

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of)	
	)	DOCKET TS-060061
Application No. B-79418 of)	
)	
SEAN MCNAMARA)	
d/b/a PACIFIC SEA TAXI	)	ORDER 02
)	
For a Certificate of Public Convenience	)	APPROVING AND ADOPTING
and Necessity to Operate Vessels in	)	SETTLEMENT; GRANTING
Furnishing Passenger Ferry Service	)	CERTIFICATE
)	
.....)	
)	

In the Matter of)	
	)	DOCKET TS-060133
Application No. B-79421 of)	
)	
PACIFIC CRUISES NORTHWEST,)	
INC., d/b/a VICTORIA SAN JUAN)	
CRUISES	)	ORDER 02
)	
To Transfer All Rights under	)	APPROVING AND ADOPTING
Certificate B-120 in the name of San	)	SETTLEMENT; TRANSFERING
Juan Island Shuttle Express, Inc.	)	CERTIFICATE
)	
.....)	

1 **Synopsis:** *The Commission, approving and adopting a proposed settlement in Docket TS-060061, grants a certificate of public convenience and necessity to Sean McNamara, d/b/a Pacific Sea Taxi to provide commercial ferry service between Squalicum Harbor in North Bellingham and Rosario and Obstruction Pass on Orcas Island with flag stops at: Eliza Island, Sinclair Island, Cypress Island, Lopez Island, and Blakely Island. The Commission, approving and adopting a proposed settlement in Docket TS-060133, authorizes the transfer of Certificate No. BC-120 to Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises.*

- 2 **PROCEEDINGS:** On January 10, 2006, Sean McNamara, d/b/a Pacific Sea Taxi, filed an application (No. B-079418) for a certificate of public convenience and necessity to operate vessels in furnishing passenger-only ferry service between Bellingham and Orcas Island, with flag stops at: Eliza Island, Sinclair Island, Cypress Island, Lopez Island, and Blakely Island. The Commission docketed the application as Docket TS-060061. Notice of the Application was published in the Commission's weekly docket of February 13, 2006.
- 3 On January 20, 2006, Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises, filed Application No. B-079421 seeking authority for transfer of all rights under Certificate B-120, which is presently held by San Juan Island Shuttle Express, Inc. The Commission docketed the application as Docket TS-060133. The Commission published Notice of the Application in its weekly docket of February 13, 2006.
- 4 The Commission conducted a prehearing conference on March 31, 2006, and established a procedural schedule, including dates for settlement discussions. The parties informed the presiding Administrative Law Judge on May 12, 2006, that they had achieved settlement in both proceedings. They submitted their agreements on May 19, 2006, via e-mail and filed originals with the Commission on May 26, 2006.
- 5 **PARTY REPRESENTATIVES:** Sean McNamara represents himself, d/b/a Pacific Sea Taxi, as Applicant in this proceeding and as protestant in Docket TS-060133.¹ David W. Wiley, Williams Kastner & Gibbs, PLLC, Seattle, Washington, represents Pacific Cruises Northwest, Inc. (Pacific Cruises) as Applicant in Docket TS-060133 and as protestant in this Docket TS-060061. Mr. Wiley also represents Island Mariner, Inc., another protestant in Docket TS-060061.² Michael Fassio, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff in both dockets. Public Counsel did not appear in these proceedings.

¹ Mr. McNamara has withdrawn his protest, as discussed below.

² Pacific Cruises and Island Mariner have withdrawn their respective protests, as discussed below.

6 **COMMISSION DETERMINATION:** The Commission determines that the public convenience and necessity require that Sean McNamara, d/b/a Pacific Sea Taxi, be granted a certificate to operate commercial ferry service consistent with the terms of Application B-79418, as modified the Settlement Agreement filed in Docket TS-060061, which the Commission approves and adopts by this Order.

7 The Commission determines further that it is in the public interest to authorize the transfer of Certificate No. BC-120 to Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises, consistent with the terms of Application B-79421, as addressed by the Settlement Agreement filed in Docket TS-060133, which the Commission approves and adopts by this Order.

