being a  
7 brief adjudication, is take formal appearances from  
8 the three parties that are present, and those include  
9 Commission Staff. I'm going to ask that Assistant  
10 Attorney General Jonathan Thompson give his full  
11 appearance as an example of the formalities we go  
12 through here at the Commission for Mr. Dolson and Mr.  
13 Kezner. So I'm going to have him essentially read  
14 his business card into the record. The formal  
15 appearance requires the name, your party you're  
16 representing, your full mailing address, telephone  
17 numbers, fax number, and e-mail address.

18           So as I said, Mr. Thompson, if you could  
19 give us the example, and then we'll go down the line  
20 here.

21           MR. THOMPSON: Okay. I am Jonathan  
22 Thompson, Assistant Attorney General, representing  
23 the Commission Staff. My street address is 1400  
24 South Evergreen Park Drive, S.W., Olympia,  
25 Washington, 98504. And the mailing address is P.O.

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1 Box 40128. My phone number is 360-664-1225, and my  
2 fax is 360-586-5522. My e-mail is Jonat@Atg.Wa.Gov.  
3 And I think that covers it.

4 JUDGE TOREM: All right. Mr. Kezner.

5 MR. KEZNER: Yes, Larry Kezner, K-e-z-n-e-r,  
6 Owner of Seattle Ferry Service, L.L.C., 668 W.  
7 Emerson Street, Seattle, 98119. Phone number is  
8 206-713-8446. Fax is 206-284-2623. E-mail is  
9 Larry@SeattleFerryService.com.

10 JUDGE TOREM: Mr. Dolson.

11 MR. DOLSON: Daniel Dolson, I am the  
12 managing member of Dutchman Marine, L.L.C. Address,  
13 10642 Rainier Avenue South, Seattle, Washington,  
14 98178. My phone number is 206-854-4057. Fax,  
15 206-374-2979. My e-mail is Daniel.Dolson@Gmail.com.

16 JUDGE TOREM: All right. Thank you all.  
17 When we sent out the notice of brief adjudication,  
18 there was a request to see if there was any  
19 additional written documents to be filed, and I had  
20 set a deadline of last Thursday. I asked you before  
21 the hearing began if I had missed anything, but  
22 nothing came in.

23 So it looks like today what we're going to  
24 do is have oral statements. I think it might be  
25 helpful to hear from the Commission first if there's

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1 any change to the notice of intent to cancel  
2 certificates that were in doubt and hear from Mr.  
3 Thompson, if he chooses to explain the background on  
4 it whatsoever, it's totally optional.

5           The burden in these cases is on the  
6 responding parties to come in and set out any change  
7 to what was in the original notice and the rest of  
8 the documents, which I indicated would become part of  
9 the administrative record.

10           I've looked at all those documents, I've  
11 looked at the law, I've brought a copy of the  
12 corresponding RCW and WAC in in case there's a  
13 question. And I know this seems like a fairly good  
14 set of formalities like a normal hearing up to this  
15 point. But now we've taken care of everything we  
16 need to according to law. It just calls for us to  
17 have a chance for you to have your day in court, if  
18 you will, tell me why you're here.

19           One of the questions before we got started  
20 was, Well, why was this all necessary? So we can be  
21 informal and have an exchange. It may be helpful for  
22 me to keep the two ferry companies that are here  
23 today separated in making their statements unless  
24 there's some reasons that the issues merge.

25           But at the end of the day, I've got to issue

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1 -- after today, I'll probably take the matter under  
2 advisement, rather than, as I'm permitted to do, but  
3 not required, make a ruling right here and now.  
4 Probably want some time to think about what you tell  
5 me.

6 My deadline for issuing an initial order,  
7 which would be subject to appeal to the full  
8 Commission, is about ten days from now, should be  
9 exactly ten days from now. So it should be a very  
10 short turnaround as to, when you walk out of here  
11 today, two weeks from today, you'll be knowing if you  
12 need to file an appeal or not.

13 Any questions about the procedure, how it's  
14 going to work? Okay. Seeing none, Mr. Thompson,  
15 anything to offer?

16 MR. THOMPSON: I don't have too much to  
17 offer, in addition to just the facts and kind of  
18 legal details that are set out in the notice of  
19 intent to cancel certificates. I would just -- just  
20 in terms of laying out the big picture here a little  
21 bit, the way that the legislature's set up the  
22 regulatory scheme for commercial ferries is a little  
23 bit different than in other industries we deal with  
24 in that the person proposing to be granted a  
25 certificate has a period of time within which to

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1 initiate service, and that's because of the realities  
2 of this business, being that it's difficult to  
3 obtain, you know, docking rights and parking and  
4 similar sorts of things that are necessary to operate  
5 ferry service.

6           So the idea is that the applicant can come  
7 in and show that they're -- you know, what their  
8 plans are, but then -- and how they would operate,  
9 but they have a period of time within which to  
10 actually initiate service.

11           The -- it is a -- a ferry certificate is a  
12 property right in that if a public entity wants to  
13 begin operating in the territory or on the route that  
14 the certificate holder has, they need to buy out the  
15 certificate, and that's provided for in statute. And  
16 so there's some -- there's this, you know, intention,  
17 apparently, from the legislature to give the  
18 certificate holder some degree of certainty that, you  
19 know, they have this -- they can invest and begin  
20 operations.

21           Anyway, but there are limits on that, as  
22 well, because the public interest is probably not  
23 served by having the certificate holder being able to  
24 sit on their right for a long period of time without  
25 actually initiating service. So there is a five-year

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1 time period for initiation of service for -- it used  
2 to apply everywhere, but fairly recently the  
3 legislature shortened it to 20 months, I believe, for  
4 -- not applicable here, but for Puget Sound  
5 passenger-only service.

6           So anyway, the five-year limit applies here.  
7 The legislature, in 81.84.010, did allow for the  
8 extension of time -- extension of the five-year  
9 period if there had been progress reports that showed  
10 that the progress, that substantial progress had been  
11 made toward -- or significant advancement toward  
12 initiating service had been made.

13           So this -- the certificates, at least on  
14 Lake Washington, and as you hear, were granted -- and  
15 I think the Lake Union certificate, as well, were  
16 granted in 2001.

17           MR. KEZNER: That was actually granted prior  
18 to that.

19           MR. THOMPSON: Right. A temporary  
20 certificate, I think. But in any case -- and  
21 actually, that's --

22           MR. KEZNER: There was a merging of things  
23 there.

24           MR. THOMPSON: Right. There's some  
25 different sets of facts there, but because service



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1 actually was initiated on that route on a seasonal  
2 basis, which you'll have a chance to speak to in a  
3 minute.

