

1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3 In the Matter of the                   ) Docket No. TS-001774  
 Applications of                        )  
 4    ) Volume II  
 Dutchman Marine LLC d/b/a Lake)  
 5 Washington Ferry Service,           ) Pages 49 - 79  
 for Authority to Provide             )  
 6 Commercial Ferry Service;         )  
   )  
 7 Seattle Ferry Service, LLC,         )  
 for Authority to Provide             )  
 8 Commercial Ferry Service; and     )  
   )  
 9 Seattle Harbor Tours Limited        )  
 Partnership, for Authority to        )  
 10 Provide Commercial Ferry            )  
 Service;                                )  
 11 \_\_\_\_\_)

12                   A hearing in the above matter was held on  
 13 June 8, 2001, at 9:50 a.m., at 1300 South Evergreen Park  
 14 Drive Southwest, Room 108, Olympia, Washington, before  
 15 Administrative Law Judges DENNIS J. MOSS and WILLIAM E.  
 16 HENDRICKS.

17                   The parties were present as follows:

18                   DUTCHMAN MARINE, LLC, by Matthew C. Crane,  
 Attorney at Law, Bauer Moynihan & Johnson, 2101 Fourth  
 19 Avenue, Suite 2400, Seattle, Washington 98121.

20                   SEATTLE FERRY SERVICE, via bridge line, by  
 David W. Wiley, Attorney at Law, Williams, Kastner, &  
 21 Gibbs, 601 Union Street, Suite 4100, Seattle, Washington  
 98101-2380.

22                   SEATTLE HARBOR TOURS, by Gregory J. Kopta,  
 Attorney at Law, Davis Wright Tremaine, LLP, 1501 Fourth  
 23 Avenue, Suite 2600, Seattle, Washington 98101.

24                   Joan E. Kinn, CCR, RPR  
 25 Court Reporter

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1 THE COMMISSION, by Mary Tennyson, Assistant  
2 Attorney General, 1400 South Evergreen Park Drive  
3 Southwest, Olympia, Washington 98504-0128.

3 CITY OF SEATTLE, by Gordon Davidson,  
4 Assistant City Attorney, 600 Fourth Avenue, 10th Floor,  
5 Seattle, Washington 98104.

5 CITY OF BELLEVUE, via bridge line, by Lori M.  
6 Riordan, Attorney at Law, 11511 Main Street, Bellevue,  
7 Washington 98004.

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P R O C E E D I N G S

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JUDGE HENDRICKS: This is a conference in the consolidated matters of the applications of Dutchman Marine, LLC for Authority to Provide Commercial Ferry Service in Docket Number TS-001744, Application Number B-78937; Seattle Ferry Service, LLC for Extension of Authority to Provide Commercial Ferry Service, Docket Number TS-002054, Application Number B-78945; and Seattle Harbor Tours Limited Partnership for Authority to Provide Commercial Ferry Service, Docket Number TS-002055, Application Number B-78946.

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My name is Tre Hendricks, and sitting next to me is Dennis Moss, and we have been designated as the co-presiding Administrative Law Judges for this proceeding. This prehearing conference is being held in Olympia, Washington on June 8, 2001. Today we are convened in Room 108 of the Commission's headquarters in Olympia, Washington upon due and proper notice to all parties.

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I would like to begin by asking each of today's participants to identify themselves on the record, and state the name of the client that they represent, beginning with Mr. Hugg.

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JUDGE MOSS: Let me interject here, because before you came in, Mr. Crane introduced himself as

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1 representing Dutchman Marine. And as I understand it,  
2 you have not previously entered an appearance in this  
3 proceeding?

4 MR. CRANE: That's correct, Your Honor.

5 JUDGE MOSS: So for you, we will need the  
6 full appearance, which is address, phone, fax, and  
7 E-mail.

8 MR. CRANE: Okay.

9 JUDGE MOSS: And also we will want to know  
10 which of you will be taking the lead.

11 So, okay, go ahead Mr. Crane.

12 MR. CRANE: Thank you, Your Honor. Matthew  
13 Crane, law firm is Bauer, Moynihan, & Johnson, 2101  
14 Fourth Avenue, Suite 2400, Seattle, Washington 98121,  
15 telephone (206) 443-3400, facsimile (206) 448-9076. I  
16 will be the principal hearing attorney in this matter  
17 assisted by Mr. Hugg for Dutchman Marine.

