

0054

1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION
3 In re Application)
4 No. B-079240 of)
5) DOCKET NO. TS-031996
6 PACIFIC CRUISES NORTHWEST,)
7 INC., d/b/a VICTORIA SAN JUAN) Volume III
8 CRUISES) Pages 54 to 113
9)
10 For a Certificate of Public)
11 Convenience and Necessity to)
12 Provide Commercial Ferry)
13 Service)
14 _____)

10 A hearing in the above matter was held on
11 November 4, 2004, from 10:10 a.m to 11:30 a.m., at 900
12 Fourth Avenue, Fifth Floor Conference Room, Seattle,
13 Washington, before Administrative Law Judge KAREN
14 CAILLE.

16 The parties were present as follows:

17 THE COMMISSION, by JONATHAN THOMPSON,
18 Assistant Attorney General, 1400 South Evergreen Park
19 Drive Southwest, Olympia, Washington 98504-0128,
20 Telephone (360) 664-1225, Fax (360) 586-5522, E-mail
21 jthompso@wutc.wa.gov.

20 PACIFIC CRUISES NORTHWEST, INC., by DAVID W.
21 WILEY, Attorney at Law, Williams Kastner & Gibbs, 601
22 Union Street, Suite 4100, Seattle, Washington 98101,
23 Telephone (206) 233-2895, Fax (206) 628-6611, E-Mail
24 dwiley@wkg.com.

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

0055

1 -----

2 INDEX OF EXAMINATION

3 -----

4 WITNESS: PAGE:

5 DREW M. SCHMIDT

6	Direct Examination by Mr. Wiley	58
7	Cross-Examination by Mr. Thompson	94
8	Examination by Judge Caille	99
9	Redirect Examination by Mr. Wiley	105
10	Recross-Examination by Mr. Thompson	107
11	Examination by Judge Caille	109
12	Redirect Examination by Mr. Wiley	110

13

14

15

16

17

18

19

20

21

22

23

24

25

0056

1 -----

2 INDEX OF EXHIBITS

3 -----

4

5 EXHIBIT: MARKED: ADMITTED:

6 DREW M. SCHMIDT

7	1	59	94
8	2	60	94
9	3	61	94
10	4	61	94
11	5	64	94
12	6	69	94
13	7	69	94
14	8	72	94
15	9	74	94
16	10	76	94
17	11	80	94
18	12	85	94
19	13	89	94
20	14	91	94
21	15	98	113

22

23

24

25

1 P R O C E E D I N G S

2 JUDGE CAILLE: Good morning, we are here for
3 an evidentiary hearing on the application of Pacific
4 Cruises Northwest doing business as Victoria San Juan
5 Cruises, Docket Number TS-031996, and we are convened in
6 a conference room in Seattle. Today is November the
7 4th, 2004, and it is approximately 10:10 in the morning.

8 I believe we have already taken appearances,
9 if I could just have counsel state your name and whom
10 you represent, I don't need a full appearance, so we'll
11 begin with you, Mr. Wiley.

12 MR. WILEY: Yes, thank you, Your Honor, David
13 Wiley appearing today on behalf of the applicant,
14 Pacific Cruises Northwest, Inc.

15 MR. THOMPSON: And I'm Jonathan Thompson,
16 Assistant Attorney General, representing Commission
17 Staff.

18 JUDGE CAILLE: Thank you. Let the record
19 reflect there are no other appearances.

20 Is there anything before we call the first
21 witness or the only witness?

22 All right, why don't you call your witness,
23 and then I will swear him in.

24 MR. WILEY: Good morning, Mr. Schmidt, she's
25 going to do the honors.

0058

1 Whereupon,

2 DREW M. SCHMIDT,

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

4 herein and was examined and testified as follows:

5

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

7 BY MR. WILEY:

8 Q. Could you please state and spell your last
9 name and your first name for the record and your
10 business address.

11 A. My name is Drew Schmidt, D-R-E-W,
12 S-C-H-M-I-D-T, my address is 35 Harris Avenue, Suite
13 104, Bellingham, Washington 98225.

14 Q. And by whom are you employed?

15 A. Pacific Cruises Northwest, Inc.

16 Q. What is your position and title with that
17 company, please?

18 A. President and sole shareholder.

19 Q. And how long have you been President and sole
20 shareholder of Pacific Cruises Northwest, Inc.?

21 A. Since 1993.

22 Q. Could you give us a little background on you
23 personally and your company in the maritime industry,
24 please?

25 A. Personally I have been in the maritime

0059

1 industry for 26, 27 years, held a license as a master
2 mariner for 25 years. I started out driving tour boats
3 here in Seattle, then moved up to Blaine to operate as
4 manager for Gray Line Water Sightseeing up in Blaine.
5 Then became a general manager of the company that
6 changed its name to Gray Line Cruises and Tours at that
7 point. Moved to Bellingham. Then in 1993 I purchased
8 Gray Line Cruises and Tours and changed the name of it
9 to Pacific Cruises Northwest.

10 Q. And do you personally have a Coast Guard
11 license?

12 A. Yes, I have a license from the Coast Guard, a
13 master's license, a master mariner. It authorizes me to
14 serve as master or captain of vessels up to 500 gross
15 tons, which I have done for 25 years everywhere from the
16 Mexican border to the wilds of Alaska. I think you just
17 gave out a copy of my license, front and back, as well
18 as my what's now called an STCW certificate, which
19 authorizes me to operate internationally over Canada.

20 MR. WILEY: Your Honor, if I can have the
21 first exhibit identified, please, or marked rather.

22 JUDGE CAILLE: Okay, let's mark this as
23 Exhibit Number 1.

24 BY MR. WILEY:

25 Q. And calling your attention to the exhibit

0060

1 that's now been identified or marked as Exhibit Number
2 1, is that the individual license you referred to?

3 A. That is.

4 Q. And you have described what the Coast Guard
5 is actually authorizing you to do in this certificate as
6 you understand it?

7 A. Yes.

8 Q. Okay. Do you also hold a certificate from
9 the Washington Utilities and Transportation Commission?

10 A. Yes, my company does.

11 MR. WILEY: Your Honor, if I could have this
12 marked as well.

13 JUDGE CAILLE: This will be marked as Exhibit
14 2.

15 BY MR. WILEY:

16 Q. Mr. Schmidt, is that what you are referring
17 to?

18 A. Yeah, this is my certificate BCT, it used to
19 just be B but now it's BCT.

20 Q. And this generally authorizes service in
21 various points in Northwestern Washington, is that --
22 you don't have to read the permit, I'm just asking you
23 to --

24 A. Yes, it authorizes service on several routes
25 in the state of Washington.

0061

1 Q. And are you proposing to operate a vessel on
2 the route that you're seeking authority for?

3 A. Yes.

4 Q. And what is the name of that vessel, please?

5 A. The vessel that we would propose to operate
6 on this route between Bellingham and Friday Harbor is
7 the Victoria Star², and it's a superscript 2 as in
8 squared.