4           But in any event, with Dutchman Marine,  
5 service was not initiated within five years. The  
6 thing that prompted this -- well, the statutes and  
7 rules are a little strange in this area, because  
8 although they're mandatory by saying service must be  
9 initiated within five years, presumably you could  
10 just have -- you could be deemed by law that if  
11 you've not initiated service, well, you don't really  
12 have a certificate.

13           But there is this cancellation provision.  
14 So while we don't always -- Staff doesn't always  
15 promptly, at the end of five years, ask for  
16 cancellation of a certificate, there is sometimes  
17 ambiguity as to what's the status of an outstanding  
18 certificate. Sometimes it's referred to as a dormant  
19 certificate, and sometimes if there's an application  
20 for a certificate to serve a particular route, there  
21 may be dormant authority out there, and it's always a  
22 problem to have to deal with it, because it hasn't  
23 been cancelled.

24           So the intent here is to sort of clean up  
25 the books, make what's occurred sort of de facto,

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1 make that the case at a law to, you know, officially  
2 cancel the certificates and sort of let the world  
3 know that there's no certificate holder out there  
4 should somebody, public or private, wish to provide  
5 the service.

6 So that was the motivation for this and  
7 gives a little background of the regulatory scheme.

8 JUDGE TOREM: All right. Thank you, Mr.  
9 Thompson. Mr. Kezner, let me hear from you next.

10 MR. KEZNER: Okay. Just checking the dates  
11 here on this thing. The original certificate for  
12 Seattle Ferry Service was issued in June of 2000, and  
13 then it was amended in October of 2001. And that had  
14 to do with consolidating. For some reason, it was  
15 recommended either by Staff here or maybe it was my  
16 attorney in this that these would be consolidated.

17 Two different ferry routes. The original  
18 BC-123 was a ferry route from North to South Lake  
19 Union. And the permit was granted in June of 2000.  
20 We actually did ferry runs for special events in  
21 2002, 2003, 2004 and 2005.

22 The ferry route portion that went from Lake  
23 Union to Port Quendall, which is South Lake  
24 Washington near Renton, we had thought at the time  
25 that there was going to be an office development at

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1 that area. And it was actually Paul Allen's Vulcan  
2 property there, and South Lake Union was also largely  
3 Paul Allen's property there at that end. We thought  
4 that there was going to be an opportunity to have  
5 water transit between these two office areas. That  
6 didn't turn out.

7 And so now that Port Quendall area is now  
8 the training camp for Paul Allen's Seahawks.  
9 Seahawks? Yeah. I keep always getting my sports  
10 mixed up.

11 So I'm willing at this point to relinquish  
12 the Port Quendall to South Lake Union portion,  
13 because it is -- it's not likely it would develop  
14 into a market specifically between those two points.

15 The route between North and South Lake Union  
16 is still a viable route, although we have not run it  
17 for the last two years because of construction at  
18 both ends, Fremont Bridge approach destruction and  
19 construction, the buildings and parking lots at the  
20 Fremont side, and then the South Lake Union Park  
21 construction and trolley, all of that contributed to  
22 not having good access to either end of the lake to  
23 make those profitable.

24 Speaking of profitable, the ferry runs that  
25 I ran in 2002, 2003, 2004, 2005, all broke even or

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1 made slight profits without subsidies. I want to  
2 hear something from the Washington State Ferries  
3 about that.

4           It's not big business, but it's a public  
5 service, and it also provides the North-South Lake  
6 Union this potential to cover for emergency  
7 transportation if the bridges that go north and  
8 south, that otherwise connect North and South Seattle  
9 together across the canals and across the lakes, if  
10 those are ever damaged or closed for an earthquake or  
11 other kinds of things, that we have a continuing  
12 opportunity to run legitimate commercial service for  
13 emergency workers and other transportation.

14           The ability to have even seasonal use of  
15 this keeps the equipment and the space alive, so that  
16 the opportunity for expansion and public service for  
17 these emergency purposes, without -- if we're  
18 continually going in and out of business with this,  
19 it would die.

20           So I would like to ask that in BC-123, that  
21 I separate -- and I'm not sure what the right legal  
22 word would be, but you can have Lake Union to Port  
23 Quendall back, and it's not likely that it would  
24 materialize into anything, but I'd like to keep the  
25 North to South Lake Union route.

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1           And I might want to be more specific later  
2 on in saying that it's -- in granting permits from  
3 here, where it says things like Kirkland to Seattle  
4 or whatever, you have to -- I think things should be  
5 maybe more specific. That is, saying Seattle is  
6 huge, and it may be more important in some of my  
7 routes here, it shows that there's from here to here,  
8 in street name, is where a terminus may be. And it  
9 goes from here to here with a street name.

10           And I may like to try to revise this, just  
11 from an efficiency point of view, someone else coming  
12 along will say, Well, you want to go from here to  
13 here and we want to go from here to here, but it may  
14 not be an exact dock, it may change over time, but  
15 there would be an area where the commercial  
16 development and the maritime opportunities will say  
17 that it's got to be in this area.

18           We're always fighting the Corps of  
19 Engineers, the EPA, State Fisheries, the City of  
20 Seattle land use codes. And all of these things  
21 sometimes tend to make us shift our operation a  
22 little bit. So those are the tangles that we get  
23 into in this business.

24           This has been an interesting experience, my  
25 first time doing this sort of thing, and I think it's

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1 good. I like the opportunity to have the route type  
2 of stuff, the things that make you focus on making it  
3 happen. And I have equipment on the lake, the  
4 business is viable. We do this -- we haven't done it  
5 for a couple years. I'm working on it for this year.  
6 We'll see if it can be viable. But we've had a --  
7 something extraordinary with construction at both  
8 ends that has made it so that it wasn't viable, and  
9 since we're not subsidized, I couldn't do it  
10 continuously.

11 And that's what I've got. That's it.

12 JUDGE TOREM: Mr. Kezner, can you tell me  
13 when the last time -- let me clarify first. On the  
14 South Lake Union-Port Quendall run, that never  
15 operated.

16 MR. KEZNER: That's correct.

17 JUDGE TOREM: And that one you're conceding  
18 should be stricken from the certificate?

19 MR. KEZNER: That's correct.

20 JUDGE TOREM: On the North Lake Union-South  
21 Lake Union run, you mentioned four different years it  
22 ran seasonally for special events?