18 JUDGE HENDRICKS: Mr. Crane, do you have an  
19 E-mail address that you use?

20 MR. CRANE: Yes, it's mccrane@bmjlaw.com.

21 And, Judge Hendricks, I have a business card.

22 JUDGE HENDRICKS: Oh, thank you.

23 MR. CRANE: If that would help you.

24 JUDGE HENDRICKS: Thank you.

25 MR. CRANE: Sorry I didn't give that to you

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1 earlier.

2 JUDGE HENDRICKS: Thank you very much. Okay,  
3 Mr. Crane, thank you. And, Mr. Hugg, we can just  
4 briefly, if you would state your name and who you're  
5 representing.

6 MR. HUGG: John Hugg on behalf of Dutchman  
7 Marine.

8 JUDGE HENDRICKS: Mr. Kopta.

9 MR. KOPTA: Gregory J. Kopta of the law firm  
10 Davis, Wright, Tremaine, LLC, on behalf of Seattle  
11 Harbor Tours Limited Partnership.

12 JUDGE HENDRICKS: Mr. Wiley.

13 MR. WILEY: Yes, Steve Wiley appearing for  
14 Seattle Ferry Service, and I'm with the law firm of  
15 Williams Kastner & Gibbs.

16 JUDGE HENDRICKS: Ms. Riordan.

17 MS. RIORDAN: Lori Riordan for the City of  
18 Bellevue. I'm with the City of Bellevue City Attorney's  
19 Office.

20 JUDGE HENDRICKS: Thank you.

21 Mr. Davidson.

22 MR. DAVIDSON: Gordon Davidson with the City  
23 of Seattle.

24 JUDGE HENDRICKS: And Commission Staff.

25 MS. TENNYSON: Thank you. Mary Tennyson

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1 appearing for Commission Staff. I am appearing just for  
2 this particular hearing, and Jonathan Thompson will be  
3 the attorney representing Staff at hearing.

4 JUDGE HENDRICKS: Okay.

5 MS. TENNYSON: My direct telephone number is  
6 different than Mr. Thompson's. My number is (360)  
7 664-1220. Fax number is the same, (360) 586-5522. My  
8 E-mail, unlike Mr. Thompson I don't get to use my full  
9 name on it, so mtennyso@wutc.wa.gov.

10 JUDGE HENDRICKS: Thank you, Ms. Tennyson.

11 MS. TENNYSON: Thank you.

12 JUDGE HENDRICKS: This morning the parties  
13 will exchange proposed exhibits and identify them for  
14 the Bench. We will mark each one of the exhibits for  
15 identification prior to the hearing and provide counsel  
16 with an exhibit list at that time. The list isn't  
17 engraved in stone if there are late exhibits at the  
18 hearing. We will address how to proceed in light of the  
19 settlement, discuss the nature and time requirements for  
20 the parties' cases, and then we will set an order of  
21 presentation for the parties.

22 JUDGE MOSS: Let me interject here with  
23 respect to the exhibits.

24 Mr. Wiley, I presume you're going to have  
25 some exhibits for us other than just the settlement

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1 agreement.

2 MR. WILEY: That depends on how we dispose of  
3 the procedure for handling our presentation.

4 JUDGE HENDRICKS: Mr. Wiley.

5 MR. WILEY: Yes.

6 JUDGE HENDRICKS: Can I just ask, I don't  
7 know what's happening with your phone, but it may be  
8 difficult for some of the people in the room to hear  
9 you, so I don't know if there's a way you can get closer  
10 to your phone. Are you on a speaker phone?

11 MR. WILEY: Yes, I am.

12 JUDGE HENDRICKS: If you could just maybe  
13 move it closer to where you're at, we might be able to  
14 hear you a little better.

15 MR. WILEY: Okay. Did you hear my response?

16 JUDGE MOSS: Yes, I understood your response  
17 to be that I suppose I should say whether you will  
18 present exhibits depends on how we decide to proceed.

19 MR. WILEY: Correct.

20 JUDGE MOSS: So maybe we should discuss that  
21 first.

22 MR. WILEY: That might be the most  
23 expeditious approach for us here.

24 JUDGE HENDRICKS: Well, we will talk about  
25 the settlement agreement then. First of all, have all

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1 the parties signed it? And I haven't seen the filed  
2 copy yet, maybe it's gotten to our records center, but I  
3 haven't seen it. What's the status on that?

