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July 8, 2004

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Karen M. Caille
Administrative Law Judge
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Application B-079240, Docket No. TS-031996, Pacific Cruises Northwest, Inc. d/b/a San Juan Cruises

Dear Judge Caille:

I am now in receipt of the "exchange of information sought" per Prehearing Conference Order No. 01 from Ms. McNeill. It is clear from her submission that the Protestant has at least indirectly sought to invoke the discovery rule in this matter which as we know is not generally provided for in transportation application cases under WAC 480-07-400(2)(b). However, whether or not the discovery rule is ultimately invoked here by the Commission, I do think the breadth of the discovery and records requests by the Protestant to the Applicant necessitate (at least at a minimum) another prehearing conference with you under WAC 480-07-430(4) to address some of the requests, or possibly, the convening of a discovery conference pursuant to WAC 480-07-415, (although the latter may be somewhat premature until we resolve some of the issues now before us), based on Protestant counsel's July 7, 2004 letter.

We believe, as I stated at the original prehearing conference on June 15, that our burden in this case is set forth in the statute at RCW 81.84.010 and RCW 81.84.020 and in the rules at WAC 480-51 et seq, and specifically, WAC 480-51-030. Many of my concerns about the document and/or interrogatory requests propounded by the Protestant go to allegations that appear to be in the nature of a complaint case, not an applicant fitness evaluation.¹

In reviewing the Protestant's frankly voluminous evidentiary requests, I thus urge further review of the statute at RCW 81.84.020 in order to evaluate the appropriateness of many of these requests. Applicant has the burden of proof to establish fitness, and is well aware of that burden as it proceeds with preparation for hearing. However, many of the Protestant's requests are clearly burdensome, overbroad, lack relevance to application as opposed to potential complaint

¹Interestingly, the fitness requirement in the commercial ferry statute (RCW 81.84.020(2)) is significantly less specific and more cursory than other Commission regulatory statutes, i.e. RCW 81.80.070(2), requiring an applicant establish it is "fit, willing and able" to conduct the proposed operations.

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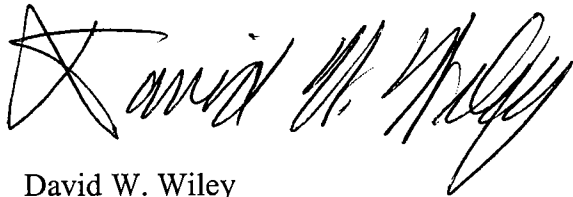
issues, and substantially exceed the statutory evidentiary scope required of an applicant under RCW 81.84.020(2) and, therefore, are objectionable on their face. For its part, the Applicant is willing to withdraw most, if not all, of its own document/interrogatory requests to the Protestant, and rely instead on subpoenas for hearing under WAC 480-07-400(2)(a) and/or cross-examination testimony as it indicated at the initial prehearing conference.

In any event, it appears that convening of a prehearing conference to address the exchange of document requests in a commercial passenger-only ferry certificate application setting would be in order. I have a number of days open next week for a telephonic prehearing conference and would be happy to provide alternative times to you.

Please contact me with further questions or comments.

Yours truly,

WILLIAMS, KASTNER & GIBBS PLLC

A handwritten signature in black ink, appearing to read "David W. Wiley". The signature is stylized and cursive, with a large initial "D" and "W".

David W. Wiley

DAV:ks

cc: Polly McNeill
Jonathan Thompson
Drew Schmidt