23 MR. KEZNER: Yes.

24 JUDGE TOREM: So the last time that ran was  
25 what month of 2005?

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1                   MR. KEZNER: That would have been in July of  
2 2005.

3                   JUDGE TOREM: So the basis, if I read the  
4 notice correctly, Mr. Thompson, you can correct me if  
5 I'm wrong, or Ms. Ingram, was for this portion of the  
6 run, the North Lake Union-South Lake Union, for  
7 Seattle Ferry Service, the basis for the cancellation  
8 is, first, that the -- it was not that the five years  
9 has expired, because they have initiated service, but  
10 instead is based on the 2006 annual report, which  
11 showed no income.

12                   MR. THOMPSON: Correct. And another that  
13 would apply is just looking at -- there's a list of  
14 grounds for cancellation of certificates, 480-51-150.  
15 And let's see. There are other grounds, such as  
16 failure to observe -- no, that's not it. I'm looking  
17 for one that says they have to observe Commission  
18 rules.

19                   JUDGE TOREM: There's a violation of any  
20 provision of this chapter that comes from the  
21 statute.

22                   MR. THOMPSON: Right, I think that's  
23 probably the connection. But in any event, there's a  
24 requirement that when the service is going to cease,  
25 that --

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1           JUDGE TOREM:  Oh, are you thinking of the  
2  petition to discontinue?

3           MR. THOMPSON:  Right.  There's a -- and  
4  maybe that's another way of looking at, I guess, what  
5  request is being made here by Mr. Kezner, and that's  
6  -- there is an opportunity to ask for a  
7  discontinuance of service under 480-51-130 WAC, but  
8  it states there that the Commission shall not grant  
9  permission for discontinuance of service for periods  
10 exceeding 12 months.

11           JUDGE TOREM:  I'm familiar with that from  
12 other cases where services have come in seeking  
13 greater than 12 months, have been granted 12 months,  
14 and told to come back and make their case again.

15           MR. THOMPSON:  Right.

16           JUDGE TOREM:  Okay.  But the trigger here  
17 for this particular run appears to have been the lack  
18 of revenue in the annual report, 2006.

19           MR. THOMPSON:  Right.

20           JUDGE TOREM:  Now, my expectation, then, if  
21 the last run was July of 2005, there would have been  
22 no revenue, Mr. Kezner, in 2006.  That's apparently  
23 what the annual report said.  And I would guess, when  
24 the annual report for 2007 is filed --

25           MR. KEZNER:  Let me see if I didn't misstate



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1 that, because I brought it with me here. Well, the  
2 2005 actually shows a revenue -- see if I can figure  
3 out how this -- we carried 175 passengers that year,  
4 and \$1,400.

5 JUDGE TOREM: What I have here, Mr. Kezner  
6 -- correct. In 2005, the Commission's notice  
7 indicates you did have a \$1,400 revenue, but in 2006,  
8 there was none.

9 MR. KEZNER: There was none; that's correct.

10 JUDGE TOREM: So where I was going with this  
11 was, the May requirement to file an annual report  
12 again this year, do you predict anything other than  
13 no income for 2007?

14 MR. KEZNER: Predict?

15 JUDGE TOREM: I'm guessing you might not  
16 have done the paperwork yet, but there's no basis to  
17 expect any difference from the 2006 report when you  
18 file the one for 2007; is that correct?

19 MR. KEZNER: Well, if I predict that there's  
20 no income, there's no penalty if there is?

21 JUDGE TOREM: Well, if there were income in  
22 2007, that may be a mitigating circumstance, I would  
23 think, but you've told me that there hasn't been any  
24 run.

25 MR. KEZNER: There hasn't been, no. So for

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1 2008, for example, I don't know. I don't know if the  
2 run will initiate, because right now they are  
3 planning on ripping out 250 parking spots so Paul  
4 Allen can have some trees to look at at the south end  
5 of the lake. And just the process, doing that sort  
6 of thing is tough. That's another meeting I'm going  
7 to tonight.

8 JUDGE TOREM: So are there any firm plans to  
9 resume service in 2008?

10 MR. KEZNER: Not firm plans. I'm available  
11 to do this within short notice, probably less than 30  
12 days, that if I get an agreement with the South Lake  
13 Union Park people, that, you know, I could spring  
14 into action. I've bracketed the time and the  
15 equipment for that. But I don't know for a fact if  
16 that's going to happen.

17 JUDGE TOREM: And last question I have is  
18 the special events that you had starting in 2002,  
19 were those always the same special event?

20 MR. KEZNER: Yes.

21 JUDGE TOREM: Which one was that?

22 MR. KEZNER: It was the Center for Wooden  
23 Boats shows, 4th of July weekend, generally ran four  
24 or five days.

25 JUDGE TOREM: Per chance, does the boat you

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1 use happen to be wooden?

2 MR. KEZNER: No, it's not. It's steel, but  
3 it looks period.

4 JUDGE TOREM: Excellent. All right.  
5 Anything else you want to tell me about your  
6 certificate under the circumstances?

7 MR. KEZNER: I think -- I think the biggest  
8 issue is separating something that is not viable, the  
9 portion from South Lake Union to Port Quendall. I  
10 don't think there's anything else in there.

11 The major reason to keep the route is that I  
12 do see it as viable in the future, and it's been  
13 something that people have supported that are in the  
14 neighborhood or visiting, so the opportunity to  
15 expand it more days, more days in a year, may still  
16 be there. It may not be with this particular boat,  
17 but it could be with other equipment.

18 JUDGE TOREM: Okay. I think I understand  
19 your position and I'm going to have to try to  
20 reconcile that with the legislative guidance, but I  
21 will note, for both you and Mr. Dolson, and Mr.  
22 Thompson's benefit as well, that under the  
23 cancellation grounds, all of this is permissive  
24 language.

25 I specifically looked at this and

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1 highlighted it before the hearing today to see if I  
2 was mandated or if there was a way to look at this.  
3 The language says, After notice and opportunity for  
4 hearing, the Commission may cancel. There's not a  
5 mandate. So I have to give this some thought and see  
6 what looks appropriate given the intent of the  
7 legislature and the intent of the Commission's rules  
8 in that regard.

9 MR. THOMPSON: If I can address that.

10 JUDGE TOREM: I expect you would.

11 MR. THOMPSON: I agree with you there's some  
12 curious wording. It would appear to be permissive in  
13 the part you're quoting. However, in the -- if you  
14 look at RCW 81.84.010.

