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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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In re Application of ) DOCKET TS-121253  
) (Consolidated)

5

SEAN McNAMARA, d/b/a BELLINGHAM )  
WATER TAXI, )

6

for Extension of Operating )  
Authority )

8

9

PREHEARING CONFERENCE

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Pages 1-18

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ADMINISTRATIVE LAW JUDGE ADAM TOREM

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10:00 A.M.

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NOVEMBER 6, 2012

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Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive Southwest  
Olympia, Washington 98504-7250

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A P P E A R A N C E S

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\* \* \* \* \*

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1 OLYMPIA, WASHINGTON NOVEMBER 6, 2012

2 10:00 A.M.

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

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6 JUDGE TOREM: On the record a little bit

7 before ten o'clock here on Tuesday, November 6, 2012.

8 This is two different dockets consolidated.

9 TS-121253 is the matter of the application of  
10 Sean McNamara, doing business as Bellingham Water Taxi, for  
11 an extension of authority of current certificate BC-64619.

12 The Commission consolidated this docket with  
13 TS-121395, the matter of the application of Pacific Cruises  
14 Northwest, doing business as San Juan Cruises, for their own  
15 certificate of public convenience and necessity to operate  
16 vessels and furnishing passenger ferry service. So these  
17 two are consolidated.

18 My name is Adam Torem. I'm the  
19 administrative law judge assigned to hear this case down  
20 here in Olympia.

21 I'm going to take appearances first. I'm  
22 going to ask Commission staff and then the two applicants in  
23 the room here, and then we have an intervenor or protester  
24 on the line as well.

25 MR. FASSIO: Good morning, your Honor. Would

0005

1 you like my full appearance today?

2 JUDGE TOREM: I think just name and who you  
3 represent will be fine. And I can make sure that everybody  
4 has their mailing address, e-mail, and fax numbers in the  
5 record, and then we don't have to go through the recitation  
6 of the whole business card on the record today.

7 MR. FASSIO: Thank you. Michael Fassio,  
8 Assistant Attorney General, representing Washington  
9 Utilities and Transportation Commission Staff.

10 JUDGE TOREM: All right. And I know I have  
11 your information.

12 Representing Bellingham Water Taxi?

13 MR. MCNAMARA: Sean McNamara, Bellingham  
14 Water Taxi.

15 JUDGE TOREM: And the service address we  
16 have for you is on 17th Street in Bellingham?

17 MR. MCNAMARA: Correct.

18 JUDGE TOREM: I believe from other filings  
19 we have a phone number, fax and an e-mail. I'll write that  
20 later at a break.

21 Representing San Juan Cruises?

22 THE WITNESS: Drew Schmidt.

23 JUDGE TOREM: And Mr. Schmidt, have you  
24 provided a card to our court reporter so she's got the  
25 spellings and address?

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1 MR. SCHMIDT: Yes.

2 JUDGE TOREM: And Mr. Buzzard on the line,  
3 you're representing Island Mariner Cruises; is that right?

4 MR. BUZZARD: That's correct.

5 JUDGE TOREM: Can you state your full name  
6 for me?

7 MR. BUZZARD: Terry Alan Buzzard.

8 JUDGE TOREM: And Mr. Buzzard, I don't have  
9 an e-mail address for you. Do you have one that you can  
10 receive courtesy copies of documents?

11 MR. BUZZARD: Yes. It's Mariner,  
12 M-A-R-I-N-E-R, @orcawatch.com.

13 JUDGE TOREM: Okay. Mariner@orcawatch.com.  
14 I'll add that in. And otherwise I have you on South Harbor  
15 Loop in Bellingham?

16 MR. BUZZARD: 2621 South Harbor Loop.

17 JUDGE TOREM: Perfect. All right. Then  
18 I've got the addresses I need for the prehearing conference  
19 order.

20 Gentlemen, what I wanted to do today is now  
21 that we've taken appearances is see if there's any other  
22 folks seeking intervention in this matter. And I'm not  
23 hearing anyone else calling in for intervention at this  
24 time. So if there is a potential intervenor that comes in  
25 here in Olympia or comes on to the line, I'll rely on them

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1 to identify themselves.

