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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of the Petition of )  
SAN JUAN EXPRESS, INC., )Docket TS-090424  
Petitioner, )Volume I  
Relating to Discontinuance of )Pages 1-95  
Commercial Ferry Service Authorized )  
by Certificate of Convenience and )  
Necessity No. BC-117. )

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A hearing in the above-entitled matter

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was held at 9:33 a.m. on Tuesday, June 9, 2009, at

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1300 South Evergreen Park Drive, S.W., Olympia,

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Washington, before Administrative Law Judge DENNIS

14

MOSS, Chairman JEFF GOLTZ, Commissioner PATRICK OSHIE

15

and Commissioner PHILIP JONES.

16

The parties present were as follows:

17

SAN JUAN EXPRESS, INC., by David Wiley,  
Attorney at Law, Williams Kastner & Gibbs, PLLC, Two  
Union Square, 601 Union Street, Suite 4100, Seattle,  
Washington 98101.

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20

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

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Barbara L. Nelson, CCR

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Court Reporter

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1           JUDGE MOSS: Good morning, everyone. My  
2 name is Dennis Moss. I'm an Administrative Law Judge  
3 with the Washington Utilities and Transportation  
4 Commission.

5           We are convened this morning in a hearing  
6 styled In the Matter of the Petition of San Juan  
7 Express, Inc., Petitioner, Relating to Discontinuance  
8 of Commercial Ferry Service Authorized by Certificate  
9 of Convenience and Necessity Number BC-117. Our  
10 docket number is TS-090424.

11           This is, as I described it, a request under  
12 Washington Administrative Code 480-51-130, for a  
13 12-month discontinuance of service under certificate  
14 BC-117, which is the company's seasonal service  
15 between Seattle and Friday Harbor.

16           Let's begin with our appearances. Mr.  
17 Wiley.

18           MR. WILEY: Yes, Your Honor. David Wiley.

19           JUDGE MOSS: You can remain seated. You  
20 don't need to stand.

21           MR. WILEY: Okay. David Wiley, with the  
22 firm of Williams Kastner, Two Union Square, 601 Union  
23 Street, Suite 4100, Seattle, Washington, 98101. My  
24 e-mail address is DWiley@WilliamsKastner.com. And my  
25 direct phone number is 206-233-2895. Appearing on

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1     behalf of the Petitioner, San Juan Express, Inc.

2             JUDGE MOSS: Thank you. Mr. Thompson.

3             MR. THOMPSON: Jonathan Thompson, Assistant  
4     Attorney General, representing the Commission Staff.  
5     My address is 1400 South Evergreen Park Drive, S.W.,  
6     Olympia, Washington, 98504. My telephone number is  
7     360-664-1225; fax is 360-586-5522; and my e-mail  
8     address is JThomps@Wutc.Wa.Gov.

9             JUDGE MOSS: Thanks very much. Anyone else  
10    wish to enter an appearance? Hearing nothing. We  
11    rarely get to do hearings that are sort of shoot from  
12    the hip, as it were, with live testimony, but I do  
13    understand, from talking to Mr. Wiley beforehand this  
14    morning, that Mr. Bryan is here, the president and  
15    CEO of the company, and he will -- Mr. Wiley would  
16    wish to put him on the stand to testify.

17            And Mr. Wiley has also prepared for and  
18    presented to the bench a small set of exhibits that I  
19    assume he will be referring to during the course of  
20    that examination.

21            And I have also provided both counsel and  
22    the bench with a copy of an exhibit that the bench  
23    wishes to put into the record, and I'm going to  
24    mention a couple more here.

25            Let me first ask you, Mr. Thompson, if you

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1 intend to put on a witness this morning?

2 MR. THOMPSON: No, we do not.

3 JUDGE MOSS: Okay, thank you. Of course you  
4 will have the opportunity to cross-examine Mr. Bryan.  
5 With respect to the bench exhibits, I have listened  
6 to the MP3 digital recording of the open meeting at  
7 which this matter was first set for hearing on May  
8 14th, 2009.

9 I think perhaps, to use the nautical  
10 metaphor, we don't need to sail those same waters, so  
11 I would like to make that an exhibit for our record  
12 by reference. If we ever need it transcribed, we can  
13 easily have that done, but I don't propose to do that  
14 unless it becomes necessary.

15 I'm going to provide you all with an exhibit  
16 list, and it will include the site, the so-called URL  
17 Internet address where you can access that recording.  
18 I have inquired as to whether we can break out the  
19 first 15 minutes and 25 seconds of that open meeting  
20 and eliminate it for purposes of this docket and I'll  
21 -- if so, I'll let you know.

22 We also -- the document that I distributed  
23 to you earlier is the tariff filing of February 4th,  
24 2009, by San Juan Express, Inc. related to this  
25 certificate, and Tariff Number 42, which is for the

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1 Seattle to Friday Harbor service for 2009, and that  
2 tariff was allowed to become effective on the no  
3 action agenda at the Commission open meeting of  
4 February 26th, 2009. So were this service occurring  
5 this year, this would be the governing tariff.

6 A third item that I wish to place into the  
7 record, Mr. Wiley, you probably don't have with you,  
8 or perhaps it's in your pile here, I don't really  
9 know. We would like to see the contract between  
10 Clipper Navigation and C-Port Marine Services leasing  
11 the Victoria Clipper III. Do we have that this  
12 morning?

13 MR. BRYAN: I have brought that with me.

14 JUDGE MOSS: Okay, good. Thank you. We can  
15 make copies at another moment in time. There may be  
16 some questions about it this morning. In fact, let  
17 me say, let's do get some copies of that for the  
18 bench now. So I wonder if, Judge Friedlander, if you  
19 could assist us in that way?

20 JUDGE FRIEDLANDER: Sure.

21 JUDGE MOSS: Mr. Bryan here could provide  
22 you with a copy.

23 JUDGE FRIEDLANDER: How many copies did you  
24 need?

25 JUDGE MOSS: Why don't we have six.

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1 JUDGE FRIEDLANDER: Okay.

2 MR. BRYAN: Now, all I have to do is find  
3 it.

4 JUDGE MOSS: Okay. All right. Now,  
5 finally, I'm reserving a spot. We have received a  
6 series of letters, e-mail transmissions, what have  
7 you, from members of the public or the community,  
8 principally from tourist-related organizations,  
9 chamber of commerce, and one from a state  
10 representative. I will reserve a place on the  
11 exhibit list for that.

12 We'll receive those this afternoon with the  
13 thought that there may be some that come before 1:30  
14 when we have our public comment hearing, so I'll put  
15 that on the record at that time.

16 And with that, unless there's anything else  
17 preliminary from the parties, we can call your  
18 witness.

19 MR. WILEY: Thank you, Your Honor. I'd call  
20 Mr. Darrell Bryan to the stand, if he's identified  
21 the contract.

22 JUDGE MOSS: Well, we'll take a brief  
23 recess.

24 MR. BRYAN: Thank you. I apologize.

25 JUDGE MOSS: It might be useful for us to



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1 have that up here.

2 (Recess taken.)

3 JUDGE MOSS: Let's go back on the record.

4 We'll have Mr. Bryan.

5 MR. WILEY: Would you like him to go call

6 his office to have it faxed down now?

7 JUDGE MOSS: I don't think it's that

8 critical. Would you like it? Okay. Well, let's go

9 ahead and do that. We'll go back into recess.

10 (Recess taken.)

11 JUDGE MOSS: Mr. Bryan, if you will rise and

12 raise your right hand, please.

13 Whereupon,

14 DARRELL E. BRYAN,

15 having been first duly sworn, was called as a witness

16 herein and was examined and testified as follows:

17 JUDGE MOSS: Thank you. Please be seated.

18 Mr. Wiley, you may proceed.

19 MR. WILEY: Yes, Your Honor. Do you want to

20 pre-mark the exhibits, or what's your pleasure on

21 that or the Commissioners' pleasure?

22 JUDGE MOSS: Let me just identify them

23 quickly for the record, and then we'll number them

24 and so forth later. Well, I'll go ahead and give

25 them numbers now. That way you can refer to them by

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1 number.

2 All right. First we have the certificate of  
3 public convenience and necessity, Permit Number  
4 BC-117, and we'll call that DB-1. Second we have Mr.  
5 Bryan's professional qualifications, and we'll mark  
6 that as DB-2.

7 And then we have a set of orders. I will  
8 mark them individually. We have -- what will be  
9 marked as Exhibit DB-3 is a Commission order in a  
10 matter concerning Aqua Express, L.L.C. It's Order  
11 Number One in Docket TS-051318. And it's an order  
12 granting temporary discontinuance of service.

13 We will mark as DB-4 an order from this  
14 Commission in the matter concerning the company Aqua  
15 Express, L.L.C., and it's Order Number One in Docket  
16 TS-060903, an order granting temporary discontinuance  
17 of service.

18 I'll mark as Exhibit DB-5 another order from  
19 this Commission, also involving Aqua Express, LLP,  
20 again Order Number One in this case, Docket  
21 TS-061812, and again an order granting temporary  
22 discontinuance of service.

23 And finally, I'll mark as DB-6 the Fourth  
24 Order from this Commission concerning Aqua Express,  
25 LLP. It's Order Number Three in Docket TS-070889,

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1 and it is an initial order accepting settlement  
2 agreement and authorizing discontinuance of  
3 commercial ferry service for one year.

4 Oh, did you intend to make this packet of  
5 advertising materials an exhibit?

6 MR. WILEY: At this point, I'm not sure,  
7 Your Honor. It's so voluminous, I was surprised by  
8 it.

9 JUDGE MOSS: I'll mark it for identification  
10 as DB-6, if you wish to do so.

11 MR. THOMPSON: I think it should be DB-7,  
12 Your Honor.

13 JUDGE MOSS: Thank you. You are quite  
14 right, Mr. Thompson. I appreciate you catching that.

15 MR. WILEY: Your Honor, do you wish to mark  
16 the bench exhibit at this point?

17 JUDGE MOSS: Yes, I'll give you numbers for  
18 those. Actually, I can give you a handout that will  
19 make it easier, perhaps.

20 MR. WILEY: Okay.

21 JUDGE MOSS: And just for the record,  
22 Exhibit B-1, Bench One, is the open meeting minutes  
23 that I mentioned at the outset. B-2 is the tariff  
24 filing of February 4th, 2009, and associated papers.  
25 B-3 will be the contract between Clipper and C-Port

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1 Marine Services. And by the way, that is the letter  
2 C-Port. And then I'm reserving B-4 for public  
3 comment.

4 And of course, we may have additional bench  
5 requests along the way. I'll number those as we get  
6 to that, if we get to that.

7 All right. Now, with that, anything else  
8 before we proceed?

9 MR. WILEY: Nothing from Petitioner.

10 JUDGE MOSS: All right. Very good. Go  
11 ahead.

12

13 D I R E C T E X A M I N A T I O N

14 BY MR. WILEY:

15 Q. Good morning, Mr. Bryan. Would you please  
16 state and spell your last name and provide your  
17 address for the record?

18 A. Yes, Darrell E. Bryan, B-r-y-a-n. My  
19 address is under Clipper Navigation, Inc., 2701  
20 Alaskan Way, Seattle, Washington, 98121.

21 Q. And are you also employed by and associated  
22 with San Juan Express, Inc., the Petitioner in this  
23 matter?

24 A. Yes, sir, I am.

25 COMMISSIONER OSHIE: Excuse me, Mr. Wiley.

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1 Mr. Bryan, this is Commissioner Oshie. You may want  
2 to turn your microphone on. I'm not sure that it is.

3 THE WITNESS: Thank you. I apologize.

4 COMMISSIONER OSHIE: That way the  
5 individuals who are tracking this on the bridge line  
6 will be able to hear your testimony.

7 THE WITNESS: Very good. Thank you.

8 Q. Mr. Bryan, I think I was asking you about  
9 San Juan Express, Inc. What is its relationship,  
10 please, to Clipper Navigation, Inc.?

11 A. It is a wholly-owned subsidiary of Clipper  
12 Navigation, Inc.

13 Q. What are your job titles, please, with  
14 respect to both companies, if you would?

15 A. I am the president and CEO for both  
16 entities. In fact, I might add that the brief resume  
17 that I had provided showed my former position as  
18 executive vice president and general manager, which  
19 changed two years ago.

20 Q. And so referring you to DB-2, that's the  
21 revision that you would make on your title; is that  
22 correct?

23 A. Yes, sir; that's correct.

24 Q. Could you just briefly describe your duties  
25 and responsibilities with both Clipper Navigation,

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1 Inc. and San Juan Express, Inc., please?

2 A. The role is essentially the same. I'm -- a  
3 small company, you wear many hats. As a CEO, handle  
4 oversight of the operations. I'm the single signing  
5 authority for all contracts, checks, but it's deeply  
6 involved in all phases of the operation, and as it  
7 applies to the subsidiary, San Juan Express, as well.