15 JUDGE TOREM: Oh, certainly. And under  
16 there, I've got must initiate service and shall  
17 report to the Commission. So we have a disconnect  
18 between these two provisions.

19 MR. THOMPSON: Yeah.

20 JUDGE TOREM: I look at what the mandate is  
21 as to the holder of the certificate, but the  
22 Commission is given discretion in how to react to  
23 each certificate holder's attempts to comply with  
24 what is mandatory. There's not much room for  
25 discussion on that. Mr. Kezner and Mr. Dolson are

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1 told what to do and are required to do it. And in  
2 this case, the Commission's alleged they haven't  
3 complied. And yet, here the Commission is not a  
4 turnkey, thou shalt do something, it's not an if-then  
5 like the computer is, but simply allows me to hear  
6 things and determine if that ultimate sanction will  
7 be taken.

8           It may be appropriate, but there's not a --  
9 I'm glad, at least, that I get to sit here and think  
10 about it and not just say, Thank you, next. So I  
11 appreciate hearing that. So I guess that's why I get  
12 the title of judge today, to figure out what to do  
13 here.

14           All right. Mr. Dolson, having heard all  
15 that, let's turn to the case of Dutchman Marine.  
16 This is your opportunity to tell me your  
17 circumstances.

18           MR. DOLSON: Thank you. I am Daniel Dolson.  
19 I did start Dutchman Marine. It is a for-profit  
20 business. I started it. I have a marine background.  
21 I'm a merchant marine officer. I understand somewhat  
22 was insurance vessel operations. I do not understand  
23 politics, but it was forced down my throat once we  
24 began this process.

25           Right now my day job, if you want to call it

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1 that, is I'm the majority owner and the founder of  
2 Seattle Diving Corporation. I have about 60  
3 employees. I started --

4 JUDGE TOREM: Sixty? Six-zero?

5 MR. DOLSON: Six-zero employees. I started  
6 this in 2003, which was after the original permit for  
7 the passenger ferries was started, because I needed  
8 an income. I've grown this business. Last year, we  
9 worked in four different countries. And so now that  
10 that business is going, it has its own full-time  
11 staff, I'm able to concentrate back on Dutchman  
12 Marine, which is a simple passenger ferry service on  
13 Lake Washington.

14 I petitioned the WUTC a little over five  
15 years ago for a passenger ferry permit. And in my  
16 research, I found that Seattle Harbor Tours, which I  
17 believe is owned by Argosy -- I'm not sure exactly.  
18 I mean, I know there's a connection, I don't know the  
19 formal connection -- had had a permit to run between  
20 Kirkland and Seattle. They did not file annual  
21 progress reports. They did file annual --

22 JUDGE TOREM: The reports?

23 MR. DOLSON: -- commercial reports.

24 MR. KEZNER: Annual report.

25 MR. DOLSON: Because they do have other

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1 operations that need that. So it was -- when we did  
2 the application and as I did subsequent progress  
3 reports, the weight and the importance of their  
4 reports was not -- did not seem significant. I do  
5 know that they're required, and it's my fault that  
6 they were not all filed and that they are identical,  
7 because, as Larry probably knows, Mr. Kezner knows as  
8 much as anybody, the boats are the easy part.  
9 The multi-jurisdictional cooperation is the hard  
10 part.

11           Getting the different municipalities and  
12 King County to cooperate or at least get on the same  
13 page to initiate passenger ferry service is not easy.  
14 It was only recently that they formed the King County  
15 Ferry District, which has this very purpose in mind,  
16 to get passenger ferry operations on the lake. It's  
17 the one entity we can all go through to make it  
18 happen. Before -- and it was only formed --

19           MR. KEZNER: Just a few months ago, I think.

20           MR. DOLSON: October, November of last year.  
21 It has taken that long to get that in place, and it's  
22 not necessarily by my work, but I've surely been  
23 watching and staying active with King County and Ron  
24 Sims' office.

25           So being that this is a for-profit

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1 operation, we can -- we had the financing in place to  
2 get the vessels. We could operate, of course, when  
3 fuel was less expensive then. Now it's much more.  
4 The service can be initiated. But if I were to just  
5 initiate it right now, it would fail as a for-profit,  
6 dependable transit system. It needs some subsidy,  
7 whether it be indirect or direct. Indirect being  
8 inexpensive docking fees or access to facilities.

9           With the King County Ferry District now in  
10 place, they have around \$18 million for 2008  
11 available for doing multiple ferry runs, not just  
12 Lake Washington. I do know that Lake Washington is a  
13 little bit further down their list. They're  
14 concentrating on Vashon Island passenger-only ferry  
15 service, but it does include money for capital costs,  
16 which helps out our business. It also provides money  
17 for shuttle bus service, which is key for the mode  
18 switches to get the commuters to and from either  
19 their homes or to their businesses from the ferry  
20 dock.

21           I've -- like I said, I can start the ferry  
22 service. We can initiate service and just throw it  
23 against the wall and see what sticks, but without  
24 working with King County, especially this new Ferry  
25 District, it would harm the passenger ferry



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1 reputation throughout Puget Sound a lot more than it  
2 will help. So we've been holding off on initiating  
3 service.

4           The progress reports that the Commission  
5 asks for or requires are legitimate, but it's very  
6 difficult to indicate your political progress in  
7 terms of getting the jurisdictions to help out. Some  
8 things we can put in there. It's public record, it's  
9 open. Some things we don't want to, for obvious  
10 reasons.

11           The first two or three years I had the  
12 permit, it seemed like we could still do it just as a  
13 private operator, but now, with the fuel costs being  
14 what they are, we need the subsidies, they will be  
15 coming, they are in place, just in the past few  
16 months.

17           This morning's signing of -- I don't know  
18 the specific legislation, but Governor Gregoire  
19 signed in allowing tolls. Especially on the 520  
20 bridge. I can guarantee you the moment those tolls  
21 go in, within short order, boats will start running,  
22 because it will make the difference in price between  
23 driving a car and taking the ferry much more -- a  
24 much smaller difference. And that will help the  
25 vessel operation succeed.

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1           I don't have the lobbying power or the  
2 money, I did not have the money and the lobbying  
3 power the first five years of the permit to make all  
4 this happen. It had to happen from King County  
5 Executive Ron Sims' office, and it has.

6           If you pull the permit from us, if you  
7 cancel the permit, which we spent roughly \$150,000  
8 between legal costs and other costs and consultants  
9 to get in place, I can almost promise you that  
10 Dutchman Marine, or at least myself, will not do a  
11 second application to the WUTC for a permit to  
12 operate passenger ferries.