9 JUDGE CAILLE: That will be marked as Exhibit
10 Number 3.

11 MR. WILEY: There's also one called the
12 Fairhaven, Your Honor.

13 JUDGE CAILLE: Will that be separate?

14 MR. WILEY: Whatever you prefer.

15 THE WITNESS: It's a separate vessel.

16 JUDGE CAILLE: Yes.

17 MR. WILEY: Do you want to mark that 4?

18 JUDGE CAILLE: Let's mark that 4.

19 BY MR. WILEY:

20 Q. So Captain Schmidt, you indicated that you
21 will be using the Victoria Star², but you have also
22 -- and unfortunately I have somewhat cut off the left
23 side which I just discovered of the Victoria Star²
24 exhibit. The other exhibit, the Fairhaven, could you
25 identify that, please.

0062

1 A. Yeah, the one you have marked as Exhibit 4 is
2 the certificate of inspection for the Fairhaven, which
3 is a vessel we own that we operate our tour/water taxi
4 between North Bellingham and South Bellingham.

5 Q. Now going back to Exhibit 3, the upper
6 right-hand corner shows an expiration date of October
7 20th, 2004, could you explain what the status of the
8 certificate of inspection is at the present time?

9 A. Yes, these certificates are issued by the
10 United States Coast Guard after they examine the vessel,
11 they do all the security, not the security, the safety
12 inspections, hull inspections, safety equipment. Anyway
13 for an international vessel such as the Victoria Star,
14 they reissue this every year. We had the inspection
15 last week, waiting for the paperwork to come in the
16 mail.

17 MR. WILEY: Your Honor, if the Commission
18 would like a substitute updated exhibit for 3, we would
19 be happy to provide it.

20 JUDGE CAILLE: That would be great.

21 MR. WILEY: Okay.

22 JUDGE CAILLE: Please do that.

23 MR. WILEY: Okay. We don't have it yet, Your
24 Honor, but we will do it as soon as it's received.

25 BY MR. WILEY:

0063

1 Q. Captain Schmidt, will you tell us a little
2 bit about what certificates of inspection show? Again,
3 I'm not asking you to read the exhibit, which speaks for
4 itself, but what am I seeing certified here, it looks
5 like capacity, et cetera?

6 A. You're seeing, this is again the Coast Guard
7 issues a certificate of inspection to vessels that are
8 certified to carry passengers for hire. This will say
9 what we're legally allowed to do. This vessel can take
10 up to 149 passengers.

11 Q. Where is that indicated?

12 A. That is indicated about the middle of the
13 page.

14 Q. Okay.

15 A. You will see it says, well, part of it's
16 chopped off and then it says vessel may carry 142
17 passengers, 2 other persons, total persons allowed 150.
18 There's 149 that's been chopped off.

19 Q. Similarly in Exhibit 4 that same reference to
20 capacity is included on page 1 of Exhibit 4, is it not?

21 A. Yes, it is. So this will tell you what
22 routes the vessel is authorized to travel, what security
23 or safety equipment is required, what the manning levels
24 are that are required.

25 Q. If you want to transport passengers for hire

0064

1 in vessels, are you required to have a certificate of
2 inspection?

3 A. Yes, you have to have a certificate of
4 inspection.

5 Q. And if one lapses, is the certificate holder
6 then not authorized until a new certificate is issued?

7 A. That's correct.

8 Q. Okay, thank you.

9 So you have identified these two vessels, are
10 those the current vessels in your "inventory" that you
11 would propose to utilize in serving between Bellingham
12 and Friday Harbor if this application is granted?

13 A. Yes, these are the vessels that I currently
14 own.

15 Q. The Commission requires insurance for vessels
16 that are authorized and regulated service, do you have
17 current insurance on file?

18 A. We do have current insurance on file, it's
19 automatically filed with the Commission every year, has
20 been for more years than I can count.

21 MR. WILEY: And, Your Honor, if I can have
22 that marked as the next in line.

23 JUDGE CAILLE: The certificate of liability
24 insurance is marked as Exhibit 5.

25 BY MR. WILEY:

0065

1 Q. And, Captain Schmidt, up in the upper
2 right-hand corner, does that show when it was reissued
3 to the best of your knowledge?

4 A. That shows when this certificate was written.
5 Our insurance policy goes from the 1st of September to
6 the 1st of September.

7 Q. So this is a filing with the WUTC; is that
8 correct?

9 A. That's correct.

10 Q. And this reflects at least the minimums of
11 insurance required by the Commission as you understand
12 the regulations?

13 A. Yes, the insurance company only likes to put
14 the minimum, and then we carry more.

15 Q. Your company carries more than the \$1 Million
16 shown on Exhibit 5?

17 A. Oh, yes.

18 Q. How much more; do you know?

19 A. \$9 Million.

20 JUDGE CAILLE: Excuse me, did you say \$9
21 Million more or --

22 THE WITNESS: \$1 Million policy, then it's a
23 \$9 Million excess policy.

24 JUDGE CAILLE: Thank you.

25 BY MR. WILEY:

0066

1 Q. Could you describe the sort of test
2 inspection that's done by the Coast Guard in a little
3 bit more detail. I mean do they go look at propellers,
4 you know, for us land lover types, can you describe?

5 A. Yeah, there's two parts to a Coast Guard
6 inspection. One is called the dry dock inspection or
7 hull inspection, which is done with the vessel out of
8 the water. An international vessel that's required to
9 be done every year. A domestic vessel it has to be done
10 every two years. While the boat's out of the water,
11 they look at the hull itself, they look at all the
12 structural members of the inside and out. They look at
13 the propellers, they look at the bearings that the
14 propeller shafts turn in, they look at the rudders, they
15 look at the zincs that offer the protection for the
16 vessel, they look at everything they can.

17 And then once a year each vessel is required
18 to have a safety inspection where they look at every
19 life jacket, every fire extinguisher, every life ring,
20 life raft, emergency lights, fire extinguishers, fire
21 pumps. They go out and make sure that the crew has been
22 drilled to see whether they can do a man overboard, how
23 they handle a fire, how they handle an abandoned ship.
24 It's very extensive.

25 Q. So they are the safety regulator for your

0067

1 operation?

2 A. They are.

3 Q. Do any other employees at Pacific Cruises
4 Northwest have licenses such as you have shown in the
5 exhibit that's been identified as 1?

6 A. Yes, we have five or six licensed captains
7 that work for us.

8 Q. How many employees does Pacific Cruises
9 Northwest have?

10 A. In the summer peak about 30.

11 Q. And during the winter season about?

12 A. About four.

13 Q. Okay. Could you please state on the record
14 what your proposal really is for the extension of your
15 permit; what are you seeking to do by asking the
16 Commission to add to your authority?