8 Q. And you indicated that San Juan Express is a  
9 wholly-owned subsidiary; is that correct?

10 A. That is correct.

11 Q. Are there shareholders, officers, and  
12 directors that are the same for both companies?

13 A. That's correct. The founder and chair of  
14 Clipper Navigation is Meredith Tall, who owns the  
15 vast majority of the company; John Ebel, who had been  
16 our attorney for many years, has a small percentage;  
17 and a man by the name of David Hsiao; as well as  
18 myself. So there are the four of us, and both  
19 companies, they're represented on.

20 Q. Could you spell Mr. Hsiao's name, please,  
21 for the record?

22 A. Yes, sir. It's H-s-i-a-o, David.

23 Q. Thank you. We have marked for  
24 identification DB-2, which is your resume that I  
25 previously referred to. Without regurgitating

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1 everything that's on it, could you please just  
2 provide the Commissioners a bit of your background in  
3 the marine passenger vessel industry?

4 A. Yes, sir. I might just start with a  
5 comment. As a small company, we found it vital to us  
6 to be heavily involved in those aspects involving our  
7 industry. So I served on the board of the Passenger  
8 Vessel Association for ten years and was president of  
9 that trade association based in Washington, D.C. So  
10 I'm still on the board for Interferry, which  
11 represents ferry operators worldwide, and I was the  
12 president of that organization in 2001. I was also  
13 representative for the Passenger Vessel Association  
14 when I was named to MTSNAC, and that was the Marine  
15 Transportation System National Advisory Council, and  
16 I served two years in that advisory, reported to  
17 Secretary of Transportation Norm Mineta.

18 Also have -- was involved, selected to  
19 participate in the Washington State Legislative Joint  
20 Task Force on Ferries in 2000, and have been involved  
21 in a number of other marine associations and  
22 organizations, including MTAC, which is associated  
23 with Kitsap Transit and their efforts to establish  
24 passenger-only ferry service to Bremerton, Kitsap  
25 County.

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1           And so there are a number of others. I  
2   won't bore you. Those are probably the highlights,  
3   but we found it vital, as a small company, to be  
4   involved. One that was of course an issue for this  
5   week, I represent our industry and have. I was  
6   trying to figure out when I first started, but it's  
7   been at least ten years, and that is -- it used to be  
8   U.S. Immigration Airport, Sea Ports Users Group, and  
9   now it's under U.S. Customs. And I go back to D.C.  
10   two to three times a year and essentially I sit there  
11   to represent our sector to make sure we don't get  
12   charged any customs or cost recovery charges that our  
13   industry does not want to participate in.

14        Q.   And is that a relatively hot button issue  
15   currently?

16        A.   Yes, it is. And as I think everyone knows,  
17   Homeland Security is looking for additional dollars,  
18   and so there are a couple of areas that -- where they  
19   want additional charges, and the cruise ship industry  
20   and the airline, international air carriers, because  
21   they want to be assured, when the ship pulls in or  
22   the aircraft arrive, that they've got customs people  
23   there to clear them.

24                So -- and that legislation was sunsetted  
25   several years ago by a Congressman from Florida who



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1 had first introduced it, at the request of the cruise  
2 ship industry, reintroduced it to reinstate it. But  
3 it is a top -- top of mind issue for the  
4 international ferry operators, of whom more than 80  
5 percent are represented here in the Pacific Northwest  
6 and Alaska.

7 Q. Could you, for the Commissioners' benefit,  
8 give us a little background on the history of San  
9 Juan Express's operations, you know, giving us a  
10 little foundation on when you started and where you  
11 serve, generally? And then we'll go to some more  
12 specific questions.

13 A. We started service, if my recollection is  
14 correct, 1991. We received our certificate in 1991,  
15 and have served Friday Harbor. And it's a seasonal  
16 service, and right from the get-go, we started as a  
17 seasonal service, Seattle to Friday Harbor. And we  
18 several times attempted to provide some service later  
19 into the fall, but the demand period is in the  
20 summer.

21 And what we soon found with that service was  
22 that one of the things that you'll hear from me, time  
23 and time again, is with our kind of service, you're  
24 talking about high capital cost for the cost of  
25 equipment and high operating cost. And the fare

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1 structure generally is lower.

2           And what we found, as we have found with our  
3 Victoria Clipper service and ferry operators  
4 worldwide, that the transportation fare does not  
5 cover your capital costs and your operating costs.  
6 So we had to come up with other things to generate  
7 ancillary or incremental revenue.

8           And our service to the San Juans, we began  
9 to sell whale watching, non-regulated hotel packages.  
10 And some of the materials you see before you show  
11 some of the hotels in that. We're the largest  
12 purchaser of hotel rooms, for instance, in Victoria.  
13 We're a major purchaser of hotel rooms in Friday  
14 Harbor, Vancouver, Seattle. We are Amtrak's single  
15 largest customer in the Pacific Northwest, between  
16 Seattle and Vancouver, Kenmore Air's largest  
17 customer.

18           So what we found, that we have a wholistic  
19 view of our travel business, that we no longer view  
20 ourselves simply as a ferry operator. We are a  
21 travel service. And because the dynamics that apply  
22 to Friday Harbor also apply to Victoria. Forty-eight  
23 percent of our business is non-marine. If we had to  
24 rely on the marine transportation, we'd be out of  
25 business, like so many other ferry operators. And so

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1 we have really tried to optimize the awareness.

2           And again, those materials, you'll see that  
3 we try and cross-sell, try and make people aware of  
4 the products within the islands and conjunctive with  
5 travel to the islands. And I think that's  
6 essentially it. And in terms of that service, we've  
7 provided that with -- in 2007, and I know we'll talk  
8 about that, a brief delay in startup for, what is  
9 that, 17 years.

10       Q. Mr. Bryan, you indicated that 48 percent of  
11 your business is non-marine. Is that with respect to  
12 your gross annual revenues for Clipper Navigation and  
13 San Juan Express that you're making that statement?

14       A. That's correct.

15       Q. Okay.

16       A. It's -- you know, of course, the bulk of our  
17 business is the parent company, Clipper Navigation,  
18 or some people know it as Clipper Vacations. Our  
19 business to San Juans is a very small part of it and  
20 our business to San Juans in the best of years could  
21 not survive without its association with Clipper,  
22 Victoria Clipper or Clipper Vacations.

23       Q. Is there interlining of passengers going on?  
24 Is that what you mean by not survive, or can you  
25 clarify that?

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1           A.    Yes, because the -- for one, the unregulated  
2    services in the islands, the whale watching, a  
3    substantial number of the people going to Friday  
4    Harbor continue whale watching, and which we use that  
5    same vessel to go out for a two-and-a-half-hour whale  
6    watch trip.  What we found is that there are -- an  
7    overwhelming majority of people are not going to  
8    Friday Harbor simply to see Friday Harbor.  We have  
9    some people who go up there because their boats are  
10   up there and we have some people on the islands that  
11   will use our service.

12                We have a one-way/one-way with Kenmore Air,  
13   for instance.  So for those people where the schedule  
14   doesn't work, they can use both services to get back  
15   and forth.  But our core business being the vacation  
16   packages, that's really what supports Clipper, which  
17   in turn supports San Juan Express.  Our revenues for  
18   San Juan Express do not offset the cost of that  
19   service.

20           Q.    Since 1991, have you also been involved in  
21   working with the legislature in terms of laws that  
22   impact the commercial ferry industry in Washington?

23           A.    We were involved with the working groups  
24   that took place particularly after the 1995  
25   legislation.  And for those of you who do not know,

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1 we were very key to that 1995 legislation, since we  
2 came to the UTC Staff on an issue that existed. And  
3 there was -- the UTC Staff felt that there needed to  
4 be clarity with some amended legislation. So we were  
5 involved in that, and then in the early working  
6 groups, along with Argosy, Victoria San Juan Cruises,  
7 Victoria Express, a number of the certificate holders  
8 that worked on the issues.

9 Q. When you say there needed to be clarity, was  
10 that with respect to whether you needed a certificate  
11 as a commercial ferry operator to perform certain  
12 services?

13 A. Yes, sir. In fact, in a nutshell, what had  
14 happened, in our mind, there was an illegal operator  
15 that could cancel trips that didn't have enough  
16 passengers, adjust or set their own fare, and it came  
17 down to that individual's belief that they were  
18 providing excursion service and therefore did not  
19 need a certificate. And they were going exactly the  
20 same route we were going.

21 We needed to go through a process for fare  
22 and schedule approval, and so, frankly, we -- when we  
23 worked with the UTC Staff, we then went to the Chair  
24 of the Senate Transportation Committee, Karen  
25 Schmidt, the vice chair, Senator Haugen, and Ruth

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1 Fisher on the House side, and got new -- I shouldn't  
2 say we got. New legislation was drafted with some  
3 clarity and it went through without a whole lot of  
4 contention, which I don't think we've seen much of  
5 since then.

6 Q. Have you also been involved in any specific  
7 stakeholder rule makings at the Commission with  
8 respect to implementation of legislation?

9 A. Back in the -- as I say, shortly after, and  
10 there were -- and I don't recall much of this taking  
11 place in the last few years, but back in the early  
12 '90s and then following the '95 legislation, there  
13 were working groups, and we did participate at that  
14 time.

15 Q. Has San Juan Express or yourself, and you  
16 can distinguish in what capacity, have you been  
17 involved in prior service discontinuance requests  
18 under the Commission's rules?

19 A. Yes, sir. We were partner with Aqua Express  
20 in conjunction with Argosy, Nichols Brothers Boatyard  
21 and Four Seasons Marine, and started up a service  
22 between Seattle and Kingston. We spent a lot of time  
23 down here and in the community working on that, and  
24 the Staff and the Commission were very supportive.  
25 But finally we relinquished that certificate.

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1           We also had been approached by Mosquito  
2 Fleet, Pacific Navigation -- I can't remember the  
3 legal name, but Greg Dronkert, who's a partner, and  
4 Mike Bennett approached us, because that service, in  
5 its ten years, had never made money. They were in  
6 financial distress and they originally wanted us as a  
7 partner. We ended up buying the entire entity,  
8 operated for two years.

9           Q.   If I could interrupt you. Could you  
10 identify what the route is?

11          A.   Oh, I apologize. That route was from  
12 Everett to Friday Harbor. And part of the reason we  
13 agreed to a partnership and then subsequently to take  
14 over the entire business was we felt that with the  
15 infrastructure that we had in place, marketing, the  
16 reservations offices, sales, operations, engineering,  
17 et cetera, that we could reduce their overhead and  
18 make it profitable. We were wrong.

19               And at the end of the lease of the vessel  
20 that we had, the Orca Song, we asked for a one-year  
21 temporary suspension. We were granted that. Going  
22 into the next year, we could not find a satisfactory  
23 vessel that had the speed that we could use for the  
24 short season service, and what we also found is many  
25 of the people who might have been interested in going

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1 to Everett would also go to Seattle and use the  
2 service out of Seattle. So we ended up giving up  
3 that certificate.

4 We have been a strong proponent, as of 1995  
5 legislation, of use it or lose it. And we try to  
6 live by that, and we have given up other segments of  
7 the certificate, including Rosario. We had  
8 discussion --

9 Q. Calling your attention to Exhibit DB-1, is  
10 that the reference to Rosario that's in that  
11 certificate?

12 A. Yes, sir; that's correct. We had received  
13 approval for a number of years for suspension of that  
14 service, and it had to do with docking issues,  
15 ownership changes, and this year, we had no -- and  
16 there were some other considerations in terms of  
17 Washington State Ferries provides a good service in  
18 the islands at no cost within the islands. And so  
19 we, at the suggestion, I might add, of Staff, agreed  
20 with them that we should go ahead and move forward  
21 and relinquish that portion of the certificate to  
22 Friday Harbor, Rosario.

23 Q. Had you previously relinquished other  
24 portions of BC-117? Roche Harbor?

25 A. That's correct. When we first got the



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1 Certificate B-117 from Puget Sound Express, there  
2 were other elements of the certificate originally,  
3 one that the Commission took away because the  
4 predecessor had not filed the appropriate report, but  
5 there was another segment, and I was thinking about  
6 this last night, I believe it was Edmonds to Pt.  
7 Townsend that we had given up, because we never had  
8 any intention to provide a service between Edmonds to  
9 Port Townsend. Staff may have better information on  
10 that, but that's the best of my recollection. And I  
11 think that's about it.

12 Q. Mr. Bryan, going back to the Mosquito Fleet  
13 service, when did you relinquish the certificate  
14 between Friday Harbor and Everett, to the best of  
15 your knowledge?