13           If you allow it to -- and I will file my  
14 proper progress reports, more detailed, instead of  
15 the same text over and over. We need a year, maybe  
16 two more years to get it in place. My understanding  
17 is that the RCWs allow for anyone who -- allows for  
18 the permit to be started within five years or three  
19 annual extensions for up to five years total. We  
20 need those extra years.

21           And also, the RCWs allow for someone else,  
22 another company, another vessel operator who may be  
23 interested in those same routes to challenge Dutchman  
24 Marine's permit and to be able to get their own  
25 permit without necessarily canceling Dutchman

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1 Marine's certificate.

2           So if there's a concern that Dutchman Marine  
3 having a permit in place is preventing others from  
4 initiating service, I think that's not a -- not a  
5 valid argument, because anybody at any time can  
6 petition the WUTC. My understanding of the RCWs for  
7 this is that if we don't do our job, somebody else  
8 will have ample opportunity to. Thank you.

9           JUDGE TOREM: Mr. Dolson, let me ask what I  
10 hope don't seem like rude or --

11           MR. DOLSON: No, not at all.

12           JUDGE TOREM: -- bad questions. In my  
13 position, I just have to ask these. When you said  
14 you still need another two to three years, what year,  
15 best case scenario, could you begin operations?

16           MR. DOLSON: We were to begin last year.

17           JUDGE TOREM: Well, right now, from what you  
18 said, I know fuel prices have changed from last year.  
19 Right now, today, if you said, We would begin  
20 operations, best case scenario, what year would that  
21 be?

22           MR. DOLSON: August 2008.

23           JUDGE TOREM: So this year?

24           MR. DOLSON: The vessel operations are not  
25 the difficult part. It's having the intermodal

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1 connections, bus service, and getting permissions to  
2 use the docks.

3 Kirkland has -- I don't speak for them, but  
4 what they've told me is they're excited to have  
5 passenger ferry service come there, because not only  
6 does it bring people there, but it also relieves  
7 congestion on their side. Getting people out on the  
8 other side, they say there's no parking, which of  
9 course that's an absolute fact.

10 But a small ferry service with passenger  
11 vessels holding 150 people is barely able to keep up  
12 with just the people within walking distance of the  
13 Kirkland ferry dock. A 150-passenger ferry boat  
14 carries the same number of people as two articulated  
15 buses owned by King County Metro. So the capacity is  
16 not that big.

17 Of course, you use smaller vessels, they're  
18 less expensive to operate, more flexible in their  
19 scheduling, and you can pull them out of service as  
20 needed or you can expand the service as needed to  
21 have more frequent service.

22 JUDGE TOREM: All right. So when you were  
23 talking about the five years, plus another two to  
24 three years of extension, that would be from 2001  
25 until 2008, and that would give those total of eight

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1 years?

2 MR. DOLSON: If we cannot start service or  
3 have the solid plans and boats coming to start spring  
4 of 2009, then we're not starting it. Somebody else  
5 will have to do it.

6 JUDGE TOREM: Let me go, then, to your  
7 comments about the new -- I think you said it was the  
8 Seattle Municipal Ferry District?

9 MR. DOLSON: No, King County Ferry District.

10 JUDGE TOREM: King County. And you  
11 mentioned there were new grants that may be  
12 available. And I couldn't tell if you were speaking  
13 in the we, as for our company, have grants available  
14 --

15 MR. DOLSON: No, it's --

16 JUDGE TOREM: -- or we, as the general ferry  
17 service community?

18 MR. DOLSON: The King County Ferry District,  
19 they expect \$18.3 million in 2008, of which 13.3  
20 million is for capital expenditures. They're already  
21 collecting the money.

22 JUDGE TOREM: So of this nearly \$20 million,  
23 is any of that going to go to a private ferry company  
24 in waiting, such as yourself, or are you suggesting  
25 those are capital improvements being made for docking

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1 and intermodal connection services?

2 MR. DOLSON: Both. The money is for the  
3 whole package, to pay for not only some subsidized  
4 operations, but also capital improvements needed to  
5 the docks, which only is limited capital improvements  
6 needed. It goes to pay for the shuttle and it goes  
7 to pay for offsetting the start-up costs.

8 JUDGE TOREM: And what will be the process  
9 or is there one existing already to apply for some of  
10 those subsidies?

11 MR. DOLSON: The Ferry District is  
12 developing that now.

13 JUDGE TOREM: So there's not a current grant  
14 application that you have?

15 MR. DOLSON: Correct. The district was just  
16 formed within the past few months and they're just  
17 getting organized. I don't even think they have  
18 staff in place yet.

19 JUDGE TOREM: I had a question. Let me see  
20 if it comes back. Ah. Do you know if the Ferry  
21 District has given any indication as to the  
22 eligibility for those subsidies, such as would you  
23 have to already have the certificate from the  
24 Washington UTC in order to apply for those subsidies,  
25 or would you be able to do so on promise of going to

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1 apply?

2 MR. DOLSON: I don't know. But I assume,  
3 since it was put together by King County, that the  
4 requirements will be similar to what they did for the  
5 Elliott Bay Water Taxi, where the -- actually, Mr.  
6 Kezner might know, because I don't know. Did they  
7 ask for a WUTC permit from the private contractor?

8 JUDGE TOREM: Mr. Kezner.

9 MR. KEZNER: I believe so. Kitsap Harbor  
10 Tours owned some equipment, and Argosy chartered that  
11 equipment, and Metro King County was the envelope  
12 that -- Metro Transit, King County Metro Transit was  
13 the envelope that had federal subsidies that they ran  
14 and routed into it. A lot depended on the fact that  
15 there was a city dock on one side that the city gave  
16 permission to and the private dock on the other side,  
17 who happened to get the contract, okay.

18 So whether there was a permit concurrent  
19 with the grant or not, I'm guessing not. I'm  
20 guessing that the grant came about, they said we  
21 could do this, and they must have gotten a permit, at  
22 least maybe a conditional use or temporary use to  
23 start with, and maybe there was a permit. I don't  
24 actually know if there's a permanent permit for that  
25 route now.

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1 MR. DOLSON: I believe there is.

2 MR. KEZNER: You believe there is? Okay.  
3 They probably got a conditional permit of some sort  
4 from the start and then wrapped it all together at  
5 once. But there's a lot of balls in the air to put  
6 any of that together.

7 JUDGE TOREM: I'm learning much about the  
8 ferry system from my experience in this proceeding  
9 and some others that I've had in the last year, so I  
10 can concede that quite easily.