17 A. I'm seeking authority for Pacific Cruises to
18 be able to offer express service between Bellingham and
19 Friday Harbor. We would do this on our way to Victoria.
20 I realize the route on the Victoria is not regulated,
21 but we kind of included all the information in there so
22 that it hopefully made more sense to everyone.

23 Q. So you would propose to let passengers embark
24 or disembark between two points in the state of
25 Washington if this application is granted?

0068

1 A. Yes, people would be able to do a one way or
2 round trip service between Bellingham and Friday Harbor.

3 Q. And if there is sufficient demand for the
4 service, would you be willing to put another vessel on
5 the route that isn't tied to Victoria?

6 A. Absolutely, yes.

7 Q. But your initial proposal and your proforma
8 and ridership surveys and all the things we're going to
9 put in the record envision you using your international
10 service?

11 A. Yes.

12 Q. Could you please, there's been some reference
13 earlier on in this proceeding to Island Mariner, they
14 filed a letter indicating they don't oppose this
15 application. What is Island Mariner or who is it, or
16 just describe your relationship to it?

17 A. Island Mariner is another marine company in
18 Bellingham. They're good friends of ours. They operate
19 whale watching vessels as well as passenger only ferries
20 operating to several of the San Juan Islands, including
21 Friday Harbor with several flag stops in between.

22 Q. And is your company in some sort of joint
23 venture with Island Mariner?

24 A. Yeah, I guess you could say it's a joint
25 venture. Pacific Cruises Northwest along with Island

0069

1 Mariner each own 50% of a company called Island
2 Commuter. Island Commuter owns a vessel which it in
3 turn leases to Island Mariner to operate its
4 certificated service. We also in the joint venture do
5 the ticketing and different services for Island Mariner
6 out of our facility at the Bellingham Cruise Terminal.

7 This must not be part of the Paperwork
8 Reduction Act.

9 MR. WILEY: None of these hearings ever are.
10 Your Honor, if I could have the certificate
11 marked first.

12 JUDGE CAILLE: All right, the Certificate for
13 Operation of Motor Propelled Vehicles, this is a UTC
14 Certificate, is marked as Exhibit 6.

15 And the letter to Mr. Pritchett from the
16 Acting Secretary Paul Curl of the UTC dated June 15th is
17 marked as Exhibit 7.

18 BY MR. WILEY:

19 Q. You referred to the operations, Mr. Schmidt,
20 of Island Mariner and what they are authorized to do,
21 could you identify Exhibit 6, please, for the record.

22 A. Exhibit 6 is Island Mariner, Inc.'s
23 Certificate Number B, see theirs is only a B, 95.

24 Q. And you --

25 A. It authorizes service between Bellingham and

0070

1 Friday Harbor via, which means all of its flag stops,
2 the Elisa, Sinclair, I won't read the whole thing but
3 several stops.

4 Q. And are you aware of correspondence that
5 dealt with Staff interpretation of Island Mariner's
6 authority in previous years?

7 A. Yes, and there's a copy, Exhibit 7, a letter
8 from the attorney for Belairco, which is now San Juan
9 Island Shuttle Express, and the Commission.

10 Q. And calling your attention to paragraph 4 of
11 that letter, page 1 of Exhibit 7, you referenced the
12 operations of Island Mariner, do you see a conclusion
13 regarding whether they can service Bellingham and Friday
14 Harbor directly under that permit?

15 A. Yeah, this concludes that a direct service is
16 distinctly different from a flag stop service.

17 Q. And does it have any conclusion about the
18 authorization to provide direct service?

19 A. That Island Mariner is not authorized to do
20 direct service.

21 Q. And that is a different type of service than
22 you're proposing by this application?

23 A. That's correct, we wouldn't have flag stops,
24 we would go direct.

25 JUDGE CAILLE: Excuse me, just for the record

0071

1 would you please define flag stop; does that mean that
2 somebody flags you down?

3 THE WITNESS: If you want the history on it,
4 you bet. Originally flag stops were if you had a
5 location that wasn't a regular stop, there would be a
6 flag pole, and if you wanted on the vessel, they would
7 hoist a flag up, the boat would pull in and pick you up.

8 JUDGE CAILLE: Great, thank you.

9 BY MR. WILEY:

10 Q. And that's the kind of service you -- is that
11 the service that you provided under your existing
12 authority in the past?

13 A. Flag stops?

14 Q. Yes.

15 A. On our trip to Roche Harbor, yes.

16 Q. Regarding your relationship with Island
17 Mariner, have those operations been scrutinized by the
18 Commission Staff?

19 A. Yes. In 1998 San Juan Island Shuttle Express
20 before they went I think bankrupt operated or filed a
21 complaint over dormancy with the Commission about Island
22 Mariner's certificate. I went along with Terry Butler
23 who owns Island Mariner to the investigation.
24 Everything was scrutinized from records, ridership,
25 ticketing, all arrangements between Island Mariner and

0072

1 Island Commuter, arrangements between Island Mariner and
2 Pacific Cruises, everything was looked at, gone through,
3 and once it was done, the Commission dismissed the
4 complaint as having no validity.

5 JUDGE CAILLE: I will mark this as 8,
6 Mr. Wiley.

7 BY MR. WILEY:

8 Q. Captain Schmidt, you referred to the
9 dismissal, can you identify Exhibit 8 in that context.

10 A. Exhibit 8 is a letter from the Commission
11 Secretary I guess acknowledging that it would appear on
12 the consent agenda for dismissal of the complaint.

13 Q. And is that, in fact, what happened in
14 December of 1998?

15 A. Yes, it is.

16 Q. Now during that investigation, did you
17 indicate that all arrangements, marketing agreements, et
18 cetera, were reviewed by the Commission?

19 A. Everything was reviewed pretty thoroughly by
20 Sharon Paulsen, the investigator, and Cathie Anderson,
21 and everything was -- they deemed that we had everything
22 in place and proper.

23 Q. And do you, in fact, disclose on annual
24 reports to the Commission the relationship between
25 Island Mariner and Pacific Cruises Northwest, and if so,

0073

1 how do you do it?

2 A. Yes, both Pacific Cruises Northwest and
3 Island Mariner on their annual reports list 50% ownership
4 of Island Commuter under the, I'm not sure the exact
5 line, I think it's additionally controlled or under the
6 control of, I can't remember which section, I think on
7 page 2 of the annual reports.

8 Q. And are all operations of Island Commuter
9 performed under or under the jurisdiction of Island
10 Mariner?

11 A. Yes, Island Mariner controls operations.

12 Q. And Island Mariner is the entity -- which
13 entity owns the certificate?

14 A. Island Mariner owns the Certificate B-95.

15 Q. Getting back to the proposed service, what
16 sort of response have you had amongst prospective
17 customers to your proposal to offer nonstop service
18 between Bellingham and Friday Harbor?

19 A. The response has been great. People are
20 always interested in other ways to travel. We have had
21 some letters submitted on our behalf, some direct to the
22 Commission, some that are probably in this pile and
23 haven't made it to the Commission. I should stop saying
24 this pile until you admit the exhibit I guess.