16 A. The years begin to flow together, but I  
17 believe it was year before last is when we made the  
18 request to relinquish that certificate.

19 Q. 2007?

20 A. That's correct.

21 Q. And since that time, since you -- since  
22 Mosquito Fleet abandoned the certificate, or  
23 relinquished, I think is a better verb, the  
24 certificate, has anyone applied to serve that route?

25 A. No, sir, no one has.

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1 Q. Now, regarding the Aqua Express reference  
2 that you made, we've identified an exhibit in this  
3 proceeding, or a series of exhibits, DB-3 through 6.  
4 Do you have those in front of you?

5 A. Yes, sir.

6 Q. These are orders of the Commission, are they  
7 not?

8 A. Yes, sir.

9 Q. Do they represent a series of proceedings in  
10 which the operators of Aqua Express sought and  
11 received discontinuance authority from the  
12 Commission?

13 A. Yes, sir. Very painful memories and  
14 accurate recitation of what we experienced there.

15 Q. And what ultimately happened with Aqua  
16 Express's authority between Kingston and Seattle?

17 A. The partners made a decision to relinquish  
18 that certificate because we felt, after the money  
19 that we had lost and the lack of demand for the  
20 service, and the, quite frankly, the Sounder service  
21 going in, that that was not something that we were  
22 going to attempt to move forward with, that the  
23 conditions were not right, and so we, as a group,  
24 decided that we were going to let it go.

25 Q. Returning to the current permit, the San

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1 Juan Express, Inc. permit and the service between  
2 Seattle and Friday Harbor, in the 17 or so years in  
3 which you've operated that certificate, have you ever  
4 sought discontinuance approval before from this  
5 Commission? And if so, under what circumstances?

6 A. Yes, sir. For a 30-day period in 2006, we  
7 had a contract with C-Port and the Navy, and in  
8 August, when they needed the boat, we were able to  
9 utilize another vessel to finish out the season and  
10 our certificate. The following, and I do happen to  
11 have that contract with me. And once again, I  
12 apologize. That contract shows an expiry date of  
13 March 15, 2007.

14 And but -- as typical with the government or  
15 with the military, there is language that if  
16 conditions arise necessitating an extension, that  
17 that could be handled.

18 We had been told when we went into this that  
19 the Abraham Lincoln, it was another Lincoln contract,  
20 was going to -- they were going to move it through  
21 the Puget Sound Naval Shipyard, Bremerton, as quickly  
22 as possible, because of deployment. There were  
23 issues in the Middle East at the time. I have  
24 correspondence here, too, e-mails, copies of e-mails,  
25 giving us updates as to why the delay. They had a

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1 problem with their nuclear reactor, where they  
2 couldn't pass the test.

3 But I have all this that I can provide if  
4 you -- and so we -- the nutshell is that we asked for  
5 a temporary suspension of June 1 through June 30, and  
6 then we went ahead and finished out the summer,  
7 consistent with our tariff.

8 Q. And your certificate?

9 A. And the certificate, thank you.

10 Q. And the year, just for the record, of that  
11 discontinuance?

12 A. That was June 1 through June 30 of 2007.

13 Q. Thank you.

14 A. And I might add, Mr. Wiley, I think it was  
15 in 2003, we had a Navy contract in the summer, but we  
16 were able to find a substitute vessel to operate to  
17 Friday Harbor for the entire season. There was one  
18 available through David Giersdorf, and the vessel's  
19 name was Lewis and Clark. And so we operated that  
20 season with a substitute vessel while the Navy used  
21 the Clipper III for force protection between Todd  
22 Shipyard and Bremerton.

23 Q. Thank you. Let's move forward to this  
24 season and talk about some of the circumstances that  
25 you find yourselves in today. Why are you seeking

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1 discontinuance approval today?

2       A.    In short, because we've invested a lot of  
3 resources, a lot of heart in this route.  It's a  
4 route that not only the people who travel it like it;  
5 our employees like it.  It fits in well with our  
6 wholistic view of travel in the Pacific Northwest.  
7 But we spent a lot of time talking about this.  There  
8 had been discussions about the route.

9            We -- C-Port Marine didn't get approval from  
10 the Navy for contracting for vessels until late  
11 March, and those documents that I'll be providing  
12 will show you that -- the lateness of the contract  
13 signing.

14            But what really -- the challenges we face,  
15 and I think everyone is familiar with the passport  
16 issue, the western hemisphere travel initiative that  
17 required that people entering the United States from  
18 Canada or the Caribbean, Mexico, would have to have  
19 what they called a secure travel document.  And it  
20 was as a result of 9/11 that this legislation came  
21 through.  And that was in 2004.

22            We were -- because of our primary business  
23 to Victoria, that's a big deal for us.  So we were  
24 involved -- I'm co-chair of a coalition, bi-national  
25 coalition that was working on the passport issue.  In

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1 fact, Governor Gregoire was very helpful when we had  
2 a meeting with her in Lake Union November of 2005 in  
3 moving things forward. She was also very aggressive  
4 in having Liz Luce, the Director of State Department  
5 of Licensing, come up with an enhanced driver's  
6 license.

7 We were involved with Senator Murray and  
8 Senator Stevens in terms of getting a delay in  
9 implementation. But June 1, last week, was the day  
10 where there was no more extension. To enter the  
11 United States from Canada or Mexico or the Caribbean,  
12 you now have to have a passport or a passport card or  
13 a Nexus card or something like that, or an enhanced  
14 driver's license.

15 We didn't know what the impact would be to  
16 our business, and there's been a lot of discussion on  
17 this. Also, I serve on the board, the Convention  
18 Visitors Bureau. I was a chair for two years, I've  
19 been on the board for 15 years. And again, business  
20 occupancy in Seattle and much of the region is at an  
21 all-time low. And that is representative of what  
22 exists across the country.

23 Until recently, I was on the Board of  
24 Tourism Victoria, as well, and I was president of  
25 that organization at one time. But business, tourism

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1 business is way down. And I think this would be  
2 borne out by talking to just about anyone in the  
3 tourism/hospitality industry. Fuel prices last year  
4 hit us, \$4.60 a gallon. And again, what's beginning  
5 to happen is we're beginning to see that rise again,  
6 \$70 a barrel.

7 And so we had kind of the perfect storm of  
8 issues coming together that led to uncertainty as to  
9 what's going to happen.

10 And we had many discussions and, looking at  
11 the bigger picture of the company, not wanting to put  
12 the company and the 200 year-round employees, the  
13 250, 260 employees at risk, we made this decision to  
14 enter into an agreement that would provide -- there  
15 was no cost to us. It was all revenue to us. And  
16 this agreement that you'll see that we have with the  
17 Navy was not a case of gouging the Navy or anybody  
18 else. The price that we showed prior to June 1  
19 per-day costs and after Labor Day is \$2,300 a day, is  
20 what we charge. In the summer, it's \$6,000 a day.

21 And I think if you talk to the Washington  
22 State Ferries or to C-Port Marine or to the Navy, our  
23 price per day has not changed in 15 years. And so it  
24 is -- you know, I want to negate any views that it's  
25 an opportunity to gouge. That was not it. It was a

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1 certainty of cash flow to get us through a tough year  
2 so that next year we'll be in a stronger position,  
3 the entire company, and can be assured that we're  
4 around and the employees -- many of our employees --  
5 and I apologize for the sidetrack.

6           But we have many employees who have been  
7 with us for the full 23 years that the company's been  
8 in existence. We're very proud that we don't have  
9 layoffs. We've had one layoff this year. And again,  
10 you talk to people in the industry, and there is a  
11 lot of that. But we think that if we manage  
12 prudently, that we can get through tough times, and  
13 this is one of those tough times.

14       Q. As you looked at the tea leaves in spring of  
15 this year, was there any intent on the part of San  
16 Juan Express/Clipper Navigation management to abandon  
17 the route at issue permanently?

18       A. No, not at all. In fact, I talked to a  
19 number of people about alternate vessels. Tom  
20 Tougas, who owned the Orca Song. Jack -- well, it  
21 wasn't Jack Harmon, it was Port of Kingston, Marc  
22 Bissonnette. They were looking to acquire the boat  
23 and then we talked about leasing that boat. Two  
24 Harbor vessel, Matt Nichols, from Nichols Brothers  
25 Boatyard, and it was in California.



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1           The issues that we had in terms of finding  
2 an alternative vessel, especially at that date,  
3 happened to be with speed. You're talking 82  
4 nautical miles between Seattle and Friday Harbor.  
5 And so the speed's too slow, it creates other  
6 situations in terms of fatigue factors for the crew.  
7 You're limited to 12 hours per day. And that's not  
8 underway time; that's when you're on the vessel. You  
9 could be at the dock in Friday Harbor and that counts  
10 to it if you're on the vessel.

11           Some of the issues that we had, too, with  
12 those alternate vessels was two of the vessels had  
13 insufficient storage capacity for sewage. We, as an  
14 operator, cannot dump sewage overboard. And so we  
15 looked at one of the vessels going up and doing some  
16 whale watching and going to Friday Harbor. The tank  
17 was insufficient and there's nothing we could do to  
18 create larger tank space. And so we looked, and in  
19 fact, on the Orca Song, besides the speed, a 20-knot  
20 boat, that was the fastest of the ones we looked at,  
21 which would make for a little over a four-hour trip  
22 to Friday Harbor, it was -- the contract was for  
23 \$110,000, which was economically -- it wasn't  
24 feasible with that amount. But fortunately, that  
25 wasn't the sole factor in our consideration.

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1           Q.    As you looked at these alternative vessels  
2   to try to cover the route in spring of 2009, how many  
3   -- how many people did you speak with who had boats  
4   available?  And could you just elaborate a little bit  
5   more on why those were not sufficient, just in  
6   characterizing them?

7           A.    Yeah, there were four people I spoke to, and  
8   to be succinct, which I'm generally not, but one is  
9   the speed of the vessel was not acceptable.  Two is  
10  the sewage storage capacity was insufficient, which  
11  would cause, on a long day, with full loads, sewage  
12  overboard, which would have subjected us to fines and  
13  penalties with the Coast Guard, and we have an  
14  unblemished record in those kind of things.

15                 In terms of -- another issue is with that  
16  slow speed, we would run into problems where we would  
17  be over the 12 hours for our crew, and there wasn't a  
18  satisfactory alternative.  In fact, I brought an  
19  article from David Moseley from last Friday that  
20  Washington State Ferries is having this issue  
21  themselves in the San Juan Islands.  And it is a  
22  critical -- it's no different than truck drivers.  
23  I'm sure the Utilities and Transportation Commission  
24  has oversight on that.

25                 So those are really the main issues that

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1 were affecting us. And there just aren't many  
2 vessels available. As you go into summer, people  
3 have made their arrangements for deploying equipment,  
4 and then the other factor is, for us, what has made  
5 us successful on that route is the Clipper III is a  
6 fast boat. If not for the parent company, could not  
7 go out and buy a boat -- a replacement boat for the  
8 Clipper III, its fair market value right now is \$3.5  
9 million. To go out and buy that boat, if you were to  
10 check with Nichols Brothers Boatyard or, let's see,  
11 another shipyard, Dakota Creek, or Gladding-Hearn, in  
12 Somerset, Mass. You're talking a boat that, at  
13 minimum, would be \$5.5 to \$8 million. You can't make  
14 that work on a seasonal run.

15           But we were able to acquire that boat, we've  
16 been able to use it in other areas, and we've also  
17 used it to augment some of our service in the past to  
18 Victoria. But it's a very limited market of vessels  
19 that were a suitable replacement, and those were the  
20 only four that I could find.

21           Q. And since the open meeting on May 14th,  
22 2009, have you made subsequent inquiries, as well?

23           A. Yes, I once again revisited and we started  
24 to look if we could compromise some things. The Two  
25 Harbor boat from California, it only has a 100-gallon

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1 holding tank. And the reason they can get away with  
2 it is it's ocean service. And once they get out in  
3 the ocean, they can open the valve. That wouldn't be  
4 too attractive or legal in our case.

5 But we looked at whether or not we could put  
6 additional holding. But I received a call from Matt  
7 Nichols that they blew up an engine. This is  
8 detailed, but it was a Deutz engine, which are hard  
9 to replace, and it was going to take half the summer  
10 to get a new engine and parts to restore it.

11 Q. Can you put in context or characterize the  
12 issues facing the industry in 2009 versus all of the  
13 other years in which you've operated BC-117, which I  
14 think the record will show is 16 to 17 years?

15 A. Well, you know, and one of the things I  
16 failed to mention, Mr. Wiley, earlier, this perfect  
17 storm. We've always felt that we were somewhat  
18 recession-proof, because people would forego the  
19 longer vacations when things got tough and they would  
20 take shorter getaway trips.