2 What I see is we have two different  
3 overlapping applications. One was filed by Bellingham Water  
4 Taxi July 30, and San Juan Cruises filed an application for  
5 substantially the same service August 24, 2012.

6 The key here is the service between  
7 Bellingham and Friday Harbor. There were some other minor  
8 differences as to where flag stops might be, and then Mr.  
9 Buzzard protested both applications.

10 There's a history also of other dockets that  
11 were identified by each other's protests or by Mr. Buzzard's  
12 protest. So I think the matter before me, the main issue is  
13 going to be which service is best willing and able, if any,  
14 to provide this for at least a 12-month period going  
15 forward. And we'll have a hearing on whatever evidence gets  
16 presented. Is that how staff sees the issue?

17 MR. FASSIO: Yes.

18 JUDGE TOREM: All right. So hopefully we'll  
19 be able to develop a schedule that allows for all of you to  
20 provide the testimony you need.

21 And then we have an existing certificate, I  
22 believe, that discontinued service. That's Mr. Buzzard  
23 that's on the line. And if somebody else comes available  
24 before his 12-month discontinuance runs, which I think is  
25 until next April, and is able to put service up, as I read

0008

1 the RCW and applicable Administrative Code, he would have to  
2 be ready to go and shorten his discontinuance in order to be  
3 a valid protest at this point. Mr. Buzzard, is that how you  
4 understand this as well?

5 MR. BUZZARD: Yes, sir. I believe it's May,  
6 but you could be correct.

7 JUDGE TOREM: It's either April or May. But  
8 I know right now your service to Friday Harbor has been  
9 discontinued with permission of the Commission, and now  
10 these other gentlemen are pressuring you to either start up  
11 sooner, or they take your place doing that, or run side by  
12 side. There's any number of potential outcomes here,  
13 depending how the Commission sees the needs of the service  
14 and what would satisfy the Commission.

15 Mr. McNamara, you had something you wanted to  
16 add?

17 MR. MCNAMARA: No. I'm under the impression  
18 that we're not going to get into all the details and  
19 protests and that in this.

20 JUDGE TOREM: Today, no.

21 MR. MCNAMARA: This is just a pre-hearing.

22 JUDGE TOREM: I just want to make sure I'm  
23 prepared to know what we are going to get into eventually so  
24 I can set appropriate deadlines for the filing of witness  
25 names and addresses.



0009

1                   And one of the next things we'll talk about  
2 is how much discovery formally needs to go on, if any.  
3 Sometimes it's very informal, where you're exchanging  
4 documents and names of witnesses you plan to call and making  
5 them available to the other folks.

6                   Most of this is going to be pro se today.  
7 Mr. Fassio is an assistant attorney general.

8                   If you decide to hire counsel, that may be  
9 something we want to know as well, if you're going to  
10 continue to represent yourself through the hearing.  
11 Sometimes the attorneys' schedules can slow things down as  
12 well.

13                   So I'll start with you Mr. McNamara. Are you  
14 going to represent yourself as of today all the way through  
15 the hearing?

16                   MR. MCNAMARA: Yes, as of today.

17                   JUDGE TOREM: Things can change. You're not  
18 waiving any rights of any sort.

19                   And so the same question then to Mr.  
20 Schmidt?

21                   MR. SCHMIDT: Yes, as of today.

22                   JUDGE TOREM: Mr. Buzzard, are you planning  
23 on representing yourself all the way through as well?

24                   MR. BUZZARD: At the moment, yes, sir.

25                   JUDGE TOREM: Mr. Fassio, you get to be the

0010

1 only lawyer so far, as of today. So with that in mind, do  
2 you think we need to invoke the Commission's discovery  
3 rules?

4 MR. FASSIO: Well, I'm not sure what the  
5 other parties intend to engage in with respect to discovery.

6 I know staff doesn't have any discovery that  
7 it foresees on its part today that would need to invoke  
8 formal discovery rules.