25 JUDGE CAILLE: This is identified as Exhibit

0074

1 Number 9.

2 MR. WILEY: Thank you, Your Honor.

3 BY MR. WILEY:

4 Q. Captain Schmidt, calling your attention to
5 the exhibit that's been identified or marked as 9, would
6 you indicate what these are?

7 A. These are letters in support of our proposed
8 -- our application of our proposed route. There's one
9 from the Bellingham/Whatcom County Convention and
10 Visitors Bureau, here's's one from the
11 Bellingham/Whatcom County Chamber of Commerce. There's
12 one from the Port of Friday Harbor Port Commission
13 signed by the President of the Port Commission. There's
14 one from a customer that has ridden with us in the past
15 that would love to see this new service. And there's
16 also one from State Representative Doug Ericksen.

17 Q. And were it not for the election on Tuesday,
18 would representative Ericksen be here?

19 A. Yes, he was planning to come, but he decided
20 he was tired from campaigning.

21 Q. We understand.

22 And are you anticipating if any other letters
23 come in during the time period that the Judge has
24 allowed for filing that those will go in the Commission
25 docket?

0075

1 A. Yes, there's a couple more that said they
2 would send them, and there's several people that said if
3 we needed them that they would be happy to supply them.
4 I said I thought I had enough, but.

5 Q. The more the merrier.

6 A. If the Commission wants more, then we'll get
7 more. But yes, we will be happy to submit those.

8 Q. Would you please state what your arrangements
9 will be for docking in both termini points, meaning
10 Bellingham and Friday Harbor, and I don't believe you
11 told us about your Bellingham location in any detail, so
12 please provide that.

13 A. Okay, well, we have a long-term lease with
14 the Port of Bellingham for our terminal in Bellingham.
15 It's called the Bellingham Cruise Terminal. It's also
16 shared with the Alaska Marine Highway System. The
17 ferries coming in from Alaska also dock there. On the
18 property is also the Amtrak terminal and the Greyhound
19 terminal, so it is a transportation hub. We have a
20 long-term lease there, we have a long-term lease in
21 Victoria, and then in Friday Harbor we have a long-term
22 relationship with them, so we have access to the
23 commercial float that we would need. And, well, the
24 President of the Port Commission sent a letter on our
25 behalf, so I think that shows that they would like us to

0076

1 come.

2 Q. Have you filed a proposed tariff and schedule
3 for the Friday Harbor service you're proposing?

4 A. Yes, I filed one with my initial application.

5 JUDGE CAILLE: I will mark this as 10.

6 BY MR. WILEY:

7 Q. The exhibit that's been marked as 10, Captain
8 Schmidt, what is that, please?

9 A. That is Tariff Number 16 of Pacific Cruises
10 Northwest.

11 Q. And calling your attention to page, let's go
12 to --

13 A. 7.

14 Q. Yeah, 7. Would you state what's depicted
15 there, please.

16 A. Page 7 shows our proposed fares for the
17 different routes.

18 Q. And there's also information, for instance,
19 at page 8 that relates to the international service; why
20 is that on here?

21 A. I realize that our international service is
22 not regulated by the Commission, but it makes it make
23 more sense. It kind of ties everything together so it's
24 all on the same page, so to speak.

25 Q. And have you always included that in your

0077

1 filed tariffs for BC-10?

2 A. I believe we have.

3 Q. And at page 9, what is shown on page 9,
4 please?

5 A. Page 9 shows our proposed time schedule for
6 both the Bellingham-Friday Harbor-Victoria service and
7 our service between North and South Bellingham.

8 Q. And would you comment a little, we'll get
9 into a little more detail on this, but go back to page
10 7, with respect to the proposed rates, do you have any
11 updated reference on that?

12 A. Yes, the proposed rates in this may have to
13 change. This was done almost a year ago before the
14 price of fuel went through the roof. So in analyzing
15 actual costs, it looks like we'll probably have to
16 adjust this upward.

17 Q. And how, just if you could, state how much.
18 You said it went through the roof, in the last year how
19 much have your fuel costs increased?

20 A. Our fuel costs increased about 35%.

21 Q. And would you propose to work with the
22 Commission Staff in modifying this tariff schedule if
23 it's required?

24 A. Absolutely.

25 Q. Your company also has concessions and other

0078

1 services provided on board, does it not?

2 A. Yeah, we have a snack bar on board, we have a
3 licensed, you know, a full bar on board, a little gift
4 shop.

5 Q. Those are not included in your revenue
6 calculations for transportation, are they?

7 A. Not for transportation, no.

8 Q. I know that the Staff is interested,
9 particularly interested, in service to Roche Harbor. If
10 you go back to Exhibit 1, BC-10, you are currently
11 authorized to provide service to Roche Harbor, are you
12 not?

13 JUDGE CAILLE: That's Exhibit 2, right?

14 MR. WILEY: I'm sorry, Exhibit 2.

15 A. We are currently authorized, yes, between
16 both Blaine and Roche Harbor and Bellingham and Roche
17 Harbor.

18 BY MR. WILEY:

19 Q. And the former protestant in this proceeding
20 raised allegations about service and discontinuation
21 thereof; could you tell us what the story is about your
22 Roche Harbor service?

23 A. Well, it's a two sided answer I guess.
24 Blaine -- we -- our company was located in Blaine for
25 five years before it moved to Bellingham. Roche Harbor,

0079

1 we operated to Roche Harbor for a few years and then
2 discontinued that service.

3 Q. Why?

4 A. The main reason is Customs and Immigration.
5 Being an international service, we have to have an
6 approved customs facility. We initially stopped going
7 there when they redeveloped Roche Harbor's marina and
8 they took away our box, so we had no ability to go
9 there. Since then, since September 11th, the rules have
10 changed severely for security, and the only approved
11 place in the San Juan Islands for a commercial vessel to
12 clear internationally is Friday Harbor.

13 Q. What is your view about resumption of service
14 to Roche Harbor?

15 A. It would never be practical. It would almost
16 be virtually impossible to get the Customs clearance
17 there, so there's really no need for us to keep Roche
18 Harbor on our certificate.

19 Q. And why haven't you asked to formally
20 discontinue service?

21 A. Because I didn't know when and if we would
22 ever start it back up, and I offered to give it back
23 once before, so.

24 Q. And that was my final question. If as a
25 condition of granting the Friday Harbor service the

0080

1 Commission would ask you to relinquish the Roche Harbor
2 service from Blaine and from Bellingham, would you be
3 willing to do so?

4 A. Yeah, they can have it.

5 Q. Have you prepared ridership and revenue
6 forecasts as required by the statute for this
7 application?

8 A. Yes, indeed I have.

9 JUDGE CAILLE: This will be Number 11.

10 BY MR. WILEY:

11 Q. Captain Schmidt, looking at the exhibit
12 that's now been marked as 11, what is that, please?

13 A. This is a proforma ridership income and
14 expense analysis for 2005.

15 Q. Tries to cover a 12 month period; is that
16 correct?

17 A. Covers a 12 month period. Our income only
18 covers about 5 months, but our expenses cover the rest.

19 Q. And, in fact, have you extrapolated based on
20 your historic experience, actual experience, into the
21 proformas shown in Exhibit 11?