21 This year, with two wars, with the economy  
22 at -- you know, I don't recall experiencing anything  
23 like this in terms of the gas cost, the media's --  
24 well, I shouldn't blame all the media, but in terms  
25 of people's concern about, you know, certainty about

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1 a job, continued employment, all this, all these  
2 coming together, that's what's different than what we  
3 experienced after the first Iraq war and what we've  
4 experienced in other times that -- where we did fine,  
5 but things leading up to this summer have not been  
6 encouraging, and so we've done a hunker down deal.  
7 We've cut back on any number of things, because part  
8 of the -- my pontification with our staff is that if  
9 we manage properly, if we cut down the cost, we don't  
10 have to make the difficult decisions with regard to  
11 people.

12 Q. Just briefly, in your trade association  
13 capacity, can you comment on what other either  
14 regional or national passenger ferry companies have  
15 been experiencing of late for the Commissioners'  
16 information?

17 A. Yes. And you may -- of course, this is so  
18 close to me, because of the business and because of  
19 my dealings with B.C. Ferries, for instance, up  
20 north. It used to be just like the state ferries,  
21 basically managed by the legislative assembly up  
22 there. Now it's a Crown corporation. They operate  
23 as a business. They, in the last two and a half  
24 months, have laid off 40 senior management. They  
25 have a dramatic decrease in their ridership.

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1            Bay Ferries, which operates between Bar  
2 Harbor and Yarmouth, just got a \$5 million subsidy  
3 from the province of Nova Scotia because of declining  
4 ridership. And New York Fast Ferries, New York  
5 Waterways, which you may recall from 9/11, they were  
6 the ferry service that was used to take people off of  
7 lower Manhattan over to Brooklyn. The CSX out of  
8 southern California, the Wave, gone out of business.  
9 CATS, the Canadian-American Transportation Service,  
10 which had service between Bar Harbor and Yarmouth,  
11 \$40 million investment by MARAD, the state of New  
12 York, went out of business after 70 days.

13           Harbor Links, between Vancouver and Nanaimo,  
14 folded. Hawaii Super Ferry, a gigantic car-carrying  
15 catamaran that operated in Hawaii, MARAD money, \$100  
16 million, just closed down, and that was partly  
17 because of economic conditions, partly because of an  
18 environmental issue that went to the Supreme Court,  
19 but they shut that down. That boat has -- the first  
20 boat has gone to the military, second boat they're  
21 negotiating the military taking over. And the Hawaii  
22 Department of Transportation had a service operating,  
23 and they just recently closed that down.

24           These are just a few, but it's because the  
25 economic conditions and the high cost of operating

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1 expensive capital equipment.

2 Q. Are you also aware of -- and that's been  
3 brought to both of our attention, of recent  
4 legislation in the state of Washington that Staff may  
5 ask you about, but I just wanted to get your views on  
6 it. It's, for the record, it's ESB 5894. Are you  
7 aware of that?

8 A. Yes, and in fact, Staff had made me aware of  
9 it. I had been unaware of it before that. And  
10 initially, before reading it, I thought, you know,  
11 this might be something that's applicable that might  
12 be what we needed. But, you know, for our service,  
13 although -- and I try to be consistent in the things  
14 that I say. I should have stayed with that before  
15 Aqua Express, when I said no service could survive  
16 without government subsidy. Would have had a little  
17 more money in the pocket.

18 But in terms of our service to Friday  
19 Harbor, overwhelmingly visitors to the area.  
20 However, there's still a strong percentage, and it's  
21 not, you know, it's not 20 percent, it's not 50  
22 percent, are using it as transportation. And because  
23 that's a money-losing route. The only reason we're  
24 able to maintain it is the non-regulated services  
25 that help to subsidize it. And so for us to turn

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1 away from the opportunity for any other  
2 point-to-point transportation service I think would  
3 be ill advised.

4 If I could draft the language, or more  
5 appropriately David draft the language, perhaps  
6 there's some things that could be done that would fit  
7 our needs.

8 But our issue is, you know, we've put a lot  
9 of time in on this route and we just do not believe  
10 we would be well advised to walk away and limit it to  
11 excursion services. And in fact, quite frankly, I  
12 was a little bit surprised that we hadn't heard  
13 anything about this up until the point, because I  
14 would have liked to have been involved, and that's no  
15 one's fault but our own.

16 One of the cost cutting measures we had to  
17 make a couple years ago is when our lobbyist, Jim  
18 Boldt, retired and we used Robin Appleford. We had  
19 to cut expense. And you may like Olympia, but I just  
20 don't come down here very much.

21 Q. Without getting into a legal issue, because  
22 I know there'd be objections, the statute uses the  
23 term commercial ferry service does not serve an  
24 essential transportation purpose and is solely for  
25 recreation.



0041

1           Do you view your route between Seattle and  
2 Friday Harbor as consistently fitting that  
3 description?

4           A.   We are not solely an excursion or --  
5 service. We do provide -- and as I testified  
6 earlier, for some of those folks that need to go back  
7 and forth, because our schedule is not conducive to  
8 all of them traveling both directions, we do work  
9 with Kenmore.

10           I might also add that when we first applied  
11 for this certificate, there were prohibitions about  
12 us having a schedule conflict with Washington State  
13 Ferries, that it was geared towards tourists and the  
14 like. And that -- and frankly, I say that, but the  
15 demand factor is from south to north; it's not from  
16 the islands into Seattle. But we do provide some  
17 service for people coming down to use a hospital or  
18 doctor services or people who leave their boat up  
19 there or vice versa. Small service, but it is not  
20 solely as you related, for tourists.

21           Q.   You've historically provided, I think you  
22 alluded to it briefly in your testimony, service to  
23 the Tulip Festival. I think it might be covered  
24 under the Seattle-La Conner point-to-point.  
25 Contrasting the Tulip Festival service that you

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1 provide, how would you characterize that service  
2 under the new legislation?

3 A. Completely different, and it would apply  
4 under the ESB 5894. There is no essential service  
5 being provided. We're taking people up to the tulip  
6 fields. And what we do, incidentally, is we do that  
7 in conjunction with motor coach carrier. We used to  
8 deadhead motor coaches up there and then take them  
9 out on tours with the gardens. Now we do one way on  
10 the boat, one way on the motor coach. But that is  
11 all excursion or no essential service there.

12 Q. Recognizing we're going to have a public  
13 hearing segment this afternoon and there may be  
14 updates to this, since your discontinuance request  
15 and the notice that you provided in May -- in March  
16 and since that time, have you personally received  
17 contact from prospective customers to complain about  
18 the service that's mentioned?

19 A. No, sir. I've not heard of any complaints  
20 until I heard the KOMO news this morning, one person  
21 with a small inn in Friday Harbor. But part of our  
22 reason for being proactive was to minimize  
23 inconvenience to the consumer and offering them  
24 choices, but --

25 Q. And if I could interrupt, when you say by

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1 being proactive, could you explain what you mean for  
2 the record?

3 A. I believe that a 15-day notice is required.  
4 We did 60 days. And we contacted everyone who had  
5 reservations. We offered them choices. In fact,  
6 what we did is the fare to go to Friday Harbor is  
7 less than it costs to go to Victoria. We came up  
8 with a fare and whale watching out of Victoria that  
9 was the same as what it would cost to go to Friday  
10 Harbor. So that if people were going up there  
11 primarily to do marine sea life search or whale  
12 watching, they could do that to Friday Harbor.

13 But we had a number of options that we  
14 provided to people, and I kept a record of everyone  
15 who was contacted, where they're from, what choice  
16 selection they made, and we received support from  
17 folks, one -- there was disappointment, of course, on  
18 the parts of some people, because they wanted to see  
19 Friday Harbor, but overwhelmingly, they appreciated  
20 the contact and appreciated being given alternatives.

21 The business people that I've spoken to,  
22 although disappointed, you know, you rely on  
23 different forms of transportation. They understood  
24 and understand the basis for our decision.

25 Q. Mr. Bryan, why, in your view, is this

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1 request consistent with the public interest?

2 A. Well, I think that, you know, in terms of --  
3 and this is my biased opinion, is I think many people  
4 in the islands recognize that there had been no  
5 service to Friday Harbor from Seattle prior to our  
6 starting that service. And I am convinced that  
7 because of the high cost of equipment and the high  
8 cost of operation, the high cost of advertising and  
9 that and what we've found in our experience, that  
10 there isn't a great demand to come in and fill that  
11 void.

12 And we have invested 17 years and I think  
13 most people will say that we've done a good job.  
14 We've had our hiccups, we've had equipment failures  
15 at times, like most transportation companies, but we  
16 provided a good, consistent service. And that,  
17 taking the big picture view of what we've done and  
18 what we're asking for, because we clearly plan to be  
19 back in 2010. And we want that route. We think  
20 that, as I say, we've done a good job.

21 And in terms of -- you know, especially at  
22 this point, you know, who's best served by a decision  
23 not to grant the suspension? We're talking -- you  
24 know, in terms of this far into the season, you know,  
25 the other operators to the area won't start until the

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1 end of the month into that area. Victoria San Juan  
2 Cruises I believe starts I think next week. And the  
3 service from Port Angeles that goes to Victoria and  
4 then carries over will be starting up later this  
5 month.

6           And I know I'm going -- I'm digressing, and  
7 I apologize, but I think that we've -- our track  
8 record has been good. And this -- we believe there  
9 is a factual basis here of why we made the decision,  
10 whether people agree or not that -- hopefully you  
11 understand. I think the lack of negative comments  
12 and some of the positive comments from some of the  
13 business people, some of the people on Friday Harbor,  
14 indicates that they understand what the situation is  
15 that we're facing.

16           JUDGE MOSS: Mr. Wiley, how much more?

17           MR. WILEY: I have just one or two  
18 questions, Your Honor.

19           JUDGE MOSS: All right. Well, go ahead and  
20 finish up, and then we'll take our recess after that.

21           Q. Mr. Bryan, before the open meeting on May  
22 14th, there was a proposed order that was drafted by  
23 the Staff that approved discontinuance, obviously  
24 subject to the Commissioners' review, but my question  
25 is in that order, there are some conditions such as

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1 filing a progress report during a period -- an  
2 interval of discontinuance. What is your view on  
3 progress reports? Do you have any objection to that?

4 A. No objection.

5 Q. As far as any other conditions to the  
6 discontinuance that you are aware of now that have  
7 been expressed, do you have any objection to any  
8 conditions?

9 A. No, sir.

10 Q. Can you tell me, just in summary, why this  
11 route is important to San Juan Express?

12 A. It's -- you know, and on this point, I feel  
13 like I'm talking out one side of my mouth, and so  
14 I'll preface that. But it is important because of  
15 the whole -- we offer service throughout the Pacific  
16 Northwest and you haven't had a chance to see our  
17 propaganda there, but we do wine tours over to  
18 Yakima, Prosser, we do Leavenworth tours. We like to  
19 think of ourselves as Pacific Northwest travel  
20 experts, and this is an important part of that.

21 We have a lot of people that will go to  
22 Friday Harbor and spend time there. They'll go on.  
23 In fact, what I failed to mention is Washington State  
24 Ferries, we're a customer of theirs, too, because we  
25 use Washington State Ferries to go from Friday Harbor

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1 to Sidney. Blackball Transport out of Port Angeles,  
2 we're a customer of theirs, as we are with B.C.  
3 Ferries. So we have this big wide range of products  
4 that we offer.

5 The ticket price to Friday Harbor for a  
6 number of these people is a small part of the total  
7 revenue per passenger. It is not uncommon for us to  
8 have revenue of \$2,000, \$2,400 per person, because  
9 it's one part of a continuing part of our vacation  
10 product. But having said that, I also do not want to  
11 give up those people who use our service to go up to  
12 their property up in the islands or they go up  
13 because their boat's up there or what have you. But  
14 this is a very important part of what we do and what  
15 we sell.

16 Q. Mr. Bryan, as an illustrative exhibit, we've  
17 marked DB-7, which is a packet. Is that the  
18 reference to your complete or comprehensive service  
19 that you're referring to in terms of how you hold out  
20 and advertise?

21 A. This is just a few things I happened to  
22 bring with me for your review, but yes, sir, it is.

23 MR. WILEY: Thank you. Your Honor, I think  
24 that completes our direct examination. I would  
25 tender the witness and offer Exhibits DB-1 through

0048

1 DB-6.

2 JUDGE MOSS: Any objections?

3 MR. THOMPSON: No objection.

4 JUDGE MOSS: Hearing no objection, then, the  
5 exhibits will be admitted as marked, as are the bench  
6 exhibits, I might add. And we'll take our recess  
7 now. Let's take 15 minutes, until, what is that,  
8 five before the hour by the wall clock.