9 JUDGE TOREM: When we talk about the formal  
10 discovery rules, we're talking about more lawyerly ways of  
11 taking a deposition, filing interrogatories.

12 You can still send a letter informally  
13 requesting information. If we invoke the discovery rules,  
14 we would call it a data request and there would be formal  
15 guidelines in our administrative rules governing how soon  
16 you have to respond.

17 If you folks are objecting to something you  
18 think you shouldn't be disclosing, whether it's your books  
19 or other things that you think shouldn't be out there, then  
20 I can handle those sorts of things or we can formally invoke  
21 the discovery rules later.

22 But if it's just a question of I'm going to  
23 show that I'm fit, willing and able, and I'm not going to  
24 research and delve too much into the other guy and I'll wait  
25 for the hearing, we don't need the formal discovery rules.

0011

1                   If you have a formal plan now, like if you  
2 hired a lawyer, they would go out and do it for you. But if  
3 you want to try it yourself, we would have to invoke the  
4 formal discovery rules going forward and you'd have to  
5 adhere to those.

6                   There's pros and cons. One, you'd get to  
7 formally ask more questions and a response is required.

8                   If there's a dispute, someone doesn't give  
9 you the information you wanted or refuses to answer, then I  
10 have to weigh in and say it's an improper question and  
11 doesn't have to be answered or order the person on a motion  
12 to compel to provide the response.

13                   So that's the context where the formal  
14 discovery rules kick in or not.

15                   Mr. Schmidt, what are you thinking?

16                   MR. SCHMIDT: I'm thinking that I can see  
17 some need for discovery to get to fitness. So I'm not sure  
18 how -- if it needs to be formal discovery. Maybe so. But I  
19 do see discovery needed.

20                   JUDGE TOREM: Let's come back to the issue  
21 and see where we set the hearing up and how much time there  
22 is.

23                   And I think it's clear that fitness is  
24 something that's going to have to be proven before a  
25 certificate is issued to anyone by the Commission. So some

0012

1 of the information is going to be disclosed. And it may be  
2 the sort of thing that is filed voluntarily, and into that  
3 further inquiry is going to want to be made. So that may be  
4 the sort of thing we work into our procedural schedule with  
5 a deadline to file all the appropriate documents you're  
6 going to present at hearing. And that may be all you need.

7 If there's any new data requests, further so  
8 you're not surprised at hearing, that may be also a valid  
9 use.

10 Mr. Buzzard, are you following along with all  
11 of this?

12 MR. BUZZARD: Yes, sir.

13 JUDGE TOREM: Any opinion you want to weigh  
14 in?

15 MR. BUZZARD: Not at this time, no, sir.

16 JUDGE TOREM: Typically we would want to get  
17 this done in the next couple of months. But it's November 6  
18 on a busy election day across the country, and we also have  
19 Thanksgiving and the holiday season coming. And then I have  
20 some absences where I'm going to be out a good chunk of  
21 January for military service.

22 So there's some windows that Mr. Fassio has  
23 become aware of consulting with my office assistant that are  
24 my limitations, and every other party always has their own  
25 calendar to consult with as well.

0013

1                   Mr. Fassio, are we ready to turn to  
2 procedural schedule at this time?

3                   MR. FASSIO: I think so, yes.

4                   JUDGE TOREM: So what I'd like to do is not  
5 have the court reporter write down everybody's individual  
6 aunts', uncles', and nephews' and nieces' holiday parties  
7 coming up. So we'll go off the record for as long as it  
8 takes to get everything scheduled and then come back on.  
9 I'll stay in the room unless it looks like it's going to be  
10 an extended discussion.

11                   Mr. Buzzard, is that all right with you?

12                   MR. BUZZARD: Yes.

13                   JUDGE TOREM: So we're going to go off the  
14 record now, and I'll let the reporter know when we're back  
15 on.

16                   (Discussion off the record.)

17                   JUDGE TOREM: Back on the record. It's  
18 10:25.

19                   We've discussed various constraints in the  
20 schedules. And I apologize again for my absence for three  
21 weeks in January due to military duty. It takes me out of  
22 the country. We have other holiday schedules.