22 A. Yes, I actually used 2003 actual numbers
23 between Bellingham and Victoria and then added the
24 projected income for Friday Harbor and added the
25 projected increase in expenses to match it.

0081

1 Q. Now you have taken your existing route to
2 Victoria and provided for an intrastate regulated stop
3 in this proforma; is that correct?

4 A. I did.

5 Q. And does it show how many passengers you
6 anticipate, and if so, where?

7 A. At the very top of page 1, it shows passenger
8 assumptions, first being Victoria 10,340 and then Friday
9 Harbor 2,570.

10 Q. It appears to average 600 passengers from
11 June to September, why the difference in May and
12 October, please?

13 A. We only run partial months in both May and
14 October.

15 Q. And in October it's a fairly limited month,
16 isn't it?

17 A. About three days.

18 Q. And what is your assumption of ridership
19 based on, please?

20 A. My assumption is based on the number of
21 people that we call left on the dock by Island Mariner.
22 They have had more -- matter of fact, I will give you
23 the exact numbers. Out of 118 days last year, 41 of
24 those days they were sold out.

25 Q. And Island Mariner provides this flag stop

0082

1 service that eventually gets to San Juan Island; is that
2 correct?

3 A. That's correct. So I know there's more
4 capacity there, and on top of that there's the capacity
5 of express people.

6 Q. Have you also received contacts at your
7 office regarding passengers who wish to go to Friday
8 Harbor?

9 A. Daily.

10 Q. And based on your experience and knowledge of
11 the industry, are you comfortable that that's a fairly
12 conservative estimate of ridership?

13 A. I'm comfortable that that's a good number.

14 Q. Now one thing that we notice in the proforma
15 is that the rate is shown as \$36.

16 A. Yeah, and that's why it says average round
17 trip, because you have to take into account that some of
18 the passengers are children at a half price fare, some
19 are infants at zero fare, so it averages -- the average
20 comes down to \$36 from the \$39 proposed in the tariff.

21 Q. Thank you.

22 Going to page 2 of Exhibit 11, the fuel line
23 item, could you testify about that fuel line item and
24 how that relates to net income and how that also relates
25 to your testimony about a prospective adjustment in the

0083

1 fares?

2 A. Absolutely. That shows basically that's our
3 2003 number of \$75,000 in fuel expense. 2004 through
4 September was over \$105,000 already.

5 Q. And what would that do to your net income as
6 shown on the proforma?

7 A. On this it would leave us in the hole.

8 Q. And based on that fuel line item, would you
9 expect that revenues would have to increase in order to
10 meet the increasing costs of fuel?

11 A. Yes, they will.

12 Do you project the same amount of net income
13 in your proposed model with a fuel cost adjustment,
14 relative same percentage of net income?

15 A. Yes.

16 Q. And similarly would you be working with the
17 Staff of the Commission on the fare adjustment with this
18 proforma in mind vis a vis fuel and net income?

19 A. I have worked with Bob Colbo before, I will
20 do it again.

21 Q. Does Exhibit 11 as currently configured
22 propose a net profit for the company?

23 A. Yes, it does.

24 Q. Do you anticipate that any revised proforma
25 or any revised model would also propose a net income for

0084

1 the company?

2 A. It has to.

3 Q. On Exhibit 11 we see other types of income
4 besides Friday Harbor, would you just comment on why
5 that's included?

6 A. Because we're using the same vessel, the same
7 operation to do both the international and intrastate
8 service. I figured it was only fair to try to reflect
9 everything.

10 Q. And if you are subject to analysis as to your
11 revenues, do you have any problem allocating costs for
12 your regulated route versus your unregulated route?

13 A. No, that's how the Commission has had us do
14 it in the past, and we will be happy to do it again.

15 JUDGE CAILLE: Just a question for
16 clarification.

17 THE WITNESS: Sure.

18 JUDGE CAILLE: Mr. Schmidt, I thought I heard
19 you state interstate.

20 THE WITNESS: International and intrastate.

21 JUDGE CAILLE: Intra, okay.

22 BY MR. WILEY:

23 Q. We're going to jump a little bit because you
24 mentioned some of the other services. Do you currently
25 -- how do you hold out to provide services by your

0085

1 company right now?

2 A. Oh, gees, we print hundreds of thousands of
3 brochures, we are in publications all over the country,
4 we spend almost \$75,000 in the Seattle Times, we're all
5 over the place.

6 Q. And do you in fact print brochures that we
7 have now distributed?

8 A. Yes, I think there's two of our brochures in
9 front of you right now.

10 JUDGE CAILLE: Shall we mark these as one
11 exhibit?

12 MR. WILEY: Sure.

13 JUDGE CAILLE: Those will be marked as 12.

14 BY MR. WILEY:

15 Q. Captain Schmidt, calling your attention to
16 Exhibit 12, the first one, the more bulky one, what is
17 this, please?

18 A. This would have been our -- this would be our
19 2004 cruise brochure from between Bellingham and
20 Victoria. It includes our cruises as well as hotel
21 packages we sell, it lists tours that we sell, an all
22 you can eat prime rib and salmon dinner that we serve
23 fresh on the boat every day. Giving a sales pitch here.

24 Q. Why I jumped ahead was in reference to these
25 other services that Exhibit 11 reflected revenues and

0086

1 costs on. Putting those aside, those are shown, some of
2 those are shown on this brochure, are they not?

3 A. Yes.

4 Q. I'm more interested in the route shown on the
5 far left panel of Exhibit 12.

6 A. Oh, those nice routes they're showing from a
7 satellite photograph.

8 Q. Yes. And on the red line shown, is one
9 outbound and one inbound, or how is the red and blue
10 distinguished there?

11 A. The red and blue is, yes, usually one way out
12 and one way back just to travel, just to show people
13 that we have different options. We kind of change our
14 routes depending on weather and whales and whatnot along
15 the way. But as you can see on the red line how close
16 we pass to Friday Harbor, just a quick jag to pull in
17 and pull out of Friday Harbor.

18 Q. That was going to be my question, Captain
19 Schmidt. If this application is granted, do you
20 anticipate the need to adjust your schedule? If so, how
21 much and how material?

22 A. We really don't have to adjust our schedule.
23 Our schedule leaves Bellingham at 9:00 in the morning
24 and gets to Victoria about noon. We don't really have
25 to adjust it because we have a lot of extra time in

0087

1 there allowed for stopping to look at seals and eagles
2 and whales, local history, so we can shorten that up a
3 little bit and still have plenty of time.

4 Q. And will you be serving the same
5 disembarkation point in Friday Harbor that you currently
6 serve if this application is granted? In other words,
7 are you at the same facility in Friday Harbor?