MEMORANDUM

I. Background and Procedural History.

8 On January 10, 2006, Sean McNamara ("McNamara") filed an application for a certificate of public convenience and necessity to operate vessels furnishing passenger-only ferry service between Bellingham and Orcas Island, with flag stops at: Eliza Island, Sinclair Island, Cypress Island, Lopez Island, and Blakely Island. The Commission published the application in Docket TS-060061.

9 On January 20, 2006, Pacific Cruises Northwest, Inc. (Pacific Cruises) and San Juan Island Shuttle Express, Inc. (SJISE) filed a joint application to transfer to commercial ferry Certificate No. BC-120, held by SJISE, to Pacific Cruises. The application was published in Docket TS-060133. Certificate No. BC-120 authorizes commercial passenger ferry services between Obstruction Pass and Bellingham, with the carrying vessel touching at Obstruction Pass on voyages to and from Friday Harbor. Certificate No. BC-120 provides for flag stops at various points, including Eliza Island, Sinclair Island, Lopez Island, and Blakely Island.

10 Pacific Cruises and Island Mariner Cruises, Inc ("Island Mariner") timely filed protests to McNamara's application in TS-060061. McNamara timely filed a protest

to the application for transfer in TS-060133. The two dockets are related to the extent they have common parties and concern potentially overlapping territories.

- 11 The Commission conducted a joint prehearing conference in these dockets on March 31, 2006, and established coordinated procedural schedules but did not consolidate the dockets. The presiding Administrative Law Judge encouraged the parties to enter into settlement negotiations and set April 6, 2006, as the date for an initial settlement conference.
- 12 The Commission received informal notice on May 12, 2006, that the parties had reached settlements in principle in both dockets and would, in due course, file written agreements for the Commission's consideration. The Commission, by Notice issued May 12, 2006, granted the parties' request that the procedural schedule be suspended.
- 13 On May 26, 2006, the parties filed their settlement agreements. The two agreements include substantially identical terms. The parties request that the two agreements be considered for disposition together, request Commission consideration on the paper record without further hearing, and waive their right to an initial order.

II. Settlement Agreements

- 14 The Settlement Agreements filed on May 26, 2006, are attached to this Order as Appendices A and B, and are incorporated into this Order by this reference. The two agreements were negotiated together, include substantially identical terms, and are each contingent upon Commission approval of the other.
- 15 The parties agree that McNamara will restrict his application in Docket TS-060061 to the following:

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

Pacific Cruises and Island Mariner then agree that they have no objection to McNamara's application, as restricted, and will withdraw their respective protests. McNamara, in turn agrees that he has no continuing objection to the transfer of authority of BC-120 from SJISE to Pacific Cruises, and will withdraw his protest of Application No. B-79421.

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

III. Discussion and Decision

- 17 Staff furnished a sworn Declaration by Bonnie Allen, a Regulatory Analyst 3 in the Commission's Water and Transportation Section. According to Ms. Allen, Staff reviewed McNamara's initial application and supporting documentation, including statements by the Applicant describing the need for the proposed service, a time schedule, route map, and passenger fare schedule. Ms. Allen states that the application also included a pro forma financial statement for the first year of operations, with: 1) projected income and expenses; 2) ridership and revenue forecasts; 3) a cost of service statement; and 4) a cost of assets statement.
- 18 After review of Application No. B-79418 and supporting materials, Ms. Allen concluded that the application itself is complete. She states that the financial information is complete, and contains evidence satisfying each of the factors the Commission is to consider, as listed in WAC 480-51-030(1). The Applicant's financial information appears sufficient to initiate the proposed service and operate for at least twelve (12) months.

