

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

Application No. B-79421 of

PACIFIC CRUISES NORTHWEST, INC.,
d/b/a VICTORIA SAN JUAN CRUISES

To Transfer All Rights under Certificate
B-120 in the name of San Juan Island Shuttle
Express, Inc.

DOCKET TS-060133

SETTLEMENT AGREEMENT

The Parties request that the Commission note this Settlement Agreement contains identical agreement terms as, and is therefore related to, the Settlement Agreement filed under Docket No. TS-060061. This Agreement is therefore contingent upon Commission approval of the settlement in TS-060061. Accordingly, the Parties request that the two Agreements be considered for disposition together.

I. PARTIES

1.1. This Settlement Agreement is entered into by Pacific Cruises Northwest, Inc. d/b/a Victoria San Juan Cruises (“Pacific Cruises”), Sean McNamara d/b/a Pacific Sea Taxi (“McNamara”), San Juan Island Shuttle Express, Inc. (“SJISE”), Island Mariner (“Island Mariner”), and Staff of the Washington Utilities and Transportation Commission (“Staff”) (collectively, the “Parties”) regarding the matters at issue in this proceeding.

II. BACKGROUND

2.1. On January 20, 2006, Pacific Cruises and SJISE filed a joint application (No. B-079421) to transfer the commercial ferry certificate held by SJISE to Pacific Cruises. The certificate at issue, BC-120, authorizes various commercial passenger ferry service between Bellingham and points in Whatcom and San Juan Counties. Notice of the

application was published in the Commission's Application Docket dated February 13, 2006, as TS-060133.

2.2. McNamara timely filed a protest to the application and the matter was set for an expedited prehearing conference on March 31, 2006, before Administrative Law Judge Dennis J. Moss.

2.3. On January 10, 2006, McNamara filed an application (No. B-79418) for a certificate of public convenience and necessity to operate vessels furnishing passenger-only ferry service between Bellingham and Orcas Island, with flag stops at: Eliza Island, Sinclair Island, Cypress Island, Lopez Island, and Blakely Island. Notice of the application was published on the Commission's Application Docket of February 13, 2006, as TS-060061.

2.4. Pacific Cruises and Island Mariner timely filed protests to McNamara's application, and the matter was set for a prehearing conference on March 31, 2006, before Administrative Law Judge Dennis J. Moss, jointly with this docket. The two proceedings referred to in this Settlement Agreement were deemed interrelated to the extent of having common parties and representation, but were not consolidated for hearing.

III. AGREEMENT TERMS

3.1. McNamara agrees that he has no objection to the transfer of authority of BC-120 from SJISE to Pacific Cruises, and will withdraw his protest of the application.

3.2. Staff agrees that it has no objection to the transfer of authority of BC-120 from SJISE to Pacific Cruises, as it is satisfied with the information provided to it in the Declaration of Mark Goodman, President of SJISE, contained in **Attachment A**.

3.3. The parties agree that McNamara will restrict his application in Docket TS-060061 to the following:

PASSENGER-ONLY FERRY SERVICE between Squalicum Harbor in North Bellingham and Rosario and Obstruction Pass on Orcas Island with flag stops at: Eliza Island, Sinclair Island, Cypress Island, Lopez Island, and Blakely Island. Restriction: 18-passenger maximum capacity vessel.

3.4. Pacific Cruises and Island Mariner then agree that they have no objection to the application as restricted by McNamara and will withdraw their respective protests of McNamara's application.

3.5. If the transfer of Certificate BC-120 to Pacific Cruises is ultimately approved by the Commission, Pacific Cruises and Island Mariner intend to file an application for lease of portions of their authority to Island Commuter Service, LLC (which is owned fifty (50) percent by Pacific Cruises and fifty (50) percent by Island Mariner) in order for the lessee, Island Commuter Service, LLC, to operate a multiple flag stop service involving authority contained in BC-95 and BC-120. Pacific Cruises and Island Mariner intend to file this application within two months of a final order in TS-060133 granting transfer. McNamara acknowledges he has been fully informed of this proposal and has no objection to the proposed prospective lease application from Pacific Cruises and Island Mariner to Island Commuter Service, LLC, which is a condition to this Agreement.

3.6. Staff reserves its right under law to review and evaluate the application when filed.

IV. GENERAL TERMS

4.1. The Parties agree that this Settlement Agreement fully resolves the contested issues between them in this proceeding. The Parties understand that the Agreement Terms contained in Paragraphs 3.1 through 3.6 are not binding on the Commission unless and until the Commission adopts them.