11 MR. DOLSON: We don't know. It's a new  
12 ferry district, it's a new government organization.  
13 They have to sort some things out themselves.  
14 However, they're expecting to work with the private  
15 operators for the freshwater operations, Lake  
16 Washington, Lake Union, and that's where -- that's  
17 the only place we intend to operate. We're not a  
18 saltwater operator.

19 JUDGE TOREM: Okay. One more line of  
20 questioning, Mr. Dolson. You acknowledged that  
21 perhaps looking at existing records and failures to  
22 file reports, you might have made what turns out to  
23 be a poor assumption that that was okay, that the  
24 Commission wasn't enforcing that, and they wouldn't  
25 enforce it against you, as well.



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1 MR. DOLSON: Correct.

2 JUDGE TOREM: Can you tell me if the -- is  
3 there a similar logic as to what went on for not  
4 filing for the extensions? Because as far as I  
5 understand, unless I'm misremembering the record, you  
6 had the five years, but you have not yet filed any  
7 request based on not yet starting service to extend  
8 that five-year period; is that correct?

9 MR. DOLSON: That was an oversight on my  
10 part. I did not realize -- I did not remember that  
11 we had to file a formal application for extension.

12 JUDGE TOREM: Do you have one drafted now?

13 MR. DOLSON: I can get one for you within  
14 the next day.

15 JUDGE TOREM: Now, that would be a separate  
16 hearing. It's not something that I have jurisdiction  
17 with here. This is a notice of intent to cancel.  
18 And it may be if I exercised the discretion vested in  
19 me by law to not cancel the certificate, that it may  
20 be upon condition of a prompt filing so that a full  
21 hearing on that may be there.

22 I need to consider in my own mind if there's  
23 any additional evidence that might be brought forth  
24 or if that simply is stringing you along to yet  
25 another legal proceeding where the effect may be the

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1 cancellation as looked at here.

2 Or I guess it would require three steps. If  
3 I did that and you went there and they denied your  
4 extension, then there would be another notice to  
5 cancel for the effect of that, perhaps, if it wasn't  
6 all wrapped into one hearing. So I recognize that as  
7 an an option, but I needed to ask the question about  
8 the extensions.

9 Let me ask, Mr. Thompson, if you have any  
10 other comments or you want to take a minute to see if  
11 there's any closing comments you want to make? And  
12 then I can go back and let everybody have kind of  
13 alibis one more time here.

14 MR. THOMPSON: Well, just as to your --  
15 well, let me -- I guess I'll address --

16 JUDGE TOREM: Hypothetical on the other --

17 MR. THOMPSON: -- the hypothetical you just  
18 posed. And that is that the date -- the certificate  
19 was granted to Dutchman on October 19th, 2001, so  
20 five years was up October 19th, 2006.

21 JUDGE TOREM: Yes, I agree.

22 MR. THOMPSON: The rules require that you  
23 ask for an extension I think 90 days prior to the  
24 five-year --

25 JUDGE TOREM: In no hypothetical can I turn

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1 back the clock.

2 MR. THOMPSON: Yeah. Well -- so right.

3 You'd have to overlook a lot of rules setting

4 deadlines.

5 JUDGE TOREM: That's why I qualified my

6 hypothetical as making sure it wasn't a waste of

7 anybody's time, the Commission's or Mr. Dolson's, to

8 set him up to fail at another hearing where he

9 couldn't meet the necessary standards. I'm looking

10 at other options that I may have with the discretion

11 vested, if it's worth the paper it's written on or

12 law adopted within, to do anything to benefit the

13 company. It may be that I choose not to go that way.

14 I just don't know.

15 MR. THOMPSON: Okay. I'd also just address

16 briefly the issue about the existence of the King

17 County Ferry District. And I'll confess I don't know

18 a great deal about their powers and so forth, but it

19 would be my supposition that those kind of entities

20 are set up to provide the ferry service themselves.

21 And they can certainly do so through a private

22 contractor, in which case the Commission wouldn't --

23 that would be a public ferry service operated by a

24 private contractor, not subject to the jurisdiction

25 of the Commission.

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1           And part of the reason for the 20-month  
2    limitation on Puget Sound, the motivation there to  
3    shorten that was because private entities, like  
4    public transportation benefit areas, I believe, or  
5    other types of public ferry districts were looking to  
6    get into the business and they didn't want to be  
7    hindered by having to buy out certificates that were  
8    sitting there not being utilized.

9           JUDGE TOREM: You mentioned there was a  
10   statutory provision, and I heard of such a provision  
11   several times in the last year, but I never read it.  
12   Do you happen to know which chapter of RCW the buyout  
13   requirement comes in?

14           MR. THOMPSON: Yeah, it's right in the 81.84  
15   --

16           JUDGE TOREM: I've never had to look at it  
17   yet.

18           MR. THOMPSON: Chapter 010, in the first  
19   paragraph. Let's see. Where I guess it starts, This  
20   section does not affect the right of any county,  
21   public transportation benefit area, et cetera. The  
22   -- I believe there may be language within the  
23   statutes that set out the powers of those kinds of  
24   entities mentioned there that says that they have to  
25   buy out an existing certificate holder. I'm not sure

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1 if -- that's the case for auto transportation  
2 service, I know, but I'm not sure about various  
3 others. Right.

4 So -- and in the very last part of the first  
5 paragraph says, Without first acquiring the rights  
6 granted to the certificate holder under the  
7 certificate. There'd be a question what it's worth  
8 if service hasn't been initiated.

9 JUDGE TOREM: I guess I was looking more for  
10 language that doesn't imply that this certificate of  
11 public convenience and necessity is an exclusive  
12 right. I know that there's a tradition for doing so.

13 MR. THOMPSON: The Commission has typically  
14 interpreted it as an exclusive right, except that, as  
15 in all chapters where we do have that, such as solid  
16 waste and auto transportation, there's a question of  
17 whether the existing certificate holder has provided  
18 service to the satisfaction of the Commission.

19 So there's an opportunity for finding that,  
20 well, that serves -- the existing certificate holder,  
21 you know, serves this particular niche, and there's  
22 an opportunity for someone to serve a different niche  
23 or those types of results. But generally, the  
24 general rule is that it be a monopoly service,  
25 exclusive.

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1           MR. DOLSON: But does it not allow for a new  
2 applicant? That was my understanding, that if  
3 another company wanted to challenge our certificate  
4 or just simply provide additional service, they can  
5 petition the Commission for an additional  
6 certificate.