8 A. Yes.

9 Q. And could you describe that facility a little
10 bit more specifically for the record.

11 A. Well, the facility in Friday Harbor is called
12 Spring Street Landing. It was built, oh, about ten
13 years ago as a commercial passenger ferry terminal.
14 Last year it was I don't want to say converted but
15 upgraded to be what's called by the Coast Guard a 105
16 facility, which shows that it has proper security
17 measures in place to service international vessels.

18 Q. Are you aware of any federal legislation
19 that's changed the situation regarding customs clearance
20 for vessels in this state and in the nation?

21 A. Yes, and it's not so much Customs as it is
22 the Coast Guard security regulations. Part of the
23 Marine Transportation Act of 2002 deems that vessels
24 that carry over 150 passengers or vessels traveling
25 internationally have to go through a facility that's

0088

1 approved under 33 CFR 105, which outlines all of the
2 security policies and procedures, which are enormous and
3 enormously expensive. Something we had to do in
4 Bellingham, our Bellingham facility is a 105 facility.
5 Spring Street Landing in Friday Harbor is the only 105
6 facility in the San Juan Islands. The other two in the
7 state are Pier 69 in Seattle and Port Angeles Landing.

8 Q. Is that one reason why you don't see any
9 future for service by Pacific Cruises to Roche Harbor?

10 A. Yeah, you would never be able to make Roche
11 Harbor into a 105 facility.

12 Q. And that's now required for international
13 service?

14 A. Yes, it is.

15 Q. You also operate in some other points in
16 Exhibit 2, and have you prepared a brochure to show us
17 that service?

18 A. Oh, yeah, it's a brochure for our we call it
19 the Bellingham Bay Tour. It's our service between our
20 terminal in Fairhaven in South Bellingham and Squalicum
21 Harbor which is in North Bellingham that we do three
22 days a week throughout the summer.

23 Q. And you stop, you drop off and pick up people
24 on that service, as I understand?

25 A. Yes, we do.

0089

1 Q. Have you also, getting back to your financial
2 showing, have you also prepared a revised balance sheet
3 for this proceeding?

4 A. Yes, a couple days ago I updated the one that
5 was included with our initial application to reflect
6 current numbers.

7 JUDGE CAILLE: This will be marked as 13.

8 MR. WILEY: Thank you.

9 BY MR. WILEY:

10 Q. And, Captain Schmidt, when you filed this
11 application, how long ago was it if you recall?

12 A. December 3rd I believe. It was a long time
13 ago.

14 Q. So that was 11 months ago, and so this
15 financial statement updates the submission in the
16 application; is that correct?

17 A. Yes, it does.

18 Q. And could you just describe briefly,
19 understanding that the balance sheet sort of speaks for
20 itself, but does this refer to the assets on hand to
21 provide the service?

22 A. Yes, it lists the two vessels that we own
23 under section 10, and then section 12 shows our balance
24 sheet.

25 Q. And it also, question 11 I see it refers to

0090

1 where you're going to operate out of?

2 A. Yes.

3 Q. And are the operations of Pacific Cruises
4 Northwest, Inc., currently profitable?

5 A. Yes, they are.

6 Q. Does Pacific Cruises Northwest, Inc., have
7 access to additional lines of credit and lending
8 facilities if it needs to expand or otherwise infuse
9 capital in the operations?

10 A. Yes, we have plenty of borrowing capacity and
11 additional cash that can be lent to the company by me.

12 Q. You personally?

13 A. Me personally.

14 Q. Currently you have two vessels that you would
15 propose to be deployed in regulated service if need be;
16 is that correct?

17 A. Yes, we have two that we own.

18 Q. What would you do if ridership is
19 significantly higher than expected?

20 A. Go buy another one. I like to buy boats.

21 Q. Could you also lease a vessel if you wanted
22 to?

23 A. We could lease another one. There's plenty
24 out there. I would have no problem finding another
25 vessel.

0091

1 Q. When we were talking about your route, I
2 probably should have identified this previously, but
3 have you caused a map, a colored map, to be prepared of
4 the route?

5 A. Yes, I do have a colored map that I prepared.

6 JUDGE CAILLE: This will be marked, the map
7 is marked as 14.

8 BY MR. WILEY:

9 Q. And just for the record in identifying this,
10 Captain Schmidt, does this show the proposed intrastate
11 and international route?

12 A. It does, it shows the intrastate route in
13 blue and then the continuation of the international
14 route in red.

15 Q. How far is Bellingham from Friday Harbor, if
16 you know?

17 A. 26 miles.

18 Q. And how far is Friday Harbor from Victoria,
19 do you know?

20 A. 26 miles.

21 Q. Wow. So it's a 52 mile, it's a 104 mile
22 round trip, is it?

23 A. 104 mile round trip. It's \$1 a mile, it's a
24 bargain.

25 Q. Have you ever been cited by the Commission

0092

1 for violation of any of its laws and rules?

2 A. No.

3 Q. If this application is granted, will you
4 conform your operations to the laws and rules of the
5 Commission in the state of Washington?

6 A. Yes.

7 Q. If there is any current question with the
8 relationship between Island Mariner and Pacific Cruises
9 Northwest, do you have any concern about filing any of
10 the written agreements or arrangements with the
11 Commission if the affiliated interest rules for instance
12 were to apply?

13 A. No, we have shared everything before, and if
14 there's more that the Commission wants or if the rules
15 change, we will be happy to share them in the future.

16 Q. If in the future you have any questions on
17 rule change or modification to a rule in the law, what
18 will you do?

19 A. Pay you too much to find out for me. But I
20 will contact the Commission or Commission Staff is the
21 right answer.

22 Q. Could you please state in summary why Pacific
23 Cruises Northwest, Inc., is seeking an extension of its
24 certificate from the Commission?

25 A. We feel that it would be good to offer an

0093

1 express route to the public, that there's a desire and a
2 need for that, and it fits into our program of
3 operations, and it would be a good fit for everybody.

4 Q. Is any company at the present time to your
5 knowledge authorized to provide nonstop as opposed to
6 touch stop or flag stop service between Bellingham and
7 Friday Harbor?

8 A. No one is authorized to offer that service,
9 nor is anyone offering nonstop direct service.

10 Q. Is there, so that was my next question, is
11 there anyone currently authorized, even in the summer
12 season is there anyone currently exercising authority to
13 provide nonstop service?

14 A. No, Island Mariner is operating a flag stop
15 service. The only other certificate out there is San
16 Juan Island Shuttle Express, and they basically went
17 bankrupt, so they're not offering anything at all.

18 Q. And they haven't provided the service, their
19 service requires touch stops as you understand it, does
20 it not?

21 A. Yeah, they had a certificate with a stop, one
22 required touch, and I think three or four required, or
23 flag stops, but they haven't operated that in three or
24 four years.