4.2. The Parties have entered into this Agreement voluntarily to lessen the expense, inconvenience, and uncertainty, and delay of litigation.

4.3. The Parties agree to cooperate in submitting this Agreement promptly to the Commission for adoption. The Parties agree to support adoption of this Agreement in proceedings before the Commission through testimony or briefing (if necessary). No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

4.4. The Parties recognize that this Agreement represents a compromise of the positions the Parties may otherwise assert in this proceeding. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement.

4.5. This Agreement shall not be construed against either party because it was a drafter of the Agreement.

4.6. The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein.

4.7. The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are effective as original documents.

4.8. The Parties shall take all actions necessary and appropriate to carry out this Agreement.

4.9. In the event that the Commission rejects all or any portion of this Agreement, each party reserves the right to withdraw from this Agreement by written

notice to the other parties and the Commission. Written notice must be served within 10 days. In such event, no party will be bound or prejudiced by the terms of this Agreement, and any party shall be entitled to seek reconsideration of the Order rejecting all or part of the Agreement.

This SETTLEMENT AGREEMENT is entered into by each Party as of May 18, 2006.

PACIFIC CRUISES NORTHWEST, INC.
d/b/a Victoria San Juan Cruises

By: See Attached Signature Page
Drew M. Schmidt
Its President

See Attached Signature Page
SEAN McNAMARA
d/b/a Pacific Sea Taxi

SAN JUAN ISLAND SHUTTLE
EXPRESS, INC.

STAFF OF
THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

By: See Attached Signature Page
Mark A. Goodman
Its President

By: See Attached Signature Page
Michael Fassio
Assistant Attorney General


ISLAND MARINER

By: See Attached Signature Page
Terry A. Buzzard
Its President

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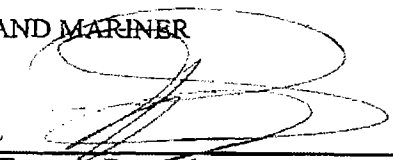
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Assistant Attorney General

ISLAND MARINER

By: 
Terry A. Buzzard
Its President

SETTLEMENT AGREEMENT - 5

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Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
Telephone (206) 628-6600
Fax (206) 628-6611

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SEAN McNAMARA
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SAN JUAN ISLAND SHUTTLE
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STAFF OF
THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

By: _____
5/17/06
Mark A. Goodman
Its President

By: _____
Michael Fassio
Assistant Attorney General

ISLAND MARINER

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Terry A. Buzzard
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STAFF OF
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By: _____
Mark A. Goodman
Its President

By: Michael Fassio
Michael Fassio
Assistant Attorney General

ISLAND MARINER

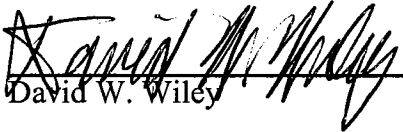
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Seattle, Washington 98101-2380
Telephone (206) 628-6600
Fax (206) 628-6611

APPROVED AS TO FORM:

WILLIAMS, KASTNER & GIBBS PLLC

By:  _____
David W. Wiley

Attorney for Pacific Cruises Northwest
and Island Mariner Cruises, Inc.

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In the Matter of

Application No. B-79421 of

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d/b/a VICTORIA SAN JUAN CRUISES

To Transfer All Rights under Certificate
B-120 in the name of San Juan Island Shuttle
Express, Inc.

DOCKET TS-060133

**DECLARATION OF MARK A.
GOODMAN OF SAN JUAN ISLAND
SHUTTLE EXPRESS, INC. IN SUPPORT
OF TRANSFER OF CERTIFICATE B-120**

I, Mark A. Goodman, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the matters set forth below.
2. I am the President and shareholder of San Juan Island Shuttle Express, Inc. San Juan Island Shuttle Express, Inc. is the proposed Transferor in Application No. B-79421, Docket No. TS-060133, by which we seek to transfer all outstanding rights in Certificate BC-120 to Pacific Cruises Northwest, Inc.
3. The vessel *Mercury* was insured and fully operational in the 2005 season. We attempted to hold out for regulated commercial ferry passenger service, particularly in the morning sailing from Bellingham, which 11:00 ferry schedule was designed to accommodate the ferry service while operating a whale watching service at 3:00 p.m. We believed our 48 hour advance reservation requirement for ferry service logically complimented the fact that most whale watch passengers booked within 24 hours of departure. Apparently the 48 hour advance reservation requirement may have deterred spontaneous itineraries for passenger ferry service, but we believe that particularly to the islands like Eliza and Sinclair, the advance reservation was necessary for compensatory



service to those points. As indicated, we designed the 2005 schedule and season to accommodate both whale watching and commercial ferry passengers, but were unfortunately unsuccessful in obtaining the latter. See, 2005 tariff and time schedules attached hereto as **Exhibit 1**. In the 2006 season, we had hoped to revamp that scheduling approach to generate more inter-island passengers but obviously the developments with respect to the sale of the vessel and the whale watching business precluded us being involved in the upcoming season.