23                   We talked about trying to squeeze something  
24 in five or six weeks from now, but I think the general  
25 agreement is it's going to have to wait until late January.

0014

1 And we'll schedule the hearing on Thursday, January 31, and  
2 if necessary Friday, February 1 to conduct our hearing.

3           Given that, we're going to ask that everybody  
4 file a witness and exhibit list on Friday, December 21st.  
5 Feel free to file it early if you have it done, but I  
6 understand as long as it comes in by Friday, December 21 at  
7 5:00, that's great.

8           If you look and pay attention to our filing  
9 rules, it's in Washington Administrative Code 480-07. The  
10 filing rules in there tell you that you can file  
11 electronically as long as we receive the hard copy the  
12 following business day. So that following business day  
13 would be Monday the 24th.

14           Just make sure we have it and that you  
15 understand how to use the portal to do the filing, or our  
16 electronic filing.

17           Send a courtesy copy of the E-mail to  
18 everybody else. Give it to the other folks and serve it on  
19 each other party, which includes Bellingham Water Taxi, San  
20 Juan Cruises, and Island Mariner Cruises, as well as myself  
21 and Mr. Fassio representing staff. So you're going to send  
22 in at least that number of electronic copies.

23           I'm going to go find out how many hard copies  
24 we need, because there are other members of our staff that  
25 still work on a paper record. Look for that in the

0015

1 pre-hearing conference order I put together as the number of  
2 hard copies you need to file for your witness and exhibit  
3 lists.

4 Also file a copy of each exhibit and number  
5 it however you see fit. We'll renumber things at the  
6 hearing. Those are all due December 21.

7 And I'm going to set another responsive list  
8 of witnesses, if you need more, if you've reviewed each  
9 other's filings and response to exhibits for January 16,  
10 2013. That's on a Wednesday, and the same rules apply.  
11 File electronically and meet the deadline by 5:00 as long as  
12 the hard copies are received by the next business day. So  
13 quite often that means hiring the UPS or FedEx guy to make  
14 the next day delivery.

15 Any questions about the schedule we've set  
16 up?

17 MR. MCNAMARA: No.

18 MR. SCHMIDT: None.

19 JUDGE TOREM: And I think if there's a need  
20 for formal discovery, you can be in touch with Mr. Fassio  
21 directly or send an e-mail to me to let me know that there's  
22 been a dispute that's arisen. Somewhere in early January,  
23 that first week, would be my preference to handle a  
24 discovery dispute and invoke those rules, on the 2nd, 3rd  
25 and 4th of January. Otherwise, another judge will have to

0016

1 handle the dispute while I'm out of the office, starting on  
2 Saturday the 5th. So if something comes up before Saturday,  
3 of 5th of January, I'll still be in the country and can  
4 attend to it. And we'll just do something by telephone and  
5 sort out what's going on that you guys can't solve  
6 informally.

7                   And if Mr. Fassio can help from staff's  
8 perspective, you know, I will shift the burden to him as the  
9 lawyer in the group to suggest yes, that's something you  
10 should have or shouldn't have. It's his opinion and you can  
11 take it or leave it, but I'll have to be the one to resolve  
12 the dispute if he can't make a suggestion on how the  
13 information can be submitted.

14                   Any other questions while we are on the  
15 record?

16                   Mr. Buzzard, any other questions?

17                   MR. BUZZARD: No, sir.

18                   JUDGE TOREM: All right. I'll be sending  
19 you electronically, probably tomorrow, the prehearing  
20 conference order, and you'll get the hard copy in the mail.

21                   The schedule will be at the very back page,  
22 Appendix B.

23                   And all of your contact information will be  
24 in Appendix A. And that's addresses, e-mail, phone numbers.  
25 If you see an error in any of that, I've copied it down



0017

1 wrong from documents in the record, please let me know and  
2 we'll get it corrected.

3                   Okay. Thanks. We're adjourned.

4                   (Whereupon, the proceedings were  
5                   concluded at 10:30 a.m.)

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23 My license expires December 21, 2012

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