25 MR. WILEY: No further questions, Your Honor.

0094

1 I tender the witness, and I offer Exhibits 1 through 14.

2 JUDGE CAILLE: Is there any objection to the
3 admission of the Exhibits?

4 MR. THOMPSON: No objection.

5 JUDGE CAILLE: Exhibits 1 through 14 are
6 admitted into the record.

7 MR. THOMPSON: Just a couple of questions.

8

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

10 BY MR. THOMPSON:

11 Q. Looking back at Exhibit Number 2, which is
12 your certificate with the WUTC, Mr. Wiley was asking you
13 about your certificate for service to Roche Harbor.

14 A. Yes.

15 Q. Which is about in the middle of the page
16 there I guess.

17 A. Okay.

18 Q. He was describing the route. And this is
19 just a point of clarification, but you indicated that
20 you would be willing to surrender that authority,
21 correct?

22 A. Yes, I'm happy to surrender authority to
23 Roche Harbor.

24 Q. Including the flag, the various flag stops at
25 the different islands as well?

0095

1 A. Yeah, I guess I wouldn't mind holding on to
2 those if -- because who knows what will happen in the
3 future, but I can always go back and get them again, so
4 if you want them back, you can have them.

5 Q. Okay, well, it just sounds like what you're
6 describing now is an express service.

7 A. Yes.

8 Q. What you're asking for is that -- well, just
9 to clarify though, but you're not asking -- in other
10 words, what you're seeking today is not service to
11 Friday Harbor with keeping --

12 A. With flag stops --

13 Q. -- like those --

14 A. -- no.

15 Q. So just to clarify, you're not asking for
16 express authority which you could then use in
17 conjunction with the flag stops that already exist under
18 the Roche Harbor route?

19 A. No, I do not want to use the flag stops with
20 my express service.

21 Q. You also mentioned the fact that you have a
22 friendly relationship with Island Mariner. What is
23 their -- could you describe the service that they
24 presently offer in a little more detail?

25 A. Sure. Their service presently goes from

0096

1 Bellingham with flag stops at several of the islands on
2 the way over to Friday Harbor.

3 Q. And is that a year round service or --

4 A. Just a May through October, it's seasonal as
5 well.

6 Q. Okay. And how -- do they have one run a day
7 or --

8 A. It's one run a day leaving Bellingham around
9 9:30 in the morning, makes flag stops at Elisa, Sinclair
10 Island, Blakely Island, Orcas Island, Lopez Island. I
11 think there's a couple more in there before arriving at
12 Friday Harbor.

13 Q. Do you know how -- how frequently do they
14 actually make stops at those islands; do you have any
15 idea?

16 A. Virtually every day.

17 Q. Okay.

18 A. Virtually every day.

19 Q. Would you view Island Mariner as serving a
20 different market of customers than you would be serving?

21 A. They really do. Most of those flag stops are
22 I wouldn't call them commuters like you have here in
23 Seattle, but they're people with cabins and other
24 reasons to be out on the islands. They aren't -- they
25 don't serve as many tourists. The bulk of our market

0097

1 really is tourists to Friday Harbor, or excuse me, to
2 Victoria, so it is a different market.

3 Q. I see. Would your passengers be, well,
4 assuming they're leaving from Bellingham, would they be
5 just stopping over briefly on San Juan Island at Friday
6 Harbor and then continuing on to Victoria primarily
7 or --

8 A. No, these passengers would be staying,
9 spending the day in Friday Harbor on San Juan Island.
10 They might be going whale watching, they might be just
11 spending the day in town, but then we would pick them up
12 again on our way back to Bellingham.

13 Q. Oh, another question about San Juan Island
14 Shuttle Express, you mentioned the term touch stops,
15 could you just clarify what that is?

16 A. I think -- we don't have a copy of their --
17 do we have a copy of their authority?

18 MR. WILEY: We're not going to make it an
19 exhibit, but we have it.

20 THE WITNESS: Great.

21 A. On San Juan Island Shuttle Express, they are
22 authorized to go from Friday Harbor -- between Friday
23 Harbor and Bellingham, between Obstruction Pass and
24 Bellingham, it even says on there, with the carrying
25 vessel touching at Obstruction Pass, which means they

0098

1 are required to stop there. They can't just go on by.
2 Whether there's people there or not, they are required
3 to stop.

4 BY MR. THOMPSON:

5 Q. And Obstruction Pass is just at the --

6 A. Obstruction Pass is on the southeast end of
7 Orcas Island.

8 Q. There's a little island just south of that
9 point?

10 A. There's a little bitty island called
11 Obstruction Island just to the south of it.

12 MR. THOMPSON: I would like to offer this
13 just for the record, the certificate of the San Juan
14 Island Shuttle Express if we could just for the record.

15 JUDGE CAILLE: Okay, I will mark that as
16 Exhibit 15.

17 BY MR. THOMPSON:

18 Q. And I think you indicated that San Juan
19 Island Shuttle Express has not been operating for three
20 years?

21 A. It's at least three years. They don't own
22 any vessels, they don't -- their lease was terminated in
23 Bellingham. The Port of Friday Harbor told them they
24 weren't welcome back until they paid their bills.

25 Q. Okay.

0099

1 A. So they're not around.

2 Q. And how long had they been operating prior to
3 that?

4 A. Prior to that, they started about 1994 I
5 believe.

6 Q. Are they operating anywhere else in the
7 state?

8 A. No.

9 MR. THOMPSON: I think that's all the
10 questions I have. Let me just check my notes.

11 That should do it, thank you.

12 JUDGE CAILLE: And I have a couple of
13 questions.

14

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

16 BY JUDGE CAILLE:

17 Q. Let's go back to Exhibit Number 2, and this
18 is just so that I'm clear in my understanding of what
19 you're requesting today. It still is an extension of
20 this particular certificate; is that correct?

21 A. That's correct.

22 Q. And can you describe that extension? Well,
23 first describe what this certificate is and what the
24 extension would be.

25 A. Okay. Our current certificate authorizes

0100

1 basically three different services, one between Blaine
2 and Roche Harbor, one between North Bellingham and South
3 Bellingham, and a third between Bellingham and Roche
4 Harbor with several flag stops. My understanding of
5 Commission rules is if you -- a new route isn't its own
6 certificate, it's an extension of a certificate you
7 already possess. That's why this one is BC-10 dating
8 back to when it was a tour from downtown Seattle to Lake
9 Washington. So, you know, we're asking to add express
10 service between Bellingham and Friday Harbor to this
11 certificate.

12 Q. And I have another point of clarification.
13 On your application and also on Exhibit Number 2 it says
14 passenger and freight service, and this is passenger
15 only service, so could you explain to me why that is?

16 A. Passenger only service is the new term that
17 differentiates a passenger carrying vessel from a
18 passenger and automobile vessel.