9 THE WITNESS: And I'll call and see if  
10 they've faxed that yet.

11 MR. WILEY: They have.

12 THE WITNESS: Oh, they have? Oh.

13 (Recess taken.)

14 JUDGE MOSS: Let's be back on the record.  
15 Okay. Mr. Wiley, you had completed your examination  
16 of Mr. Bryan, I believe, and so we have him available  
17 for cross-examination. Mr. Thompson, did you have  
18 any questions?

19 MR. THOMPSON: I do have just a couple of  
20 questions, but first I wanted to clear something up  
21 with regard to the certificate that's been marked as  
22 -- or I guess admitted at this point as DB-1.

23 JUDGE MOSS: Yes.

24 MR. THOMPSON: And there's actually a more  
25 current certificate or certificate language that was



0049

1 part of an order issued on May 6th, 2009, in Docket  
2 TS-090592. And it just -- the only difference, I  
3 think, is that it eliminates the Rosario stop from  
4 the description of the route. So just to clarify  
5 that.

6 JUDGE MOSS: Should we have that updated as  
7 part of the exhibit, Mr. Wiley?

8 MR. WILEY: Yes, I definitely think so.

9 JUDGE MOSS: If you could furnish that  
10 later. We'll just keep it as part of the same  
11 exhibit, so we don't need a separate one. Was it May  
12 2009, Mr. Thompson?

13 MR. THOMPSON: I'm sorry, I didn't --

14 JUDGE MOSS: The date of that order was  
15 what, May 2009?

16 MR. THOMPSON: May 6th, 2009.

17 JUDGE MOSS: Okay. All right. Well, you  
18 say you have a few questions, I believe?

19 MR. THOMPSON: Yeah, just a few questions.

20 JUDGE MOSS: Okay. Why don't you proceed.

21

22 C R O S S - E X A M I N A T I O N

23 BY MR. THOMPSON:

24 Q. Mr. Bryan, what's the name of the boat again  
25 that serves the route between Seattle and the San

0050

1 Juan Islands?

2 A. Historically has served as the Victoria  
3 Clipper III.

4 Q. Victoria Clipper III. And what's the use of  
5 that vessel in the off season?

6 A. Excuse me for interrupting you. We use that  
7 as a standby boat in the event that one of our larger  
8 vessels to Victoria is not utilized. We do pick up  
9 some local charter work. We do some excursions with  
10 it, like to Langley, murder mystery. We've done some  
11 things with some of the communities, like Kingston,  
12 for little excursions. And at different times, with  
13 the Washington State Ferries, we have a standby  
14 agreement with Tim McGuigan and Washington State  
15 Ferries where they can utilize that boat for  
16 emergency service or service interruptions.

17 Q. Okay. The boat is owned by the company?

18 A. It's owned by Clipper Navigation, Inc., yes,  
19 sir.

20 Q. When you entered into the contract, was it a  
21 contract with the Navy directly or with this  
22 organization called C-Port?

23 A. It's through a third party, C-Port Marine  
24 Services, which is an Alaska Native corporation. And  
25 if I might just clarify that, as Alaska Native

0051

1 corporation, they can enter into contracts with the  
2 federal government, with the Navy, on a no-bid basis.  
3 So they have historically gotten those contracts with  
4 the Navy, and then they contract for vessels.

5 Q. Okay. And what route -- or I guess is there  
6 a route that the boat is serving on behalf of the  
7 Navy?

8 A. Yes, sir. It goes from the secure Everett  
9 Naval Base to the secure facility at the Bremerton  
10 Puget Sound Naval Shipyard. And the nature of the  
11 agreement with them is that vessel is, because of the  
12 security issues, can only be used on that route,  
13 whether they're using it on weekends or what have  
14 you.

15 Q. When you entered into that transaction, did  
16 you expect that you would be able to find a boat to  
17 serve the regulated route?

18 A. That had been our hope, yes, sir.

19 Q. Okay. And it sounded like there was some  
20 delay in finding out whether the Navy contract would  
21 be awarded; is that right?

22 A. I think you'll note, just from the  
23 abbreviated agreement we have there, the boilerplate  
24 language, it shows me signing on the 18th of March, I  
25 believe it is, and the contract went into place the

0052

1 first part of April.

2 Q. And so had you made any effort prior to that  
3 March date to try to locate an alternative boat?

4 A. Yes, I had discussions with Marc  
5 Bissonnette, the President at the Port of Kingston  
6 Commission, also Tom Tougas, with Four Seasons Marine  
7 Alaska.

8 Q. I guess my question is how soon -- at what  
9 point did you start looking for an alternative  
10 arrangement for another boat?

11 A. It was not that much before then, because  
12 there was no certainty that C-Port was going to get  
13 the contract, although we felt pretty certain. But  
14 until the -- it was one of these situations where it  
15 was a flowing deal. We had our discussions with  
16 C-Port. They felt confident, but there was nothing  
17 signed or whatever, and they couldn't give us any  
18 definitive statement that, yes, they were going to  
19 have it or that it was going to start on this date.

20 Q. Is there any way to get sort of an option on  
21 a boat as a possibility? In other words, if the Navy  
22 deal hadn't gone through, you would maybe at least  
23 have, you know, a first opportunity at a boat?

24 A. I have not heard of anyone having success  
25 with that, because they're looking for ways to deploy

0053

1 their equipment. And you know, you can get an  
2 option, it's like Tom Tougas told me, about the  
3 vessel. You can pay \$110,000 for four months or  
4 \$110,000 for 12 months. The option is yours, but  
5 that's not a common practice in the rate side.

6 Q. I just want to get a little bit into your  
7 rationale for entering into the Navy contract. You  
8 were describing it earlier in your direct testimony.  
9 It sounded like it was sort of in an effort to get  
10 this additional revenue in order to protect -- or  
11 protect revenue for the business as a whole. Is that  
12 accurate?

13 A. To put it succinctly, it meant a million  
14 dollars to the bottom line in a very troubling year.  
15 That's what the impact is to the business.

16 Q. So in other words, to protect the  
17 unregulated business, as well as the regulated?

18 A. That's absolutely correct.

19 Q. Okay. You mentioned the difficulties with I  
20 guess Customs issues or Homeland Security issues with  
21 entry into Canada. Are passengers that take the  
22 regulated route, are they through-ticketed to  
23 Victoria or do they typically make a round trip back  
24 to Seattle?

25 A. There are any number of options. If they're

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1 day trippers to Friday Harbor or whale watching  
2 people, there's no need for identification. At one  
3 time, there was. They had to show ID because of,  
4 like, Washington State Ferries. Our boat used to go  
5 to Friday Harbor on to Victoria. Coming back from  
6 Victoria through Friday Harbor and then into Seattle,  
7 everyone getting off that boat had to show their ID.  
8 But today, with our modification of our schedule, and  
9 it's -- really, it's not -- Canadians don't care if  
10 you've got a passport. It's the U.S. Customs that  
11 care. And that's the -- where the issue is. But for  
12 Friday Harbor, in and of itself, no, that's not an  
13 issue.

14 Q. I note that as part of your request for a  
15 discontinuance of service in this docket, you  
16 indicated that the company would agree not to protest  
17 a certificate by a competing company. I guess that  
18 would be during the period of discontinuance or  
19 suspension. And you said something about your  
20 expectation with regard to whether another company  
21 might indeed come along and seek authority for this  
22 route. You didn't think that was likely; right?

23 A. No, sir, I do not believe it's likely. But  
24 you know, I've been proven wrong. I didn't think  
25 Starbucks would make it and my wife reminds me all

0055

1 the time they've done okay without my advice. So it  
2 could happen. But you know, you're talking a short  
3 season, expensive equipment.

4 But -- and that -- our statement is  
5 consistent with the position we took with Aqua  
6 Express. If someone could come along and start that  
7 service, and there were people over in Kingston who  
8 asserted that they could start the service, we said,  
9 Fine, if they can do it, we won't protest it. And  
10 that same position we take today.

11 Q. Okay. But anyone who did come along,  
12 however, would -- although they would have authority  
13 to operate on the route, they would also have your  
14 company to contend with as a competitor, I guess, as  
15 well, in the future; right?

16 A. Because we certainly intend to come back and  
17 provide that service, yes, sir.

18 Q. Okay. And I mean, couldn't that be a  
19 deterrent to other companies coming in and applying  
20 for the certificate, the fact that they would have  
21 your company to compete with in the future,  
22 potentially?

23 MR. WILEY: Your Honor, I would say we're  
24 getting into some area of a speculation that is based  
25 on contingent future events. If you want to allow

0056

1 it, I just would note that I think if we get too many  
2 contingencies and hypotheses, we could be really  
3 talking without much basis in fact.

4 JUDGE MOSS: Okay. Thank you, Mr. Wiley.  
5 You can answer the question.

6 THE WITNESS: If I might preface, one of the  
7 things we know, very few people know of the service  
8 of San Juan Express, Inc. And you all know the  
9 reasons why we chose to establish a subsidiary under  
10 that name. It's to protect us from large predators in  
11 terms of knowing the full range of our revenue and  
12 our cost of operation.

13 The market penetration for Victoria Clipper  
14 is virtually at 100 percent in the region in terms of  
15 name recognition and in terms of product recognition.  
16 So in terms of somebody coming in to take up that  
17 service, I think the greatest deterrent to them  
18 coming in is the fact of 23 years of equity in terms  
19 of our place in the marketplace for Victoria and the  
20 18 years in terms of in the marketplace to Friday  
21 Harbor.

22 People don't, when they think of Friday  
23 Harbor, they're not thinking of San Juan Express,  
24 Inc. They're thinking of the advertising materials  
25 that you'll see, Victoria Clipper.



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1           So a deterrent, but I don't think that's the  
2 largest deterrent. There's docking facilities in  
3 Seattle. Where are you going to go to dock? You're  
4 not going to go down to a Washington State Ferry  
5 dock, because you're going to have IBEW labor issues,  
6 so there are a number of other factors that I think  
7 trump that issue.

8           Q. I wonder if, in addition to your agreement  
9 not to protest another applicant serving the route,  
10 whether the company would also be willing to, maybe  
11 as a condition, agree to sacrifice the certificate if  
12 someone did apply in the interim. Is that something  
13 the company would consider as a condition?

14          A. I'd have to seek counsel on it. From my  
15 point, I don't -- that's something that I've not  
16 heard done before. That's not something that I've  
17 considered. I'd certainly have to think long and  
18 hard.

19          Q. Okay. Just one more question. On the issue  
20 of -- although I think it is perhaps beyond the scope  
21 of what we're dealing with here today, but you did  
22 testify on this subject and I think it's somewhat  
23 germane. Anyway, the issue of whether there's an  
24 essential service being provided here. You mentioned  
25 people that would take the route up to Friday Harbor

0058

1 to their boats or what have you. Isn't it true that  
2 those people probably -- probably are, as an  
3 alternative, would drive up to Anacortes and take the  
4 Washington State Ferries over to Friday Harbor?

5 A. Well, and that's an option and that's  
6 something that we offered to people that we  
7 contacted. David Moseley, of Washington State  
8 Ferries, wouldn't have any problem with that. I'd  
9 note it would build up his ridership. But that's  
10 certainly an option that's available to folks. But I  
11 think that you can also appreciate my point of view,  
12 that, you know, our hope had always been to build up  
13 more of that local traffic. And I won't dispute that  
14 it's a small part of our business, but it  
15 nevertheless contributes.

16 Look at the losses that we sustained over  
17 the years directly attributable to the San Juan  
18 Express, and I know, Gene, they're unaudited, but in  
19 terms of those losses, they're significant, so  
20 anything that can help offset any part of that is a  
21 benefit to us.

22 Q. Thanks. That's all -- oh. That's all the  
23 questions I have. Thanks.

24 A. Thanks.

25 JUDGE MOSS: Thanks very much. We'll have

0059

1 questions from the bench and then have any redirect,  
2 Mr. Wiley. Chairman Goltz.

3 CHAIRMAN GOLTZ: First of all, has this been  
4 marked as an exhibit?

5 JUDGE MOSS: Yes, this is B-3. This is the  
6 Standing Bareboat Charter.

7

8 E X A M I N A T I O N

9 BY CHAIRMAN GOLTZ:

10 Q. Mr. Bryan, thank you for coming today. And  
11 the contract that's been marked as B-3, do I assume  
12 that's not quite the entire contract?

13 A. That's the least important part of it. And  
14 I received an e-mail saying that they found the rest  
15 of it. It shows essentially the term of the  
16 contract, the dollar amounts per day, and the date  
17 that I signed off on it.

18 Q. And I believe you testified the dollar  
19 amount per day was \$6,000?

20 A. Up until May 31st, through May 31st, \$2,300  
21 a day. For the summer season, up until Labor Day,  
22 it's \$6,000 a day, and then again, following that,  
23 it's \$2,300 a day.