4. I have been involved in the regulated commercial passenger ferry service industry either as an employee or an operator/permit holder for over 15 years. While during that time, commercial passenger ferry service emphasis vs. whale watching has ebbed and flowed, I have always considered myself in the business of providing regulated commercial ferry service. Certificate B-120 has always been a valuable property right in my mind without which I could never have performed service nor developed the contacts in the North Puget Sound commercial ferry business.

5. Over the past few years, I have operated the vessel *Mercury* as lessee of a company known as Great Orca Adventures, providing unregulated whale watching service and as noted in Paragraph 3 above, while allowing San Juan Island Shuttle Express to offer scheduled ferry service pursuant to points authorized in Certificate BC-120. While I was unsuccessful in transporting any regulated service passengers for the last three years, the priority of my company was generating revenues through the whale watching service and attempting to offer scheduled or passenger service, as permitted by whale watching trips.

6. In late August 2005, as the past season was ending, Great Orcas Adventures asked me to list the boat they owned (and I leased) for sale. Within three months, a purchase offer to the vessel owner (Great Orcas Adventures) was accepted and thus the vessel that I used to provide whale watching and inter-island ferry services was sold,



necessitating an immediate attempt to also sell my regulated ferry service certificate, as at that point, I no longer had a vessel or capability to provide or hold out to provide regulated service by the end of 2005.

7. In late November – early December 2005, I contacted Drew Schmidt, President of Pacific Cruises Northwest, Inc. and immediately asked if he was interested in purchasing my certificate, since I would no longer be in the commercial ferry business.

8. The finances of San Juan Island Shuttle Express, Inc. and myself personally were not optimal in the 2003 – 2005 time period, resulting in a Chapter 7 filing for me and my wife. My financial plight and bankruptcy clearly affected my ability to generate cash to support any material regulated operations. Thus, I no longer had a possibility of performing a viable commercial ferry service business without the vessel and without the opportunity to conduct whale watching expeditions. By mid-December, I had negotiated terms with Mr. Schmidt, and his lawyer submitted a purchase agreement that was executed by Mr. Schmidt for the purchase of Certificate BC-120.

9. Because the purchase agreement was received the week before Christmas, I had to wait until early 2006 to obtain legal review of the proposed purchase agreement. The purchase agreement was executed on January 13, 2006 and I then reviewed the application for transfer and we filed the application with the Commission on or about January 20, 2006. The application appeared on February 13, 2006 docket of the Washington Utilities and Transportation Commission.

10. In terms of offering to perform service in the 2005 season, I maintained a website at OrcaWhales.com which contained a drop down menu for passenger ferry schedules, rates, routes and contact phone number. There was also a blog at GreatOrcaAdventures.blogspot.com which similarly posted the daily schedule and contact information of the business.

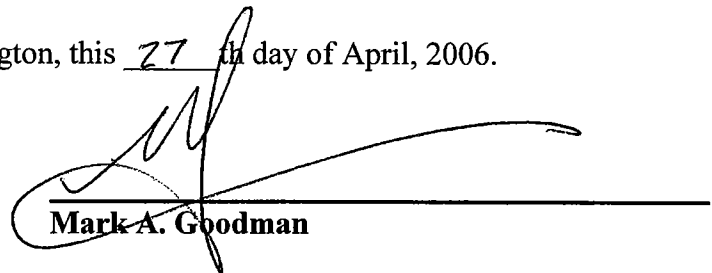


11. For the 2005 season, we printed both color leaflets and flyers (both 3" x 5" and 8" x 10") describing the passenger ferry schedule, rates, routes and the contact phone number as attached as **Exhibit 2**. We also posted tariff and time schedules at terminals such as the Bellingham Ferry Terminal, our main place of operation, which is a key access point and location for those traveling to and from the San Juan Islands. Because of the financial performance of the whale watching/passenger ferry business, I did not have additional funds available for other forms of media advertising other than these brochures and the web-based service noted in Paragraph 10 above.