4 MR. WILEY: I wish I could tell you, Your  
5 Honor. That's been out of my hands since I signed it  
6 the first day and sent the original to Mr. Hugg.

7 MR. DAVIDSON: I have a faxed copy with all  
8 signatures on it.

9 JUDGE MOSS: That's been filed.

10 JUDGE HENDRICKS: Okay, good. That's the  
11 faxed copy; I haven't seen the original.

12 JUDGE MOSS: It doesn't really matter.

13 JUDGE HENDRICKS: Okay.

14 JUDGE MOSS: We will at a minimum be making  
15 that an exhibit in the record, so whether it's been  
16 filed or not, we now have a fully executed version, and  
17 that's the key point.

18 JUDGE HENDRICKS: Our understanding of the  
19 settlement is that it does not address the substantive  
20 issues in the case that we have to decide here, which is  
21 whether the public convenience and necessity requires  
22 the proposed services and whether the applicants are  
23 fit, financially fit.

24 MR. WILEY: Right.

25 JUDGE HENDRICKS: To provide the service.



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1 The settlement purports -- what it purports to do is  
2 eliminate any overlap between Seattle Ferry Service and  
3 the other applications, and there's a mutual agreement  
4 not to protest each other's evidence. Basically what it  
5 appears to mean is that Seattle Ferry Service can put  
6 its ridership evidence in without producing any  
7 witnesses who otherwise might be confronted on  
8 cross-examination. Now does that accurately summarize  
9 what the settlement agreement does?

10 MR. WILEY: I think the effect of it, Your  
11 Honor, is to basically allow Seattle Ferry Service to  
12 sever off the consolidated proceeding and proceed to  
13 submit evidence either in an ex parte fashion for  
14 processing, as has been the case in previous commercial  
15 ferry application cases that are no longer protested, or  
16 provide for a forum where it can basically provide the  
17 evidence in an abbreviated form subject to any questions  
18 by the Staff particularly on the new focus on RCW  
19 47.61.20, which is the 10-mile rule.

20 JUDGE HENDRICKS: Okay.

21 JUDGE MOSS: Mr. Wiley, is there any reason  
22 that we shouldn't have your evidence at the same time we  
23 receive all the other evidence?

24 MR. WILEY: Well, I think there are a couple  
25 reasons, Your Honor. While we could introduce it in the

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1 record before, during, or after the consolidated  
2 proceeding, I don't think it would be very productive in  
3 terms of the record that you're going to have before you  
4 in the consolidated case, which will be two adversary  
5 applicants. I think it will protract the record and  
6 extend the costs.

7 Under the rules as I read them, Your Honor,  
8 the Commission on its own motion or on our motion at  
9 480-09-610(2) can sever at any time, and I would think  
10 that that probably would be the appropriate procedure.  
11 I have gotten a voice mail from Mr. Thompson to that  
12 effect yesterday, and I agree. I think whatever is the  
13 most economical from a judicial resource and a private  
14 regulated party resource standpoint would be the most  
15 optimal approach.

16 JUDGE MOSS: Okay, well, I think what we're  
17 going to want to do here in a moment is take this  
18 question up on an oral motion to sever and hear from --  
19 I want to hear from Staff on its view, and I will tell  
20 you quite frankly that my preliminary view, and I will  
21 need to discuss this with Judge Hendricks before we  
22 reach any determination on this, and we may go off the  
23 record and take a brief recess to allow us to do that  
24 after we hear the argument, but it strikes me  
25 preliminarily that the most efficient way to proceed

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1 would be, even if we sever, to proceed jointly and get  
2 all of this wrapped up in one proceeding and one order  
3 covering all the applications. And so let me just put  
4 the question to you as to whether that is a process that  
5 you think might work.

6 MR. WILEY: I don't have any objection to it,  
7 Your Honor. I have discussed with Mr. Kopta and  
8 Mr. Hugg though the possibility that we could kind of  
9 interrupt the flow of their contested cases to put on --  
10 to basically stand on the financial and operating  
11 exhibits that we provided with our application with the  
12 possibility of some updates, and address any questions  
13 about the 10-mile crossing from Staff, but I have  
14 discussed with the Attorney General's office and with  
15 Ms. Allen of Staff those issues.

16 So to answer your question, if we could have  
17 -- if you want to do this next week, if we could get a  
18 scheduled time, I think that would accommodate everyone.  
19 We are planning on submitting our rider or what we term  
20 supporting sever information in written statements, and  
21 I haven't had any objection to that from the other  
22 applicants.