24 Q. I understand we'll be getting the remainder  
25 of this contract sometime this morning?

0060

1           A.    Yes, sir.  Hopefully in the next little  
2 while.

3           Q.    Okay.  So is the -- you testified that you  
4 attempted to find a replacement boat for the Clipper  
5 III for the service from Seattle to Friday Harbor.  
6 Did you ever explore the idea of getting -- leaving  
7 the Clipper III on the regulated route, but getting  
8 an alternate boat for the Navy or for the C-Port  
9 contract?

10          A.    The specifications by C-Port were for a  
11 speed that wouldn't have been met by any other  
12 available vessel.  They put into the contract, when  
13 they put out the RFP, essentially, and we've done  
14 this with them before, where you have to make the  
15 trip within a certain period of time, which means  
16 certain speed.  And the vessels that I mentioned were  
17 substantially slower than what they would have  
18 accepted.

19          Q.    When was the RFP put out?

20          A.    And it wasn't a formal RFP.  It was just  
21 setting the conditions that the Navy had put to  
22 C-Port.  It was probably -- let's see.  March,  
23 probably mid to late February.

24          Q.    Okay.  And did you then -- what was the  
25 negotiation like?  Did you contact C-Port or did

0061

1 C-Port contact you?

2 A. Let's see. I'm trying to recall, because we  
3 have dealt with C-Port on four different contracts,  
4 and most of them are in the off season. And I  
5 believe -- my recollection is that we were contacted  
6 because the three parties involved have been involved  
7 in three of the prior contracts, the Four Seasons  
8 Marine out of Alaska, and Catalina Express out of  
9 Long Beach, California. But the best of my  
10 recollection is Mick Maddock from C-Port Marine  
11 contacted me.

12 Q. And that would have been about what time?

13 A. February time frame, probably early, mid  
14 February.

15 Q. Okay. So as I understand the chronology,  
16 then, in -- according to Exhibit B-2, which is the  
17 tariff filing for revised -- I don't know if it  
18 revised the schedule, but it probably revised the  
19 rates for your Seattle to Friday Harbor service, that  
20 was filed with the Commission on February 4, and so  
21 am I correct to assume that as of February 4, you  
22 fully intended to provide the service for this  
23 summer?

24 A. Yes, sir, there was no certainty with regard  
25 to C-Port Marine or --

0062

1 Q. And then, within a couple weeks after that,  
2 though, a week or two after that, you heard about the  
3 C-Port contract and your mind started to change on  
4 that issue?

5 A. It was later that we had the discussions,  
6 but as I mentioned, it was -- we didn't know with  
7 certainty when the date would start. It wasn't until  
8 that 18th of March that we signed, and it all came  
9 together fairly quickly, but we started to talk about  
10 this when we talked about the availability of other  
11 vessels. And yeah, so it was in that time frame.

12 Q. And is there -- Clipper Navigation owns the  
13 Clipper III?

14 A. That's correct.

15 Q. And so has there been a contract between  
16 Clipper Navigation and San Juan Express for San Juan  
17 Express to use the Clipper III?

18 A. There has been a contract between the two  
19 entities, yes.

20 Q. And did that contract have to then be  
21 modified in order to allow Clipper Navigation to  
22 enter into the contract with C-Port?

23 A. That contract had expired between the two  
24 entities. And as you know, I mean, I think we've had  
25 three iterations of that contract. And not having it

0063

1 with me, but it had expired between the two entities  
2 at the end of the year, and we just hadn't gotten  
3 around to renewing it, frankly.

4 Q. And I'm not asking for the figure here, but  
5 I assume that there was a payment from San Juan  
6 Express to Clipper Navigation for use of the boat?

7 A. And unfortunately our controller isn't here,  
8 but it was an intercompany -- what was charged for  
9 that vessel was not market value, frankly. Dave  
10 Wiley has given us some instructions for following  
11 this hearing for guidance for the future, but it was  
12 not market value.

13 Q. And then the -- at the open meeting, asking  
14 these questions, just let me make sure that I  
15 understand some historical ridership data. That I  
16 believe you said that there was, for last season,  
17 there was something in the neighborhood of 17,000  
18 round trips?

19 A. That's correct.

20 Q. And so I understand that to mean 17,000  
21 people went from Seattle to Friday Harbor and 17,000  
22 people came back?

23 A. That's one-way segments. Just a second.  
24 Make certain I get this right, because this is like  
25 the cruise ship industry, they talk about 400,000,

0064

1 but it's really 200,000, one direction and the other.  
2 I am virtually positive and I can clarify that that's  
3 one-way segments up and then back. And because all  
4 you've got to do is take the operating season times  
5 load factor. Excuse me one second. Let me do a  
6 quick -- I think that -- yeah, that's for both  
7 directions. That's a total, 17,000 up and back.

8 Q. So I understand it, so there's 17,000  
9 one-way trips?

10 A. Yes.

11 Q. Okay. And approximately half go one way and  
12 half go the other way?

13 A. I don't want to steer you to the wrong  
14 direction, because the majority of our people start  
15 the trip in Seattle and they come back. There are  
16 those people who continue on. So it's 17,000 in  
17 total that travel. And we count it differently on  
18 our international service. But I was just trying to  
19 do the quick math here, and the math tells me that  
20 that is 8,500 people would go north, 8,500 people  
21 come south, because of the number of seats we have in  
22 the operating season.

23 Q. And the tariff filing, which is Exhibit B-2,  
24 that, as I read it, would have started your service  
25 May 22nd and ended it for the daily service on



0065

1 September 7th, and then about a couple more weeks of  
2 weekend-only service?

3 A. That's correct.

4 Q. And is that consistent with the length of  
5 service in past years?

6 A. Yes, sir.

7 Q. And that data of 17,000 trips, that was from  
8 the year 2008 season?

9 A. That was 2008; that's correct.

10 Q. And what was it -- do you recall what it was  
11 in 2007?

12 A. Not significantly different.

13 Q. Now, you testified that this route has --  
14 San Juan Express has lost money. And I gather you  
15 basically -- you're basically saying your costs  
16 exceed your expenses? Costs -- excuse me, sorry,  
17 costs exceed your revenues?

18 A. Yes.

19 Q. I'll get a hang of this.

20 A. Well, I apologize, because I probably  
21 screwed you up with my math here.

22 Q. And are you basically, in making that  
23 statement, are you basically simply adding up your  
24 revenues from your passengers and comparing those  
25 with all the costs of the Clipper III during that

0066

1 summer?

2 A. That's correct. And allocated costs by the  
3 parent corporation for reservations services, for  
4 marketing, vessel maintenance, et cetera, that are  
5 thrown into those direct operating costs for the --

6 Q. So you're attributing some of the costs of  
7 the parent to the costs of the subsidiary?

8 A. That's correct, yes, sir.

9 Q. And are you also doing anything in reverse?  
10 That is to say, I gather that the Clipper III, in the  
11 middle of the day, is out taking people on whale  
12 watching. Are you allocating costs from the Clipper  
13 III to the parent corporation, too, for the purposes  
14 of this?

15 A. For the labor hours of those folks that are  
16 out on the unregulated, that goes to the parent  
17 company.

18 Q. So the labor, but not necessarily the boat?

19 A. Not the boat. The labor and the fuel for  
20 that two-and-a-half-hour whale watching should be  
21 attributable to the parent company.

22 Q. Can you tell me a little bit more about your  
23 contact with the Friday Harbor community when you  
24 were talking about ceasing service for this season?  
25 Did you hear concerns expressed from the folks up

0067

1 there in the chamber of commerce, tourism folks?

2 A. Chamber, I spoke to Debbie Pigman, I  
3 believe. I butchered that last name, but she's head  
4 of the Chamber. I spoke to her last Friday. Just  
5 wants us back 2010. In terms of our vice president  
6 of marketing spoke to the woman who's responsible for  
7 the visitor information center.

8 JUDGE MOSS: Let me ask you to lean forward  
9 just a little bit.

10 THE WITNESS: Oh, I apologize. And she was  
11 supportive, of course disappointed, but wants us back  
12 next year. I talked to Tammy Hayes at the Port of  
13 Friday Harbor, and she recognized our long service  
14 and wants us back.

15 And that's generally the tenor of the  
16 discussions that we've had with people up there.  
17 They recognize, as do our customers, I'm showing you  
18 a little chart here that we put on all our boats in  
19 the terminals, in terms of that elevated line there  
20 represents the fuel costs last summer. And so these  
21 folks all recognize the economic realities that have  
22 hit.

23 Q. As far as you're -- again, back to the  
24 ridership, you mentioned that for Clipper Navigation,  
25 the parent, all your materials in Exhibit DB-7, this

0068

1 is basically a big tourism marketing effort on your  
2 part?

3 A. Yes. I mean, that's -- you know, frankly,  
4 that's principally, for all of our businesses, it's  
5 tourists.

6 Q. And you did mention that some of the -- like  
7 you mentioned, someone from Friday Harbor once took  
8 the boat down to Seattle for a medical visit, you  
9 also mentioned that some folks are not tourists in  
10 that sense, but then you said that they go up to  
11 visit their cabins or go up to visit their property,  
12 go up and visit their boats. I mean, you don't have  
13 commuters on that line that go up there in the  
14 morning to work and come back in the evening?

15 A. No, the schedule is not conducive for that.  
16 And as I say, back in '91, that was one of the  
17 issues, and I know there have been some changes since  
18 then. But it's like my neighbors. They have a cabin  
19 up there and they go up every weekend to the islands,  
20 but it's not conducive to --

21 Q. So is that -- when you talk about commuters  
22 on the boat, you're really talking about those people  
23 that are going up there for the weekend for their  
24 cabins or for their boats?

25 A. If I said commuters, I apologize. I don't

0069

1 mean that.

2 Q. May not have.

3 A. But no, there isn't any for business  
4 purposes or what have you. It's --

5 Q. Does Clipper Navigation still intend to have  
6 the whale watching service out of Friday Harbor this  
7 summer?

8 A. No, sir. What we're doing is we're  
9 promoting other services this summer. An operator  
10 out of Bellingham does whale watching, there are a  
11 number of whale watching companies in Friday Harbor.  
12 And then, for those folks, we're also offering, as I  
13 mentioned, going to Victoria and using Five-Star  
14 Whale Watching out of Victoria.

15 Q. And so besides the San Juan Express route,  
16 which you're seeking to discontinue this summer, are  
17 there any of your other services, regulated or  
18 non-regulated, that you're also ceasing this summer?

19 A. No, now, what we've done with our core  
20 business to Victoria, when the fuel prices got to  
21 \$4.60 a gallon last year, and we historically have  
22 started up multiple sailings to Victoria much  
23 earlier, but what we found was, for a large part of  
24 May, we had two boats going to Victoria within an  
25 hour of one another and one could handle it. So this

0070

1 year, what we've done -- and once you've got it in  
2 your schedule, and here I'm talking to the UTC, once  
3 you get it in your schedule, it's difficult to make  
4 changes, consolidate sailings. So what we've done --  
5 I'll shoot myself.

6 Q. It's not that difficult.

7 A. No, but I tend to try and be candid. We've  
8 got one departure from Seattle and one from Victoria  
9 until the 20th of June, but we augment that core with  
10 a second departure as demand warrants. But it was --  
11 so we've made some changes there by necessity because  
12 of operating costs.

13 Q. And one final question, and that is the San  
14 Juan Express, do they have any other -- provide any  
15 other regulated service besides the route between  
16 Seattle and Friday Harbor?

17 A. We do not, no, sir.

18 CHAIRMAN GOLTZ: I have nothing further.

19 JUDGE MOSS: Thank you. Commissioner Oshie.

20 COMMISSIONER OSHIE: Thank you, Judge Moss.

21

22 E X A M I N A T I O N

23 BY COMMISSIONER OSHIE:

24 Q. Mr. Bryan, first, a couple questions that  
25 I'll follow up on the contract that's been marked as

0071

1 Exhibit B-3.

2 JUDGE MOSS: Let me interrupt you. Do we  
3 have the rest of that, Mr. Wiley?

4 MR. WILEY: Oh, yes, thank you.

5 JUDGE MOSS: Why don't we bring that up, so  
6 Commissioner Oshie can have that for purposes of his  
7 questions.

8 MR. WILEY: We're going to throw out the  
9 other one, because we've now got five pages.

10 JUDGE MOSS: All right. Thank you. So we  
11 have a substitute here for B-3, which is the complete  
12 contract.

13 THE WITNESS: David, do you have another  
14 copy, so that when the Commissioner --

15 MR. WILEY: I apologize, I don't. So I'm  
16 going to let you have mine, and I might have to look  
17 over your shoulder if it gets probing.

