

[Service Date January 4, 2013]

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of	)	DOCKET TS-121253 ( <i>Consolidated</i> )
	)	
MCNAMARA, SEAN d/b/a	)	ORDER 02
BELLINGHAM WATER TAXI	)	
	)	ORDER DENYING MOTION TO
For Extension of Authority Under	)	DISMISS APPLICATION OF SAN
Certificate BC-64619	)	JUAN CRUISES
	)	
.....	)	
In the Matter of the Application of	)	
	)	DOCKET TS-121395 ( <i>Consolidated</i> )
PACIFIC CRUISES NORTHWEST,	)	
INC. d/b/a SAN JUAN CRUISES	)	ORDER 02
	)	
For a Certificate of Public Convenience	)	ORDER DENYING MOTION TO
and Necessity to Operate Vessels in	)	DISMISS APPLICATION OF SAN
Furnishing Passenger Ferry Service	)	JUAN CRUISES
	)	
.....	)	

**1 NATURE OF PROCEEDINGS.** These proceedings arise out of overlapping applications to operate vessels in furnishing passenger ferry service between Bellingham and Friday Harbor filed with the Washington Utilities and Transportation Commission (Commission) by Sean McNamara d/b/a Bellingham Water Taxi (Bellingham Water Taxi)<sup>1</sup> and Pacific Cruises Northwest, Inc. d/b/a San Juan Cruises (San Juan Cruises)<sup>2</sup>. The Commission consolidated the applications for joint consideration pursuant to Washington Administrative Code (WAC) 480-51-040(3).

**2 APPEARANCES.** Sean McNamara, Bellingham, WA, represents Bellingham Water Taxi. Drew Schmidt, Bellingham, WA, represents San Juan Cruises. Terry Buzzard, Bellingham, WA, represents Island Mariner Cruises. Michael Fassio, Assistant

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<sup>1</sup> Bellingham Water Taxi filed its application on July 30, 2012, in Docket TS-121253, seeking to extend its current authority held under Certificate BC-64619 to include passenger and freight service between Bellingham and Friday Harbor, with flag stops at Vendovi and Cypress Islands.

<sup>2</sup> San Juan Cruises filed its application on August 24, 2012, in Docket TS-121395, seeking a new certificate of public convenience and necessity to operate vessels in furnishing passenger-only ferry service between Bellingham and Friday Harbor.

Attorney General, Olympia, WA, represents the Commission's regulatory staff (Staff).<sup>3</sup>

3 **MOTION TO DISMISS APPLICATION.** On December 10, 2012, Bellingham Water Taxi filed a motion to dismiss San Juan Cruises' application (Docket TS-121395) as deficient for not including any shipper support statements among its supporting documents. According to Bellingham Water Taxi, Commission policy requires "one or more statements from persons proving that your services are needed, otherwise your application will be denied."

4 Bellingham Water Taxi contends that the Commission requires applicants to file the required shipper support statement(s) within 30 days of filing the application or risk dismissal. Bellingham Water Taxi asks the Commission to dismiss the application.

5 **RESPONSE IN OPPOSITION – SAN JUAN CRUISES.** On December 12, 2012, San Juan Cruises responded and opposed Bellingham Water Taxi's motion. San Juan Cruises points out that the "requirement" for shipper support statements is not found in statute or in rule. San Juan Cruises argues that a Commission policy cannot be relied upon as a basis to dismiss an application.

6 According to San Juan Cruises, shipper support statements become necessary to complete applications where no protest is filed. Without a shipper support statement, Staff would not be able to complete its evaluation. Here, San Juan Cruises contends that the Commission will conduct a full inquiry into the competing applications at an evidentiary hearing. San Juan Cruises pledges to include all required supporting documentation as proposed exhibits in the pending adjudication or to provide witness testimony offering the same evidence.

7 Finally, San Juan Cruises urges the Commission to apply its rule for liberally construing pleadings, WAC 480-07-395(4). San Juan Cruises asks that we deny Bellingham Water Taxi's motion and allow the hearing process to move forward.

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<sup>3</sup> In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 8     **RESPONSE IN OPPOSITION – COMMISSION STAFF.** On December 14, 2012, Commission Staff filed its response, also opposing Bellingham Water Taxi’s motion. Staff characterizes the motion as premature and without substantive merit.
- 9     Staff agrees with San Juan Cruises that WAC 480-51-030 does not require a shipper support statement to complete a ferry application. According to Staff, witness testimony in contested cases is appropriate to establish the “need” for a proposed ferry service. Where the Commission relies on a paper record, shipper support statements can serve that purpose. Given the hearing set in this matter, Staff recommends against the Commission dismissing San Juan Cruises’ application.
- 10    **COMMISSION DECISION.** RCW 81.84.020 authorizes the Commission to conduct an adjudication to consider an application for a certificate of public convenience and necessity for ferry service. The statute lists a number of factors the Commission must consider in determining whether to issue the certificate. The statute does not require written statements from potential riders or customers.
- 11    WAC 480-51-030 elaborates on the statutory criteria for applications and requires a number of written statements in support of applications. However, as with the statute, the regulation does not require a statement of support from a potential customer.
- 12    The “requirement” for shipper support statements is found only in a set of instructions developed by Commission Staff as a guide for completing the application form. In its entirety, the language referenced in Bellingham Water Taxi’s motion states:
- Even though your application is unprotested, you need one or more shipper support statements from persons proving that services are needed, otherwise your application will be denied.
- 13    We agree with Commission Staff that this language is guidance only and is not a requirement for filing a complete application. Further, because this case involves competing applications that have been protested, the language does not apply.
- 14    We find that the application filed by San Juan Cruises is sufficient to proceed to hearing. The adjudicative process will allow the parties and the Commission an opportunity to further develop the record in this matter, to include any statements of support that might be needed to evaluate the applications. Bellingham Water Taxi’s motion should be denied.

**ORDER**

THE COMMISSION ORDERS:

15 Bellingham Water Taxi's motion to dismiss San Juan Cruises' application is denied.

Dated at Olympia, Washington, and effective January 4, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
Administrative Law Judge

**NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.**