23 JUDGE MOSS: So yeah, I think just to make  
24 sure I'm perfectly clear here, the idea then would be to  
25 submit your evidence and have it decided on what we

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1 would call a paper record.

2 MR. WILEY: That's correct.

3 JUDGE MOSS: And all I'm suggesting is that  
4 regardless of how we treat the formal question of  
5 severance, the most efficient way from our perspective,  
6 I believe, would be to have that paper record presented  
7 at the same time as the other evidence. I mean we have  
8 to go through the formalities of marking them as  
9 exhibits and so on and so forth, and it strikes me that  
10 we can do that quite efficiently, particularly if you  
11 can get that body of evidence to us say by Monday, and  
12 we could go ahead and have it premarked and ready to go  
13 and probably wouldn't take more than 10 or 15 minutes  
14 out of our hearing day to get that accommodated.

15 MR. WILEY: I would have no objection to  
16 that, Your Honor, although I'm not sure all of the  
17 shipper support statements would be -- they have been  
18 circulating. I don't know that they will all be back by  
19 Monday. If you, after the record closes next Friday, if  
20 you would allow a few days just for sporadic lag, which  
21 is typical with shippers on these tapes of statements,  
22 and we can identify the statements ahead of time if you  
23 wanted. If we can get them in that way, I think we can  
24 do this.

25 JUDGE MOSS: And if there is no objection,

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1 that is a process we have followed in prior cases where  
2 we simply put a place holder in the record and leave it  
3 open for the receipt of late filed exhibits, and other  
4 parties may also find they wish to have place holders.

5 Mr. Davidson, did you have a point on this?

6 MR. DAVIDSON: I'm sort of puzzled a bit by  
7 the process, because it was my impression that this was  
8 going to be the day that all written material was to be  
9 made available and exchanged by the parties. This  
10 process that I'm hearing described suggests that sort of  
11 like the statutory process, this can be a stealth  
12 technique. We have no opportunity to see in advance  
13 what Seattle Ferry Service's evidence may be, learn who  
14 its witnesses or the statements from shippers may be,  
15 and I'm puzzled whether you're also contemplating then  
16 not having an opportunity for the public to comment, as  
17 the prehearing order suggests there will be with respect  
18 to his particular or his client's particular  
19 application.

20 JUDGE MOSS: Okay, two points. One, as I  
21 read the settlement agreement, the City of Seattle is a  
22 signatory to the settlement agreement.

23 MR. DAVIDSON: Mm-hm.

24 JUDGE MOSS: So therefore is in agreement  
25 with this procedure whereby Seattle Ferry Service would

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1 put on uncontested evidence with respect to its  
2 application.

3 MR. DAVIDSON: But that still leaves an  
4 opportunity for the public, I'm assuming, to make  
5 comment.

6 JUDGE MOSS: Yes, the public would still have  
7 an opportunity to comment on all three applications,  
8 which is another reason that Judge Hendricks and I, as  
9 he and I discussed prior to today, believe that greater  
10 efficiency will be had if we simply proceed jointly  
11 without regard to the question of consolidation, because  
12 it will give the public an opportunity to comment on all  
13 three.

14 But with respect to the evidence itself, it  
15 does not unduly concern me that Mr. Wiley is not here to  
16 give us his evidence today, since, you know, the purpose  
17 of that early exchange is to avoid surprise where  
18 counsel will wish to cross-examine and so forth. So  
19 does that respond adequately to your question?

20 MR. DAVIDSON: That's fine.

21 JUDGE MOSS: All right. That's about all I  
22 had, Judge Hendricks. I will turn the floor back over  
23 to you.

24 JUDGE HENDRICKS: Well, I understand we're in  
25 agreement then on how to proceed.

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1           Mr. Wiley, does that sound reasonable in  
2 light of Judge Moss's statements?

3           MR. WILEY: Yeah, let's just recap what my  
4 understanding is, that we will present our operating  
5 exhibits via facsimile on Monday apparently, and that  
6 our shipper support statements will come in as late --  
7 some might come in Monday, but the rest would come in as  
8 late filed exhibits. And the public will have an  
9 opportunity, of course, to comment on the issues at the  
10 consolidated proceeding whether we're there or we're  
11 not.

12           JUDGE HENDRICKS: And we will set a time  
13 aside for you to be at the hearing to address the waiver  
14 issue, the 10-mile rule.