18 THE WITNESS: Thank you.

19 Q. Let me ask you a couple pretty basic  
20 questions, Mr. Bryan, and you can probably answer  
21 them without having to, you know, study the  
22 agreement. And certainly I would, and prior to me  
23 asking the question, but I'm going to do it anyway.  
24 What's the term of this agreement? It was entered  
25 into on March 18th, '09, with performance obligations

0072

1 expected in April 1st, 2009. So --

2 A. Well, I'd like to amend my testimony in this  
3 respect. I said 2,300 a day. It's 2,500, looking at  
4 the detail here. The 6,000 is correct. And what the  
5 contract, the hire shows, shall hire to owner monthly  
6 -- okay. Commencing at delivery April 2009. I don't  
7 have my calendar, but best of my recollection, it was  
8 the 1st of April.

9 Although this shows how far it can extend,  
10 we've been told that we'll terminate in November,  
11 with a possibility of a couple one-month extensions,  
12 depending on what they find with the condition of the  
13 nuclear reactor and so on.

14 Q. So would you explain what you meant by the  
15 opportunity to extend? What's your obligation, and  
16 perhaps better said, who has the right to call for an  
17 extension of this agreement? Does it require a  
18 mutual agreement of both parties, or does C-Port  
19 Marine have the right to require your service through  
20 the life of this agreement, including all extensions?

21 A. The Navy has a right to require C-Port  
22 Marine to extend, at their guidance or direction, the  
23 provision of ferry service. And by contract with  
24 C-Port Marine, we must be compliant with the request  
25 the Navy places on C-Port.



0073

1 Q. And this contract runs through --

2 A. Through 20 -- well, it says through 20 May  
3 2010. Well, and then from May -- it shows the  
4 amounts, but -- it shows the amounts and the time  
5 that can continue into September of 2010. But I  
6 think -- well, I can't surmise, but generally, with  
7 aircraft carriers, this is not considered to be a  
8 major overhaul, this scheduled duty cycle for the  
9 carrier work, but I get your point.

10 Q. And so that would be the -- it's the Navy's  
11 call that would be, you know, run through the chain,  
12 made to C-Port, and C-Port would tell you if they  
13 need your boat, the Clipper III?

14 A. Yes, sir.

15 Q. Through September 2010?

16 A. Yeah, they could push that to -- in fact,  
17 yes, that's absolutely correct.

18 Q. Okay. In the agreement itself, it makes  
19 reference to the Bareboat Charter Certificate. Is  
20 that what we were looking at, or is that something  
21 different?

22 A. I don't understand the terminology either.  
23 It's one that they use. And you see in the document  
24 that you had prior to that, Standing Bareboat  
25 Charter. This is inconsistent with any bareboat

0074

1 agreement I've ever seen. It's a C-Port Marine  
2 document and, you know, it's really boilerplate down  
3 to the very minimum, but I've never seen anything  
4 with that terminology before.

5 Q. I want to -- I'll move off of the agreement,  
6 because I think those are the questions that I really  
7 had, that were covered by Chairman Goltz, but I  
8 really would like to explore a bit more, because I'm  
9 having a hard time reconciling some of your testimony  
10 in that the -- and I know that you responded to it in  
11 direct testimony to questions by Mr. Wiley and then  
12 in cross by questions from the Attorney, Jonathan  
13 Thompson, representing Staff.

14 But it gets to what the company knew as it  
15 entered into this agreement with C-Port as to the  
16 availability of another vessel that would serve the  
17 route that is in question today. And at one point,  
18 you said that -- and I think from -- at least this is  
19 what I took away from your testimony, that you  
20 thought it might be possible that you'd find another  
21 boat to serve. Then, in another area of the  
22 testimony, there was -- I believe you stated  
23 something to the effect that, you know, no other  
24 boats have the speed, and then you also outlined  
25 earlier a number of other difficulties that -- and

0075

1 understanding of the condition and capacity of other  
2 boats that would limit and actually exclude them from  
3 your consideration.

4           So I guess my question is, you know, maybe  
5 I'll frame it as a risk issue. You understood, when  
6 you decided or Clipper Navigation decided and its  
7 effect, of course on the San Juan Express, the  
8 company understood that there was a risk that there  
9 would be no boat available to provide the service  
10 that is required by the certificate?

11         A. You know, when it came to our decision, in  
12 our analysis of vessels and in terms of looking at  
13 what could we accept that wouldn't shoot us in the  
14 foot for the longer term, we put on a 20-knot boat  
15 that meant that people would be on the boat for 12  
16 hours a day, that we'd run into risk of in violation  
17 of the hours of service.

18           And some of those things, as we started to  
19 look at the vessels and started to look at the  
20 various aspects of it, could we do this, were there  
21 things that we could do in terms of routing that  
22 would cut downtime? We recognized that there was a  
23 risk, but we also thought, as we did, you know, with  
24 the Orca Song, one of the boats we considered, we ran  
25 from Everett to Friday Harbor when we had Mosquito

0076

1 Fleet. In 2006, August of 2006, when we had that  
2 C-Port Marine, we used that boat for a short period  
3 of time to operate from Seattle.

4           What we found were that at the end of the  
5 season, it got -- sun set earlier and it got cold,  
6 and one of the things I found in terms of doing my  
7 due diligence on the boat, whether or not that a  
8 former engineer advised me that we had overflow  
9 sewage problems on that boat, and it didn't go  
10 overboard, it went onto the deck of the boat. So  
11 it's not like in terms of that one sitting that we  
12 were able to evaluate all the vessels. And I think I  
13 could get Matt Nichols or Tom Tougas or any number of  
14 these people will tell you that we had a number of  
15 conversations and the nature of my conversations and  
16 questions about -- because we knew there wouldn't be  
17 a match for the III.

18           But we looked at could it be suitable  
19 enough, could we do something that would be suitable  
20 enough to protect the certificate for the summer  
21 without shooting ourselves in the foot on 17 years of  
22 unblemished service that we provided.

23           Q. And when you said the III, you meant Clipper  
24 III?

25           A. The III, yeah. Yeah.

0077

1 Q. So -- and these conversations that you had  
2 with individuals, I guess within and outside your  
3 company, they occurred, to the best of your  
4 recollection, after you had executed the agreement  
5 with C-Port or before?

6 A. No, as I think I mentioned, I mentioned  
7 that, prior to the agreement, that I had discussions,  
8 and then they took on a much more aggressive  
9 following the agreement. Because it was speculative  
10 in nature prior to the signing of the agreement.  
11 Would you have a vessel available, what is it? Tom  
12 Tougas has 13 boats. Which one would he have  
13 available that we could consider? And in terms of  
14 the Two Harbors had a lease operating from Marina Del  
15 Rey to Catalina. That lease was due to expire.  
16 Would that boat be available? So discussions did  
17 take place, but they took on a new life when we  
18 actually formalized the agreement.

19 Q. If you had to -- and you know, this is -- I  
20 don't think it really requires speculation, because  
21 as a business person, you exam risk I think in all  
22 aspects of your business.

23 What -- would you at least give -- roughly  
24 assess what you believed at the time you executed the  
25 agreement with C-Port, the risk that you would be

0078

1 unable to perform under your certificate because of a  
2 lack of an available vessel that would be suitable  
3 for your needs?

4 A. I hadn't completed all of the due diligence  
5 and all the discussions with the boat owners to find  
6 out what would have to be done with any individual  
7 boat or anything, so I would not hazard to speculate  
8 on the percentage.

9 Q. So it would be just your testimony, then,  
10 that you knew that it was a risk, but you didn't know  
11 the extent of that risk?

12 A. I tell you, every day is a risk in this  
13 business. And in terms of the regulated side, where  
14 you're limited in terms of what you can make even the  
15 best of times, but this business is a risk all of the  
16 time. And what I'm trying to do is to reduce the  
17 risk to the employees and to my core business in  
18 terms of putting some money away to get through the  
19 hard times.

20 I don't think it's any different than the  
21 issues that are taking place nationally and  
22 regionally in terms of the economy. Chrysler,  
23 General Motors and so on. So I don't want to be held  
24 to a separate standard when I don't have stimulus  
25 money. I don't have the state legislature to bail me

0079

1 out. I have to rely on good business practices and  
2 trying to take care of my business. I'm sorry for  
3 the sermon.

4 Q. That's fine.

5 A. I know who has the last word, so --

6 Q. I believe I understand your point. If --  
7 you know, to protect the business as a whole, and  
8 that's been your -- at least from my -- listening to  
9 your testimony, that's been your primary point here,  
10 and you've also, I understand, from either in the  
11 open meeting and maybe today, earlier, that this is a  
12 money-losing operation to run this route. And under  
13 the certificate, it would seem that to protect the  
14 business, that at least one option would be just to  
15 abandon this route and then focus on those  
16 money-making enterprises that are available to you  
17 through the use of this boat.

18 So I don't know if that's -- you know, I'm  
19 sure that that was another aspect that you have  
20 considered.

21 A. Well, actually, if you look at it solely on  
22 the regulated portion, it is a money loser and you  
23 question why you do it. But in terms of its  
24 contribution to the overall, that's where it's  
25 important, because, as I mentioned earlier, the price

0080

1 of the ticket round trip to Friday Harbor is  
2 relatively insignificant, but it is not unusual for  
3 us to have reservations at \$2,000, \$2,400, because as  
4 a part of that much bigger picture. Much like our  
5 service with Amtrak. Amtrak, we sell a lot of people  
6 going to Vancouver, stay in a hotel, continue on to  
7 Victoria or the islands. So that's the importance of  
8 it.

9           So our decision to maintain this route --  
10 because you're not the first person to question that.  
11 We had some people that wanted to buy our company a  
12 number of years ago, and that was one of the  
13 questions. But when we went through the math, when  
14 we showed them the contribution, it made sense.

15           So I take your point, but in our analysis,  
16 its contribution is greater than its loss to us.

17       Q. Does the certificate have a monetary value?

18       A. It certainly has a painful value. You know,  
19 we figured that the amount of money that was put in  
20 that contentious 1990 hearing that created an  
21 adversary where one didn't exist, you know, it's --  
22 there is a value. We see it as a property right, as  
23 the other certificate holders do. And I know you've  
24 heard this before. But that's not the most important  
25 issue for us.



0081

1           I think I'd prefer our controller talk about  
2 the dollar amount, but there's a dollar amount, but I  
3 don't think that's the most compelling argument.

4           Q.    So it's on the books as an asset?

5           A.    Yes, sir.

6           Q.    And so -- but you don't know the amount of  
7 that?

8           A.    I'll hazard a guess, but I think it's  
9 \$250,000. So it's not a significant amount of money.

10          Q.    And just back on the -- this is really my  
11 last question, Mr. Bryan, and it just goes back to  
12 the risk question, I guess.

13                When the company -- because you're really  
14 wearing the two hats here, one running San Juan  
15 Express, as well as running Clipper Navigation. When  
16 you sized up all of the, you know, the pros and the  
17 cons and the money that could be made and then the  
18 risks that may be involved with entering into this  
19 agreement with C-Port, at least one risk I would  
20 assume that was on the table was that you would be  
21 out of compliance with your certificate and, under  
22 the law, may be required to give it up?

23          A.    That's certainly an element. But, you know,  
24 I'd be less than candid if I didn't say that in the  
25 final analysis, that our historical experience has

0082

1 been one of understanding and having a good working  
2 relationship and feeling that we could make the  
3 business case why this year.

4           So when we did our discussion, because I had  
5 a lot of internal discussion on this, because the  
6 route -- our marketing people were hot. The amount  
7 of time that's been put in, I have captains that love  
8 that service. You know, they can work three days a  
9 week and have four days off because of the number of  
10 hours.

11           But, frankly, we felt that we'd be able to  
12 make a compelling business case for this year, and  
13 particularly in light of the history that we had on  
14 that service. So yes, you're right. We did look at,  
15 and I'm the one that has to look in the mirror, that  
16 said, We've got to go for it, we've got to take  
17 advantage of this opportunity. And so --

18           Q. All right. Thank you, Mr. Bryan. No  
19 further questions.

20           A. Thank you.

21           JUDGE MOSS: Thank you. Commissioner Jones.

22

23                           E X A M I N A T I O N

24 BY COMMISSIONER JONES:

25           Q. Good morning, Mr. Bryan.

0083

1           A.    Good morning.

2           Q.    I didn't have the pleasure, as my colleagues  
3 did, of attending the open meeting, due to some  
4 medical issues, so I'm getting up to speed on these  
5 issues, but I have a couple of questions.

6                    And I think you may have responded to  
7 Commissioner Oshie on this issue, but I just wanted  
8 to clarify it. It relates to the issue of the  
9 alternative boat. And I think you stated in your  
10 testimony that in 2006, when you had a contract with  
11 C-Port, you were able to have another vessel that you  
12 contracted with to provide the service to Friday  
13 Harbor; correct?