12. I am now asking the Commission to permit transfer of Certificate B-120 to partially recoup the investment and good will I have established in the San Juan Islands and Bellingham commercial ferry service industry.

I declare under penalty of perjury of the laws of the State of Washington that the above is true and correct.

Signed at Bellingham, Washington, this 27 th day of April, 2006.



Mark A. Goodman

SUB 9/22/04

Time Schedule No. 29
Cancels
Time Schedule No. 28

Of

Name of Company: San Juan Island Shuttle Express Inc.

Certificate of Convenience and Necessity Number: BC-120

Operating under the Trade Name of: San Juan Island Shuttle Express

Providing Commercial Ferry Service
In The Following Described Territory:
Between Bellingham, Washington and Friday Harbor, Washington
via
Obstruction Pass, Orcas Island

With Terminals At:
Bellingham: Bellingham Cruise Terminal, 355 Harris Avenue
Orcas Island: Obstruction Pass
Friday Harbor: Front Street
and with flag stops at
Eliza Island, Sinclair Island, Lopez Island,
Orcas Island: Orcas Landing

Issued by: San Juan Island Shuttle Express Inc.

Name/Title of Issuing Agent: Mark Goodman, President

Mailing Address: 510 East Myrtle, Bellingham, WA 98225

Telephone Number: 360-739-6865

E-mail Address: sjise@aol.com FAX _____

Issue Date: September 17, 2004

Effective Date: October 6, 2004

For Commission Use Only:

Page Effective Date:	Docket No.:	Commission Order No.:
_____	_____	_____

SUB 9/22/04

Time Schedule No. 29

Original Page No. 2

Company Name: San Juan Island Shuttle Express

Time Schedule

<i>Name of Dock or Intermediate Point</i>	<i>Arrival Time</i>	<i>Departure Time</i>	<i>Miles</i>
Westbound			
Bellingham		11:00 AM	.0
Eliza Island (flag stop)		11:15 AM	5.0
Sinclair Island (flag stop)		11:30 AM	5.7
Orcas Island		11:45 AM	5.0
Lopez Island (flag stop)		Noon	3.7
Orcas Landing (flag stop)		12:10 PM	3.2
Friday Harbor	12:20 AM		5.2
Eastbound			
Friday Harbor		12:30 PM	.0
Lopez Island (flag stop)		12:50 PM	5.2
Orcas Landing (flag stop)		1:00 PM	3.2
Orcas Island		1:15 PM	3.7
Sinclair Island (flag stop)		1:30 PM	5.0
Eliza Island (flag stop)		1:45 PM	5.7
Bellingham	2:00 PM		5.0

Notes: (1) Flag stops may be made at the discretion of the carrier depending upon available passenger space. (2) Excludes freight service between Orcas Island-San Juan Island, Orcas Island-Lopez Island and Lopez Island-San Juan Island. (3) Service to Friday Harbor, Orcas Island and all flag stops will be daily by 48 hour advance reservation only. (4) Schedule may vary due to weather and docking conditions.

Issue Date: September 17, 2004

Effective Date: October 6, 2004

Issued By (Name and title): San Juan Island Shuttle Express Inc.
Mark Goodman, President

For Commission Use Only:

Page Effective Date:

Docket No.:

Commission Order No.:

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For more information on rates, schedule and making reservations, Please call 360-739-6865, or email sjise@aol.com

Westbound	Arrival Time	Departure Time
Bellingham		11:00 AM
Eliza Island (flag stop)		11:15 AM
Sinclair Island (flag stop)		11:30 AM
Orcas Island		11:45 AM
Lopez Island (flag stop)		Noon
Orcas Landing (flag stop)		12:10 AM
Friday Harbor	12:20 AM	

Eastbound	Arrival Time	Departure Time
Friday Harbor		12:30 PM
Lopez Island (flag stop)		12:50 PM
Orcas Landing (flag stop)		1:00 PM
Orcas Island		1:15 PM
Sinclair Island (flag stop)		1:30 PM
Eliza Island (flag stop)		1:45 PM
Bellingham	2:00 PM	



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Friday Harbor		12:30 PM
Lopez Island (flag stop)		12:50 PM
Orcas Landing (flag stop)		1:00 PM
Orcas Island		1:15 PM
Sinclair Island (flag stop)		1:30 PM
Eliza Island (flag stop)		1:45 PM
Bellingham	2:00 PM	



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Lopez Island (flag stop)		12:50 PM
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