15           MR. WILEY: And admission of my exhibits.

16           JUDGE HENDRICKS: Yes.

17           MR. WILEY: That's fine, that will help us.  
18 Actually, I think it will help all of you in terms of  
19 shortening the record too.

20           JUDGE MOSS: Yeah, I would anticipate that we  
21 would set a time early, just get that out of the way at  
22 the outset, and then you can go have a leisurely lunch.

23           MR. WILEY: Thank you, Your Honor.

24           JUDGE MOSS: I suppose it's not really on our  
25 agenda, but maybe we should go ahead and take up this

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1 question of severance at this point as to whether there  
2 is some reason that we should go through that step.  
3 Well, let me just put it that way.

4           And, Mr. Wiley, I gain the impression from  
5 your comments that you would prefer to see us formally  
6 sever this application for some reason?

7           MR. WILEY: I didn't mean to suggest that,  
8 Your Honor. That was something that was suggested by  
9 Mr. Thompson in a voice mail, and we had talked about  
10 how we're kind of in a procedural quagmire because of  
11 the timing on the submission of the settlement  
12 agreement, as you understand. And my goal had been to  
13 wrap this all up, you know, weeks ago, but I wasn't  
14 successful in that. So now we're kind of faced with the  
15 hearing going forward next week and wondered how best to  
16 be efficient in terms of our role in the record.

17           So I think if severance is a cleaner way  
18 procedurally from your standpoint or less or not as  
19 clean, I don't think we have any -- we're real wedded to  
20 the concept. We just want it clear that we are  
21 withdrawing our intervention to the consolidated other  
22 two applications, they're withdrawing their  
23 interventions to ours, and we're proceeding, as you  
24 heard, on as much of a paper record as possible.

25           JUDGE MOSS: Okay, Ms. Tennyson.



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1 MS. TENNYSON: Well, Staff would not object  
2 to a severance, I believe was the point of the  
3 discussion between Mr. Thompson and Mr. Wiley, that if,  
4 again, if it's the most expeditious way to proceed or if  
5 timing is an issue. I'm hearing you administrative law  
6 judges suggesting that the more efficient way might be  
7 to do it as part of this proceeding. Essentially what  
8 we have at this point for Seattle Ferry Service is they  
9 have an uncontested application, but the Commission  
10 still needs to determine whether or not the application  
11 should be granted. So we don't have -- we're not  
12 proposing that there be a severance, but we would not  
13 object to one if the other parties think that's the best  
14 way to do it. Our concern with keeping it as part of  
15 this proceeding would be can we fit it in without  
16 getting in the way of the other applications.

17 JUDGE MOSS: Okay.

18 MS. TENNYSON: So.

19 JUDGE MOSS: We will be off the record for a  
20 couple of minutes.

21 (Discussion off the record.)

22 JUDGE MOSS: Judge Hendricks and I have had  
23 an opportunity to consider the question before us, which  
24 is that of severance, and believe that the appropriate  
25 thing to do at this time and consistent with the statute

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1 would be to leave the case in its current posture. If  
2 at some point in the case up to the time the Commission  
3 ultimately considers this matter a party believes that  
4 there is some legal necessity or advantage to severance,  
5 then we could certainly entertain a motion to that  
6 effect at that time. In the meantime, it will simply  
7 save us a few lines in an order to leave the case in its  
8 current posture, which I think is consistent with the  
9 statute in that initially these were all overlapping  
10 within 30 days, which is the threshold for  
11 consolidation. So that will be our ruling.

12 Are you clear on that, Mr. Wiley?

13 MR. WILEY: I believe so, Your Honor.

14 JUDGE MOSS: I always worry when I don't have  
15 you in the room nodding affirmatively like the other  
16 counsel are doing.

17 MS. TENNYSON: Your Honor, if I might, Mary  
18 Tennyson again, if it comes to the point that the  
19 Commission is ready to make a determination on the  
20 Seattle Ferry Service one, and the others might end up  
21 being, who knows whether the contested applications may  
22 end up in court appeals, it may be appropriate to issue  
23 a separate order on the one application.

24 Ms. Allen informed me while you were  
25 conferring, we do have one application that was granted

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1 four years ago, but because it was part of a  
2 consolidated application, it's technically not finalized  
3 because the others are on appeal.

4 JUDGE MOSS: Ah.

5 MS. TENNYSON: So that would be, I think, a  
6 basis for a separate order on that one, whether you  
7 officially sever it at that time or just make a  
8 determination with a separate order.