7           JUDGE TOREM: Correct. I think, Mr. Dolson,  
8 your impression of the law is correct. Mr.  
9 Thompson's been pointed to another statutory section  
10 or is it a WAC section?

11          MR. THOMPSON: It's a statute, 81.84.020,  
12 subsection one. You want me to quote it?

13          JUDGE TOREM: Which part is that?

14          MR. THOMPSON: It's just the -- it's after  
15 the -- last sentence.

16          JUDGE TOREM: The Commission may not grant a  
17 certificate to operate where it's already served by  
18 an existing certificate holder unless the existing  
19 certificate holder has failed or refused to furnish  
20 reasonable and adequate service, has failed to  
21 provide the service described in the certificate or  
22 tariffs after the time allowed to begin issuing  
23 service has lapsed or has not objected to the  
24 issuance of the certificate as prayed for.

25          And I understand there's proceedings where

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1 other lines of Commission regulation where protestors  
2 can come in when an application is filed. And as Mr.  
3 Dolson is saying he would be in a position to be  
4 allowed to protest, perhaps, although there's a  
5 reading of this statute that may disallow his protest  
6 simply because he hasn't initiated service.

7 But, again, this is one of the -- he must  
8 initiate service probably in order to be able to  
9 protest, one could read that in, but I may choose not  
10 to cancel the certificate and leave it out there as a  
11 -- I'll call it, for lack of a better term today, an  
12 empty property right that has not yet been exercised  
13 and may not be worth anything because another  
14 applicant can't protest.

15 So there's a variety of ways to read the  
16 statute. I'm sure, if we keep going back and forth,  
17 we can find more details. I found another one just  
18 while we were on a break. I just look at this and  
19 say, recognizing what you've said about the public  
20 entities and their desire to start up, it's no secret  
21 that with the commute trip reduction programs going  
22 on, particularly in the Seattle area, with the  
23 congestion going on, 520 bridge tolling that's being  
24 suggested, the entire transportation system is under  
25 more pressure and greater scrutiny.

0040

1           And yet I'm faced, from where I sit, with  
2 the legislative language as it sits right now, the  
3 Commission's adopted this language, and I don't think  
4 they've stretched the legislative intent whatsoever.  
5 They've taken the same terms, and there's a reason  
6 somewhere for the five years to initiate service,  
7 there's a reason for the requirement for the annual  
8 or semi-annual progress reports, and there's a reason  
9 for having something that's in the statute and in the  
10 rule that says if there's an annual report with zero  
11 income, that's a basis to consider cancellation. So  
12 those are the things I need to weigh out.

13           I want to give the Commission one more  
14 chance to say are there any more items I need to  
15 weigh in making this decision?

16           MR. THOMPSON: No. One thing I did want to  
17 add, and I think Mr. Dolson actually alluded to it,  
18 and that is once a certificate gets cancelled for  
19 failure to initiate service, that doesn't preclude  
20 the person from coming back and applying again and  
21 restarting the process. That can certainly be  
22 costly, but the reason it's costly is because other  
23 people who are interested may come in and vie for the  
24 right themselves. But cancellation is -- in other  
25 words, it's without prejudice to the later



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1 application.

2 JUDGE TOREM: I concur. I agree with that.

3 Mr. Kezner, anything else you want to add this

4 afternoon?

5 MR. KEZNER: I think I'm probably remiss in

6 progress reports, as well. Somewhere in the process

7 of filling out the annual reports, it really kind of

8 leaves us with the impression that there isn't

9 another intermediate thing. Frankly, I couldn't tell

10 you what the format of a progress report, if it's

11 just a letter or if it's a form. Is there such a

12 thing?

13 JUDGE TOREM: I'm not certain, with regard

14 to your South Lake Union-North Lake Union service, in

15 which the runs were initiated, that the progress

16 reports are an issue. I'm just looking here to see

17 whether that's been alleged in the notice.

18 But I believe under the Port Quendall, those

19 were required, because service was never initiated,

20 and that portion of the certificate to which you

21 already conceded should be cancelled or excised

22 somehow.

23 But the other part, apparently the South

24 Lake Union-North Lake Union run, did initiate.

25 Correct me if I'm wrong, Mr. Thompson. There's no

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1 requirement for progress reports there. The progress  
2 reports under the statute are to show progress toward  
3 initiating service. Once you've initiated, the  
4 progress reports appear to drop out. Mr. Thompson,  
5 is that correct?

6 MR. THOMPSON: That's our interpretation.

7 MR. KEZNER: Even if there's a gap of a  
8 couple years because of issues, it doesn't  
9 necessarily mean that -- I filed a report that  
10 indicated, I think in 2006, zero, because of -- I  
11 made an asterisk on it that said there were issues at  
12 both ends, that's why. Is that the kind of thing  
13 that fills the requirement?

14 MR. THOMPSON: Actually, I think you would  
15 move from the progress report requirement -- once you  
16 initiate service, then you're into a requirement to  
17 request permission to discontinue service for a  
18 period of time up to, but no greater than 12 months.  
19 So I guess that would be a similar kind of thing,  
20 where you would be explaining why it was impossible  
21 to provide service.

22 MR. KEZNER: Request to discontinue service?

23 JUDGE TOREM: And there's a separate  
24 statutory provision that I'll let Mr. Thompson call  
25 to your attention after the hearing today.

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1           MR. THOMPSON: The statute itself says what  
2 a progress report should include.

3           JUDGE TOREM: It really covers just about  
4 all of the items that Mr. Dolson have listed off,  
5 what have you done for land use permits, what have  
6 you done for docking rights, et cetera, et cetera.  
7 These are infrastructure and start-up business sort  
8 of questions.

9           MR. DOLSON: It's a letter. It's a letter.

10          MR. KEZNER: It's a letter. Okay. So it's  
11 not like it's a form -- you don't send us a form  
12 every six months and say, check this off?

13          MS. INGRAM: Can I respond?

14          JUDGE TOREM: The onus is on the companies.  
15 Ms. Ingram, go ahead.

16          MS. INGRAM: It's part of the application  
17 process. When you go through the application process  
18 and you fill out the application, on the application,  
19 it indicates whether the company understands the  
20 rules and regulations of a ferry company. And you  
21 know, for that, you usually indicate yes. So the  
22 onus of the rules and the laws in the ferry industry  
23 is on the company to understand, and if you don't,  
24 then Staff's available to answer any questions at any  
25 time.