14          A.    Yes, the Orca Song.

15          Q.    What's the name of that boat, Orca Song?

16          A.    Yes, sir, O-r-c-a.

17          Q.    So why couldn't you get that boat? It's a  
18 very simple question. Why couldn't you get that boat  
19 and provide service?

20          A.    We could get -- we could get that boat. And  
21 as I testified earlier, it was \$110,000 for three  
22 months. Also, the speed of the vessel, the number of  
23 complaints we got for that last period, August of '06  
24 into Labor Day weekend, the number of complaints we  
25 received from customers because the long day and the

0084

1 slow service were elements that we --

2 Q. I see. To be specific, the speed of the  
3 Clipper III is 25 knots; correct?

4 A. That -- actually, it goes faster, but that's  
5 the service speed that we rely on.

6 Q. And what is the surface -- what is the speed  
7 of the Orca Song?

8 A. They say 20 knots is the speed, but  
9 actually, it's a little bit slower than that,  
10 especially with a full load. The Clipper III isn't  
11 as affected by the load as the smaller boat.

12 Q. I see. So is it, to correct -- accurate to  
13 summarize your response on this point, that it was a  
14 combination of slower speed and sewage capacity on  
15 the boat --

16 A. Those are primary deals, yes.

17 Q. -- that led you to the decision not to  
18 contract that boat?

19 A. And Commissioner, if I might add, too, and  
20 this was -- that boat, the Orca Song, is certificated  
21 by the Coast Guard for 149 passengers. It can only  
22 comfortably seat 90 people. So that further impacts  
23 the economic analysis on that, especially at 110,000.

24 Q. Understand. My last question relates to  
25 your optimism about the future, about 2010. You

0085

1 recited in your testimony the issues affecting the  
2 tourism industry, especially with Canada and Mexico  
3 in general, the secure identity card, tougher issues  
4 at the border, the recession. So it relates a little  
5 bit to Commissioner Oshie's question about risk.

6           So what gives you confidence that those  
7 issues are going to change next year and that, as you  
8 said, you're a believer in use it or lose it;  
9 correct?

10       A. That's correct.

11       Q. So what makes you confident about next year,  
12 that things are going to change?

13       A. Well, I have confidence because, in terms of  
14 with our company, and that's one of the things I like  
15 about a small company, I like the fact that, you  
16 know, the Truman deal, what leads to his desk, is I  
17 have a great deal of flexibility in terms of what we  
18 can do. I could go on and on about the marketing  
19 things that we've done to increase or sustain our  
20 ridership on our core market in terms of the  
21 promotional things. Three nights, get two nights --  
22 or two nights, get a third night free, in terms of  
23 kids ride free under a certain age to Victoria, those  
24 kinds of things.

25           The issues where we have been, and I was

0086

1 just involved in a filming for the Department of  
2 Licensing last week in promoting the enhanced  
3 driver's license. We are at the front on issues, and  
4 the way I look at it, there are lots of challenges,  
5 but there are opportunities, too, if we manage well.

6 And going forward, our core business to  
7 Victoria is going better than we had expected. I had  
8 budgeted for a 10 percent reduction in our ridership,  
9 and it's too early to say that the year's going to be  
10 great, but we've done fairly well on that.

11 The first week of the passport  
12 implementation. Now, we take some credit for that,  
13 because we were involved in getting the delay on the  
14 implementation through Senator Murray and Senator  
15 Stevens and Senator Leahy from Vermont. But I think  
16 things that we can do that we can control going  
17 forward. There are things that we can't. But in our  
18 region, we are probably in better shape than many  
19 parts of the country.

20 And so you know, if I didn't have optimism,  
21 hell, I'm getting old enough that I could look to  
22 walk away. I might be poor, but I have an -- when we  
23 first started the service to Victoria, no one had  
24 ever provided year-round, unsubsidized service  
25 between Seattle and Victoria until we started. I

0087

1 remember going to talk to people in Victoria hotels,  
2 and they laughed in our face when we said this is  
3 what we're going to do. We're used to being --  
4 having challenges, but again, it's how we look at it,  
5 what we can do. And I know this is an old record  
6 right now, but I feel very confident going forward,  
7 getting ourselves positioned.

8           The real thing is having money in the bank  
9 so that you can weather some storms. Last year  
10 really challenged us, because we didn't forecast  
11 \$4.60 a gallon, and our vessels, our big boats burn  
12 260 gallons per engine, per hour. It doesn't take a  
13 rocket scientist to see how fast you go through  
14 money, and it's very difficult to have surcharges  
15 that will match that. And you know, I point to state  
16 and provincial supported services and the challenges  
17 they face, and we're just small.

18           But going forward, we have money in the  
19 bank, you know, in terms of Commissioner Oshie raised  
20 a good point in the question about the extent, the  
21 time frame for that contract. If we were to come  
22 back next year, and we wouldn't ask for another  
23 extension, I can assure you that there wouldn't be a  
24 second time, us coming and asking for a temporary  
25 suspension. We'll walk away from it at that point.

0088

1 We're asking for this year, put us in the position  
2 next year where we can come back strong.

3 COMMISSIONER JONES: Judge Moss, that's all  
4 the questions I have. Thank you.

5 JUDGE MOSS: Thank you.

6 CHAIRMAN GOLTZ: Can I ask one more  
7 question?

8 JUDGE MOSS: Sure, sure.

9

10 E X A M I N A T I O N

11 BY CHAIRMAN GOLTZ:

12 Q. After I finished my questions and got the  
13 full version of the contract, and as I read this now,  
14 which is now Exhibit B-3, and it's the third page  
15 back, and it's the page that's headed Bareboat  
16 Charter Certificate.

17 A. Yes, sir.

18 Q. In the last paragraph, am I reading that  
19 correctly, that basically this is a contract that  
20 expires October 16, 2009, unless extended, and I  
21 believe you testified that the extension is at the  
22 discretion of C-Port. So you have committed, at  
23 C-Port's option, to continue this contract through as  
24 long as September 2010?

25 A. Thank you, Chair. I'm not the poster child



0089

1 for Washington State University. I should read more  
2 closely. I apologize.

3 Q. Is that right?

4 A. Yes, sir, you're correct. Thank you.

5 Q. So basically, you're saying that if -- well,  
6 you just said, in response to Commissioner Jones,  
7 that should C-Port say to you sometime in the next  
8 nine months or so, Oh, by the way, we still -- we  
9 want to exercise our option and extend this contract,  
10 at that point you're saying, We're done with the  
11 certificate?

12 A. If we can't provide a boat, if we decide to  
13 comply with the request for an extension, I won't be  
14 back to you.

15 Q. And my last question, then, is in your  
16 conversations with the folks up in Friday Harbor, are  
17 they aware -- to your knowledge, are they aware that  
18 this contract could go through September 2010?

19 A. What I've told them is we will be back in  
20 2010. And that's from my perspective. There's no  
21 way that we would extend this a second year. And so  
22 I'll put it in blood that we -- if for some reason  
23 there was a desire to extend it, I'm either going to,  
24 because we'd have to start much earlier, find another  
25 boat, or we will not be back for an attempt to -- for

0090

1 another extension. And I think our track record  
2 shows that we would do that.

3 CHAIRMAN GOLTZ: Thank you.

4 JUDGE MOSS: All right. Mr. Wiley, did you  
5 have any redirect?

6 MR. WILEY: I think I just have about three  
7 or four questions, based on the Commissioners'  
8 questions and Mr. Thompson.

9

10 R E D I R E C T E X A M I N A T I O N

11 BY MR. WILEY:

12 Q. You alluded, Mr. Bryan, in -- I think in  
13 answer to Mr. Thompson's question about docking  
14 factors. Would you elaborate a little bit about  
15 that? We deal with that in the statute on  
16 applications, and I do want the Commissioners to  
17 understand the relevance of that factor in  
18 applications or in operations.

19 A. Well, first, I don't want to confuse things,  
20 as I've done on so many things this morning, is  
21 Friday Harbor, that's not an issue. That's -- Port  
22 of Friday Harbor, you go in there, they will  
23 accommodate you. You might have to be at the outer  
24 dock.

25 The real issue is in Seattle on the

0091

1 waterfront. When you start from the north to south,  
2 the protected docking areas, there's our area, Pier  
3 70 has an area, but it's exposed. It's not  
4 satisfactory. Then south of us is Bell Harbor, a  
5 Port facility, primarily recreational vessels, they  
6 have cruise ships that come in there, that's  
7 problematic. You go south of there, and the company  
8 that controls most of the docks is Argosy, and we're  
9 very -- we have a very, very close relationship with  
10 Argosy. And south of that is -- south of Colman  
11 dock, the old passenger-only dock. So that it's  
12 very, very limited.

13           There's a potential at Shilshole, but the  
14 Port has been reticent in the past to have commercial  
15 vessels operating out of there. There are parking  
16 issues, et cetera.

17           So that's where my point to Mr. Thompson  
18 about that challenge would be the greatest. Friday  
19 Harbor, no problem.

20           Q. Thank you. You also, in response to  
21 Chairman Goltz's question, you clarified the nature  
22 of the ridership, the predominant ridership, on the  
23 San Juan Express, and you said there are no  
24 commuters.

25           Not to beat a dead horse, but I wanted to

0092

1 ask you, when you say there are no commuters, are you  
2 saying that there aren't riders who do not use the  
3 vessel for recreational purposes? I just -- I'm  
4 sorry about the double negative there, but I just  
5 wanted you to clarify the nature of the  
6 transportation that some of your riders have.

7 A. I guess terminology, as someone who worked  
8 at Penn Station, New York, commuters to me represents  
9 something -- obnoxious people running to get home or  
10 to work. With our people, we have people that have  
11 some regularity, but it's not -- you know, they're  
12 not coming down here to work. They maybe return to  
13 work from their weekend getaway or vice versa.

14 So I just want to be clear that it is not  
15 conducive to a -- someone living up there and coming  
16 down here for work every day or what have you.

17 Q. But you did acknowledge that people use it  
18 for doctors' appointments, personal business  
19 involving second homes, et cetera; correct?

20 A. That's right, because the cost is very  
21 reasonable. Kenmore Air provides a good service, but  
22 a round trip is very expensive for them. And then,  
23 as I think many of you know, that's not always  
24 convenient going to Anacortes and taking Interstate 5  
25 home. So that's where we really work hard to promote

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1 Kenmore and ourselves, providing options.

2 Q. Not going over the same terrain that  
3 Commissioner Oshie did about what was in your mind at  
4 the time you entered this contract, but I wanted to  
5 ask you one question that flowed off that, and that  
6 was, in your risk analysis, and I think he used a  
7 good term there, as a businessman, when you were  
8 engaging in that review, did the precedent or shall  
9 we say the prior discontinuance experience you had on  
10 different routes and with Aqua Express enter into  
11 your risk analysis, as well?

12 A. Yes, sir, and I apologize if I was unclear  
13 on that. Our history has been very positive in terms  
14 of when we make a good case, that the Commission and  
15 the Staff have been supportive of that. And that of  
16 course -- and maybe it's presumptuous on our part, as  
17 I'm finding, to go on that basis, but that certainly  
18 was a consideration.

19 Q. Finally, again, sort of keying off what  
20 Chairman Goltz asked you at the end there, about the  
21 possibility of mutual extension of another Navy  
22 contract, in the unlikely event that that were to  
23 happen, and it was mutually extended until summer  
24 2010, are you confident that with a full year to plan  
25 and potentially reposition a suitable vessel for a

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1 May 21 startup date, you will identify and secure  
2 such a vessel with more time than you had this  
3 spring?

4 A. And I think my testimony will bear out that  
5 I am very confident, because we feel very strongly  
6 about the certificate, we will walk away as opposed  
7 to come back for another extension. So we would do  
8 everything possible to have another vessel and not  
9 have to walk away from the certificate.

10 MR. WILEY: Thank you, Mr. Bryan. No  
11 further questions, Your Honor.

12 JUDGE MOSS: Okay. Anything further?

13 MR. THOMPSON: No further questions.

14 JUDGE MOSS: Anything further from the  
15 Bench? All right. I don't believe you'll have any  
16 other witnesses for us, will you, Mr. Wiley?

17 MR. WILEY: No, I don't, Your Honor.

18 JUDGE MOSS: With that, thank you very much  
19 for your testimony today, Mr. Bryan. You can step  
20 down, if you wish.

21 We're also, I think, at the conclusion of  
22 our hearing, unless there's something further?

23 MR. WILEY: Not unless at the public hearing  
24 something is raised that we want to address.

25 JUDGE MOSS: Of course, we have the other

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1 session at 1:30, and we'll be in recess until then.

2 (Hearing adjourned at 11:58 a.m.)

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