9 JUDGE MOSS: Ms. Tennyson raises a cautionary  
10 point then, Mr. Wiley, in that if there is any appeal.  
11 And, of course, we don't know at this juncture what the  
12 Commission ultimately may do with these applications,  
13 yours or the others. I wonder if that -- if we should  
14 consider this a little further in light of that concern.  
15 What do you think, Mr. Wiley?

16 MR. WILEY: I could not hear all of what she  
17 said, but I believe the gist of what she was pointing  
18 out is that if there are appeals inside or in court on  
19 the initial order on the consolidated case, that we  
20 could be hung up on the adversary side of the case in  
21 terms of being wedded to that.

22 JUDGE MOSS: Yes.

23 MR. WILEY: And I think she makes a good  
24 point. I believe that one of the things you said in  
25 your ruling and that the rule would provide would be on

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1 a motion, we could seek to sever at that point; is that  
2 correct?

3 JUDGE MOSS: Well, yes, but my concern is  
4 that the judicial appeal process is out of our hands,  
5 and it would be -- the motion would not be timely at  
6 that juncture.

7 MR. WILEY: Okay.

8 JUDGE MOSS: It would only be good up to the  
9 time the Commission enters a final order.

10 MR. WILEY: You know, I think that's a valid  
11 point, and procedurally sort of bifurcating off the  
12 other two applicants' records and case would be  
13 beneficial for us. Obviously I don't think the -- I  
14 would like to hear from the other two applicants, but I  
15 don't think they really care if we stay wedded to them  
16 for the future procedurally.

17 JUDGE MOSS: Okay, let's do hear from the  
18 others.

19 MR. CRANE: Your Honor, Matthew Crane.

20 Mr. Wiley, this is Matthew Crane speaking  
21 representing Dutchman Marine.

22 MR. WILEY: Yes.

23 MR. CRANE: I would like to make a proposal,  
24 and perhaps others can think about this. It seems to me  
25 that for practicality, some issues may come up in terms

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1 of the waiver of the 10-mile rule, convenience and  
2 necessity, that the other parties could benefit from  
3 hearing questions raised by the Commission Staff in  
4 terms of issues that may come up in our proceeding as  
5 well. And I'm thinking that your proceeding may be  
6 short enough that if we heard yours first, even if  
7 bifurcated or severed, then if questions come up that  
8 would make the later proceedings in the contested  
9 matters move more quickly by being able to deal with  
10 issues raised earlier, that would be of benefit to me  
11 and my client and perhaps also the process.

12 MR. WILEY: I don't think that would happen  
13 in the kind of case that we have, which is basically I  
14 think we would -- it would be the other way around,  
15 because the kind of issues particularly on public  
16 convenience and necessity in a contested case are just  
17 addressed in so much more depth on the record. And  
18 remember, we're intending to address that in a paper  
19 record. I don't think you're going to get that  
20 piggyback effect that will shorten anything. My whole  
21 concern right now is what's going to be the most  
22 expeditious and efficient way to get our application,  
23 which is uncontested now, resolved.

24 JUDGE HENDRICKS: And by severing it, it  
25 would be, although it's a procedural matter, it

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1 wouldn't, as I understand what we're talking about here,  
2 it wouldn't change how the hearing would -- how we  
3 proceed at the hearing.

4 JUDGE MOSS: We could still hear the matters  
5 jointly.

6 MR. WILEY: Right.

7 JUDGE MOSS: But if we do the formal  
8 severance, then we avoid this potential problem at the  
9 appellate stage.

10 And I guess the other question that comes to  
11 mind in this connection, and we do need to address this  
12 today, I would like to address today the question of  
13 whether the parties wish to waive the initial decision  
14 in this case. This is an ALJ only case and, of course,  
15 the normal process is that Judge Hendricks and I would  
16 enter an initial decision. That initial decision would  
17 then be subject to petitions for administrative review,  
18 and those would be to the full Commission, who  
19 ultimately enters the final order in this proceeding  
20 either way. If we enter an initial decision and there  
21 are petitions for administrative review, then Judge  
22 Hendricks and I fall out of the picture at that point,  
23 and another judge will sit as review judge with the  
24 Commission.

25 And so, you know, this is a decision that's

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1 tied up in this too, in that if these matters are  
2 severed, then we would do separate orders, and that  
3 whole process might be managed differently as well. And  
4 I can, as I sit here, I guess we're getting smarter as  
5 we talk about this, I'm beginning to see some advantages  
6 to severance.