0044

1           I think that there is no form for a progress  
2 report and to initiate service, but there definitely  
3 is rules that require a company to file -- to  
4 discontinue a service that's already been initiated.  
5 Anything, once a company becomes regulated by the  
6 Commission and you initiate service and the tariff  
7 rules apply and the administrative codes apply and of  
8 course the RCWs and statutes apply, then once you  
9 initiate service, anything the company wants to do or  
10 change in its service, terms or conditions or rates  
11 would need to come before the Commission for  
12 approval.

13           That's the way that it works, that  
14 companies, you know, must seek approval from  
15 Commission before doing anything that changes your  
16 service that affects your public that you're serving.  
17 And you know, the notice to your passengers and stuff  
18 like that.

19           MR. KEZNER: Okay. Well, I'm still confused  
20 a little bit here on whether -- a request to  
21 discontinue sounds deathly, like it's over. But what  
22 we're talking about here is perhaps a request to  
23 modify or change characteristics?

24           JUDGE TOREM: No, that's a separate issue.  
25 What has been referred to is a request to take a year

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1 off, essentially.

2 MS. INGRAM: Or up to a year.

3 JUDGE TOREM: Up to a year, right. It may  
4 be if there's a service running on a daily basis, the  
5 Commission is requiring, because its mission is to  
6 protect the public, notice for a company that expects  
7 to stop for a while, for whatever reason -- it may be  
8 that the boat has hit the dock and can't operate  
9 tomorrow and there's no replacement. It may be  
10 something that simple.

11 MR. KEZNER: It happens in Washington State.

12 JUDGE TOREM: I understand. It may be  
13 something that simple, where there's not a  
14 replacement or back-up boat. It may be something  
15 that, seasonally, it's proven that you need to not  
16 operate during the winter and the certificate calls  
17 for a daily service all year. It may be that gas  
18 prices have doubled and now, until gas prices come  
19 back down, you want a six-month hiatus.

20 The Commission needs to know that, so that  
21 there can be adequate notice to the public. Not just  
22 the ferry was here yesterday, why can't I get to work  
23 today? That's what the Commission doesn't want. Is  
24 that satisfactory?

25 MS. INGRAM: That's correct. Any time you

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1 choose to modify the service you provide your public,  
2 there's typically notice requirements to your public,  
3 as well. And so it's not just to the Commission, but  
4 it's also to your public, so that they can make  
5 arrangements to do what they need to do to be able to  
6 get where they need to get during the time frame that  
7 you need to temporarily discontinue. I'll use that  
8 term so you don't think it sounds so --

9 MR. DOLSON: Suspend.

10 MS. INGRAM: Yeah, suspend service. But the  
11 terminology in the rules are discontinue, and that's  
12 why we use that terminology.

13 MR. KEZNER: Okay. So I would -- I think  
14 I'm going to talk to you on the telephone later on  
15 this.

16 MS. INGRAM: Okay.

17 MR. KEZNER: So that I can put together a  
18 proper letter that will advise you whether or not  
19 we're actually going to be initiating or not on this  
20 service this summer. We're reinitiating it when --

21 MR. THOMPSON: It's probably a good idea to  
22 take this up after the -- off the record.

23 MS. INGRAM: I was going to say I'm not sure  
24 that's appropriate until we hear from the Judge.

25 MR. KEZNER: Oh, good point. I may not have

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1 anything to talk about.

2 JUDGE TOREM: It's okay. I've been spoken  
3 about before like I'm not in the room. It's all  
4 right. But no, I'd caution you there is a decision  
5 pending, you'll have it in ten days, as I indicated  
6 earlier. You may want to talk to Ms. Ingram and find  
7 out what your options might be, you know, plan out  
8 the full range of options that I've discussed today.  
9 Once I've exercised that discretion, one of those  
10 options may actually be appealing that if it's  
11 adverse to you.

12 Now, the Commission, I believe, would also  
13 have an appeal right in this case. It's an initial  
14 decision that I make. The final decision can be made  
15 by the Commissioners upstairs. So all of you will  
16 have appeal rights. Those will be noted in the  
17 initial decision. So unless no one appeals, I  
18 believe the appeal period is 21 days after I issue  
19 the order. Then it becomes a final order by  
20 operation of law.

21 That would be your indication that whatever  
22 I've done -- if I've not cancelled your certificate,  
23 then you still have one. If, 21 days after the  
24 initial order, no action's been taken. If I have  
25 cancelled your certificate and followed through on

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1 this ball that's been rolling now, you would have 21  
2 days to appeal and not have it go final by order of  
3 operation of law.

4           So about a month from now, 31 days is the  
5 maximum time from now, you'll know where you stand,  
6 if you're going to file an appeal or not. If there's  
7 still a pending appeal, then the Commissioners will  
8 set a hearing and follow through on this, or they may  
9 simply, because this was a brief adjudication, ask  
10 only for a paper review. There are specific review  
11 rights under a brief adjudication and it may not  
12 entitle you, unless you specifically ask, to present  
13 additional testimony or supplement the record in any  
14 way, shape or form.

15           So those are things to take up afterward,  
16 but we won't worry about them now. I have a decision  
17 to make and then, based on that, all of you will have  
18 decisions to make.

19           Mr. Dolson, is there anything else you  
20 wanted to add to the record today before we close the  
21 hearing?

22           MR. DOLSON: No.

23           JUDGE TOREM: The only thing I'm going to do  
24 in addition to what's in the record is go back and  
25 take a look and do some legal research of what the



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1 legislature was thinking, see if I can get any  
2 guidance directly from the legislative intent. What  
3 I can see in the statute, I don't know if I'll cite  
4 to it or not, but I want to disclose -- full  
5 disclosure -- the statutory commentary tells me that  
6 there are findings of the legislature in the year  
7 2003 under Chapter 373 of the session logs.

8           So I would imagine that goes to the  
9 shortening of the 20-month period for the  
10 passenger-only service, as opposed to the original  
11 intent with this law, which tells me, instead of  
12 entitling it commercial ferries, it used to be called  
13 steamboat companies. I'm not certain any steamboat  
14 company law will help me understand the current  
15 legislative intent. But that's what I'm going to go  
16 looking to to see if there's anything that helps me  
17 know why these five-year periods are there and why  
18 the annual report with no income is a trigger for  
19 potential cancellation, other than what might appear  
20 obvious to all of us.

21           So with that in mind, is there anything  
22 else? All right, then. It's now about 2:45. The  
23 hearing's adjourned. Thank you all.

24           (Proceedings adjourned at 2:45 p.m.)

25