- 19 Ms. Allen points out that the application describes a currently-leased twelve-passenger vessel, *Triton*, to be used in the proposed service and states it appears to be sufficient to initiate the proposed service. According to Ms. Allen's Declaration, Mr. McNamara has 12 years experience in the marine industry, including commercial fishing, charter, and natural history trips. Mr. McNamara also has four years experience in providing charter service to the San Juan Islands, although he has no commercial ferry experience.
- 20 Staff found no outstanding compliance or other actions by the Applicant before the Commission. Accordingly, Staff states it has no reason to be concerned that the Applicant will fail to comply with regulations in the future.
- 21 Staff has confirmed that Applicant has registered its trade name with Department of Licensing, holds a valid Unified Business Identifier, and holds a Department of Revenue tax account.
- 22 Applicant has described the need for proposed service in his application. Ms. Allen points out that Applicant's own statements of public need must be supported by independent shipper statements, particularly from those that would use the service, in order to demonstrate that public convenience and necessity support the proposed application. Subject to receipt of satisfactory shipper statements, Staff recommends that the Commission grant the authority sought by Applicant, noting the need for compliance with the additional requirements of RCW 81.84 prior to a certificate being issued. This includes working with staff to finalize a tariff and schedule, filing a Coast Guard Certificate of Vessel Inspection, and providing a copy of a Certificate of Vessel Insurance.
- 23 The Commission received independent shipper statements on June 1, 2006, from Julie Willkomm, Captain Todd Shuster, Ross and Janet Clawson, and Lori Davis. These statements express that there is a need for the service proposed by Mr. McNamara for purposes of routine travel, visits by residents of the islands to health care providers in Bellingham, business travel, and tourist travel. These shippers state that existing services are not adequate to fully satisfy the public's need for ferry transportation in the area for which Applicant seeks authority to provide service. Captain Shuster

states that the service Mr. McNamara proposes will “fill [a] missing link in the transportation chain out to Orcas and the other islands.”

24 In Docket TS-060133, Staff states as part of the Settlement Agreements that it has no objection to the transfer of authority of BC-120 from SJISE to Pacific Cruises, as it is satisfied with the information provided in the Declaration of Mark Goodman, President of SJISE, contained in Attachment A to each Settlement Agreement.

FINDINGS OF FACT

25 Having discussed above all matters material to our decision, and having stated general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the Commission’s ultimate decisions are incorporated by this reference.

26 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate commercial ferries.

27 (2) The applications and supporting materials filed by and on behalf of Sean McNamara in Docket TS-060061 and Pacific Cruises in Docket TS-060133 are complete and meet the requirements under WAC 480-51-030. Neither application is under protest.

28 (3) Application No. B-79418 (Docket TS-060061), taken together with supporting materials filed by Applicant, independent shipper statements of need and Staff’s Declaration, show that the applicant is financially and otherwise fit to perform the proposed service and that there is a need for the service as proposed, subject to the modifications effected by the parties’ Settlement Agreement.

29 (4) Application No. B-79421 (Docket TS-060133), taken together with the supporting materials filed by Applicant and Staff’s statement that it has no

objection to the proposed transfer of certificate, show that the transferor is not providing service to the satisfaction of the Commission under Certificate BC-120 and that the transferee will provide such service.

CONCLUSIONS OF LAW

- 30 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the Commission's ultimate decisions are incorporated by this reference.
- 31 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings under RCW 81.84 and WAC 480-51.
- 32 (2) Commission authorization of the Certificate sought in Application B-79418, as modified by the Settlement Agreement filed in Docket TS-060061 is in the public interest and is necessary to more fully serve the public convenience in the area where service is proposed. The Commission should approve Application No. B-79418 of Sean McNamara d/b/a Pacific Sea Taxi, as modified by the Settlement Agreement appended to this Order as Appendix A.
- 33 (3) Commission authorization of the transfer of Certificate No. BC-120 to Pacific Cruises Northwest, Inc. d/b/a Victoria San Juan Cruises is in the public interest.

ORDER

THE COMMISSION ORDERS THAT:

- 34 (1) The Settlement Agreements attached as Appendices A and B to this Order are approved and adopted in full resolution of the issues pending in Dockets TS-060061 and TS-060133.
- 35 (2) The Application for a certificate of public convenience and necessity filed by Sean McNamara on January 10, 2006, in Docket TS-060061, as modified by the terms of the Settlement Agreement attached as Appendix A to this Order, is consistent with the public interest, is approved and authority to provide service is granted.
- 36 (3) The Application for a transfer of Certificate No. BC-120 from San Juan Island Shuttle Express, Inc., to Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises filed on January 20, 2006, in Docket TS-060133, as addressed in the Settlement Agreement attached to this Order as Appendix B, is consistent with the public interest and is approved.
- 37 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective June 8, 2006.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.

[Service Date June 8, 2006]

Appendix A

Appendix B