7 MR. WILEY: And, Your Honor, I think you make  
8 a good point on the waiver of initial order. It's  
9 highly unlikely in a contested case that I'm going to  
10 hear the other two parties saying they're going to  
11 waive. When we go to an ex parte processing or a paper  
12 record processing, it is not uncommon, as you I think  
13 will acknowledge, to get a final order out of the  
14 Commission, basically an administrative order out of the  
15 Commission, whereas that's probably not going to be the  
16 case, I would venture to say, on the other ferry route.

17 JUDGE MOSS: I have become convinced in light  
18 of the discussion we have been having that it would be  
19 better to go ahead and sever the Seattle Ferry Service  
20 application at this time, and I'm getting nods of  
21 affirmation in the room, and I wouldn't cut anybody off  
22 from objecting, but I don't think I'm going to hear  
23 that, and so let us say that is the ruling.

24 We will, however, proceed jointly next week,  
25 as we have discussed, because it will gain some

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1 administrative efficiency there in terms of the public  
2 comment opportunity and in terms of just having all of  
3 the exhibits and everything at once, exclusive of those  
4 as to which we may do the place holder process, as we  
5 discussed earlier today.

6           So are we all clear, or are there any  
7 questions on this point?

8           MR. CRANE: And, Your Honor, Matthew Crane,  
9 as to how we're going to proceed jointly, that's  
10 something we're still going to work out presumably  
11 either today or Tuesday.

12           JUDGE MOSS: Yeah, in terms of the order of  
13 presentation and so forth, sure.

14           MR. CRANE: Okay.

15           MR. WILEY: Your Honor, would it be possible  
16 to address that fairly soon so that we could exit, not  
17 that we don't enjoy all of your company, but so that we  
18 could -- if we can get a date and a time, and then we  
19 should all talk about what that would be. I'm not sure  
20 that the start of the hearing necessarily would be the  
21 best, but I'm obviously willing to take your input and  
22 everybody else's.

23           JUDGE HENDRICKS: Why don't we go off the  
24 record for a minute and talk about the order.

25           (Discussion off the record.)



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1                   JUDGE HENDRICKS: The parties have agreed  
2 that Dutchman Marine will proceed with its case first  
3 beginning at 9:30 on Tuesday the 12th. At 3:30 on  
4 Tuesday the 12th, Seattle Ferry Service will present its  
5 case, which will primarily include a discussion of the  
6 waiver of the 10-mile restriction. The parties have  
7 also agreed that Seattle Harbor Tours will conduct its  
8 case at the conclusion of Seattle Ferry Service's case.

9                   And the City of Bellevue has expressed an  
10 interest in putting on two witnesses as well, one from  
11 the Department of Planning and Community Development for  
12 Bellevue to discuss the process by which Bellevue  
13 approves and brings these sorts of services to the  
14 public, and another witness from the Bellevue Parks  
15 Department who is proposed to discuss similar Parks  
16 procedures.

17                   JUDGE MOSS: And let me just add one point,  
18 which is we have also agreed that Mr. Kopta need not  
19 have his witness available on the first day if he  
20 chooses not to, but I understood him to say the witness  
21 will probably be present in any event. But we will, of  
22 course, complete the Dutchman Marine case and then segue  
23 into his witness, with the interruption as Judge  
24 Hendricks described for the Seattle Ferry Service  
25 presentation.

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1                   Now with respect to the proposal by the City  
2 of Bellevue to bring forth two witnesses, the concern I  
3 have, and I raised this off the record, is that, well, a  
4 question really, is what issue in our proceeding, what  
5 issue that the Commission must decide, to what issue or  
6 issues the Commission must decide would this testimony  
7 be relevant, Ms. Riordan?

8                   MS. RIORDAN: Well, I must confess that I  
9 have never been involved in a WUTC hearing before, but  
10 it seems to me that the testimony goes to the issue of  
11 because the applications are purporting to dock the  
12 ferry at a City owned facility in an area for which  
13 significant things would have to happen with the City's  
14 codes, it seems to me to go somewhat to the issue of  
15 public necessity. I mean certainly you know your roles  
16 a lot better than I do and can tell me if you think it  
17 doesn't -- its not germane, but it's certainly the basis  
18 on which the City sought to intervene in the  
19 proceedings.

20                   MR. DAVIDSON: If I might comment here.

21                   JUDGE MOSS: Yes, Mr. Davidson.

22                   MR. DAVIDSON: And this is a comment that's  
23 intended to be perhaps in further explanation of a  
24 somewhat similar position that the City of Seattle has.  
25 I don't want to speak for Ms. Riordan with respect to

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1 the argument that she's raising, but there is a similar  
2 concern, and that relates to the issue going towards the  
3 necessity of this. Is it all premature?

4           The system is set up in a chicken and egg  
5 problem, because the system that the WUTC operates under  
6 is we're going to act first and give a five year grant  
7 of authority for these applicants to work out their  
8 arrangements to commence service, and if they don't,  
9 then there's the possibility that the authority will be  
10 ended. We at the sort of the receiving end, the  
11 governmental end of these that are dealing with these  
12 applications, have the phenomenon of always being at the  
13 tail end.

14           We don't have applicants coming to us in our  
15 normal planning processes to try and set up arrangements  
16 as we would prefer to have them in a public process so  
17 that their efforts are coordinated with our own to  
18 improve the community transportation systems. I can't  
19 help avoid thinking that consideration by the Commission  
20 of any of these applications is premature under the  
21 circumstances, recognizing that we do have, I suppose,  
22 an ultimate hammer.

23           JUDGE MOSS: Okay, Mr. Kopta wants to be  
24 heard.

25           MR. KOPTA: Yes, thank you, Your Honor.

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1 Believe it or not, we share both the Cities' concerns,  
2 and it was something that we had raised earlier as well.  
3 And just to add another perspective is that this is a  
4 contested proceeding in which you have two applicants  
5 competing for the same routes. Hypothetically let's  
6 assume that both are financially qualified under the  
7 statute. On what basis does the Commission select one  
8 or both or neither. And I think certainly I would not  
9 want to have the Commission's review of relevant  
10 evidence limited, because the statute does authorize the  
11 Commission to grant in whole or in part or deny any  
12 application, and I think certainly the evidence that the  
13 City of Bellevue has presented and the concerns that  
14 Mr. Davidson has expressed on behalf of the City of  
15 Seattle are factors that the Commission may want to  
16 consider in making any ultimate decision.

17 JUDGE MOSS: All right. We find ourselves  
18 reasonably convinced that the witnesses proposed by the  
19 City of Bellevue may have evidence that will bear on the  
20 Commission's ultimate disposition of these applications,  
21 and so therefore I think we will need to plan for those  
22 witnesses. Can you identify the witnesses for us,  
23 Ms. Riordan?

24 MS. RIORDAN: Not with absolute certainty.  
25 The representative from Planning and Community

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1 Development will either be Matthew Terry, who is the  
2 director of the department, or Michael Paine, who is a  
3 senior land use planner.

4 JUDGE MOSS: Is that Terry with a T or Perry  
5 with a P?

6 MS. RIORDAN: Terry with a T.

7 JUDGE MOSS: Okay, Matthew Terry or?

8 MS. RIORDAN: Michael Paine.

9 JUDGE MOSS: And I suppose Paine has multiple  
10 spelling opportunities.

11 MS. RIORDAN: Yes, it's P-A-I-N-E.

12 JUDGE MOSS: All right. And how about the  
13 master planning process Parks Department witness?

14 MS. RIORDAN: That will either be Lorrie  
15 Peterson, and Lorrie is spelled L-O-R-R-I-E, and  
16 Peterson is with an N or with an O, pardon me, or it  
17 will be Roy Gatbunton, and that is spelled  
18 G-A-T-B-U-N-T-O-N. They are both assistant Parks  
19 directors.

20 JUDGE MOSS: All right. Well, I suppose we  
21 may as well, since we more or less established the order  
22 for the others, I suppose we should have those witnesses  
23 as our last two witnesses. Is that agreeable,  
24 Ms. Riordan?

25 MS. RIORDAN: Yes, it is.



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1 like to note on the record something I said off the  
2 record, which is to compliment the parties on the  
3 excellent order in which they have prepared for today's  
4 prehearing conference. We will gain considerable  
5 efficiency at hearing as a result of their efforts prior  
6 to hearing, and the Commission does very much appreciate  
7 those efforts by counsel and their clients.

8 JUDGE HENDRICKS: Is there anything else to  
9 come before the Commission at this time?

10 Hearing nothing, the prehearing conference is  
11 adjourned.

12 (Hearing adjourned at 10:50 a.m.)

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