19 Q. All right, thank you.

20 Then on your application under the section of
21 the waiver of the 10 mile restriction.

22 A. Yes.

23 Q. Is this the sort of service that requires a
24 waiver of the 10 mile restriction?

25 A. You know, I would have trouble answering

0101

1 that, giving you an honest answer since that has changed
2 a couple times in my years of doing this. My attorney
3 could probably answer that better for me.

4 JUDGE CAILLE: The reason why I ask this is
5 because I think it came up in one of the other ferry
6 certificates, and I thought there was some discussion
7 that a passenger only does not require the waiver. Is
8 that your --

9 MR. THOMPSON: I could address that if you
10 would like.

11 JUDGE CAILLE: Could you, please.

12 MR. THOMPSON: The statute that sets out the
13 10 mile restriction was recently amended. I'm not sure
14 how long ago, two or three years ago I think. And it's
15 a little confusing, because there were two bills that
16 went through during the same legislative session. One
17 of them made the 10 mile restriction inapplicable to
18 ferry districts and I think county authorities operating
19 ferries as well. But then there was another bill that
20 made the 10 mile restriction inapplicable to any
21 passenger only ferry service, and that clearly included
22 commercial ferry service too, because the bill that that
23 was a part of addressed commercial ferry service.

24 And by statute, if there is any conflict
25 between bills enacted during the same legislative

0102

1 session, and I don't actually believe there is in this
2 case but if it were argued that there were, the way
3 that's resolved is that the bill that was filed the
4 latest with the Secretary of State's Office is the one
5 that controls. And in this case, that happens to be the
6 one that contains the broader exception for all
7 passenger only ferry service, including commercial.

8 JUDGE CAILLE: Thank you very much.

9 Is that your understanding too, Mr. Wiley?

10 MR. WILEY: Yes, Your Honor, and I believe in
11 exhibit, the letters that are the shipper support
12 letters which are exhibit -- you will have to help me on
13 what exhibit number, is that 9?

14 THE WITNESS: Yes, 9.

15 JUDGE CAILLE: Yes.

16 MR. WILEY: There's a reference in
17 Representative Ericksen's letter to EHB 1388, which I
18 believe was the legislative bill that included that
19 issue as well as some others, so if you want to refer to
20 that, that might help you.

21 JUDGE CAILLE: Thank you.

22 MR. WILEY: But I agree with Mr. Thompson's
23 inquiry, and I also understand your concern because that
24 came up at a boat hearing this summer and we were
25 scrambling a little bit to resolve that.

0103

1 JUDGE CAILLE: Right.

2 MR. WILEY: And I think the difficulty was
3 the two bills in one year.

4 JUDGE CAILLE: Yes, okay.

5 MR. THOMPSON: I could add a little more
6 detail.

7 JUDGE CAILLE: Go ahead.

8 MR. THOMPSON: The bills appear, actually it
9 was only one year ago, it was in 2003, at Laws of
10 Washington 2003, Chapter 83 and Chapter 373. And the
11 statute that sets out that rule regarding sections
12 amended twice during the same legislative section is at
13 RCW 1.12.025.

14 JUDGE CAILLE: Thank you very much.

15 I haven't had a chance to look at the letters
16 in Exhibit Number 5.

17 MR. WILEY: 9 you mean?

18 JUDGE CAILLE: Or 9, thank you.

19 BY JUDGE CAILLE:

20 Q. Are there any customers describing any of
21 your service that --

22 A. There is one from a customer.

23 Q. And do you anticipate any others being --

24 A. I had one that was supposed to have come in
25 from a business in Friday Harbor that would transport

0104

1 their customers back and forth, and I could get more if
2 you would like them.

3 Q. I think I would like a few more from actual
4 people who would be using the service.

5 A. Okay.

6 JUDGE CAILLE: And, Mr. Wiley, remember we
7 had an agreement about how many days after the
8 hearing --

9 MR. WILEY: You said November 12th I believe.

10 JUDGE CAILLE: Was it --

11 MR. WILEY: I believe it was November 12th
12 that you would hold the record open for us.

13 JUDGE CAILLE: Will that still work do you
14 think?

15 MR. WILEY: And I think we can accomplish,
16 since he's going to be leaving town around then, I think
17 we need to accomplish it by then.

18 THE WITNESS: Okay, we can do it.

19 JUDGE CAILLE: Thank you.

20 Let me just check to see if I have any
21 others.

22 I have no other questions.

23 MR. WILEY: I just have a couple.

24

25

0105

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

2 BY MR. WILEY:

3 Q. You used a term in referring to San Juan
4 Islands Shuttle Express, I just wanted the record to be
5 clear, bankrupt, you weren't suggesting a legal status,
6 were you?

7 A. They're not technically bankrupt, just done.

8 Q. You mean they have shut down operations?

9 A. They have shut down, and their creditors keep
10 calling us looking for them.

11 Q. Okay. Now a second question was do you
12 envision any commuters who might in fact use this
13 service, in other words people who have to go once a
14 week to Friday Harbor from Northwestern Washington, et
15 cetera? And if so, describe that kind of rider, please.

16 A. Yes, I have talked to several construction
17 companies, that building boom in the San Juan Islands,
18 trying to get their workers back and forth. That's one
19 for instance right there.

20 We have had one young lady that goes to
21 school in Western Washington University but is taking
22 classes out at the University of Washington's Friday
23 Harbor campus, she would like a faster way to get back
24 and forth, yes.

25 Q. And as you understand, for instance, business

0106

1 customers who would use the service, would there be any
2 benefit as you understand the proposed service to a
3 nonstop service as opposed to a flag stop service? And
4 if so, what would that be?

5 A. Well, it's definitely a benefit to their
6 employers. The faster they can get back and forth, the
7 less they're paying for travel, the more work they can
8 get out of them.

9 Q. And if demand in that particular area of the
10 shipper quote-unquote community were to be provided,
11 were to grow, would Pacific Cruises Northwest consider
12 another boat and tied to a working schedule?

13 A. Yeah, as a matter of fact I work with a group
14 that is doing studies of passenger only ferry services
15 in the state of Washington and North Puget Sound, and a
16 recent study funded by the State has said there is a
17 large demand for passenger only ferry service
18 originating in Friday Harbor early in the morning and
19 then one shortly thereafter going back to Friday Harbor,
20 so we do see potential for growth there.

21 Q. If this application is granted and there's
22 any initial delays to the initiation of the service, do
23 you intend to comply with the reporting requirements of
24 the statutes regarding the startup of operations and
25 information accompanying that to the Commission as

0107

1 required?

2 A. Yes, we will.

3 MR. THOMPSON: Just one more thing if I
4 could.

5

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

7 BY MR. THOMPSON:

8 Q. Going back to Exhibit 2, which is your
9 current certificate.

10 A. I'm just going to keep that on the top.

11 Q. I just didn't do a very good job of
12 clarifying this before, and I want to try it again. I
13 want to be clear as to what you would be willing to
14 agree to as a condition on the granting of new
15 authority, and you had described to Judge Caille how
16 there are basically three different authorities
17 described there?

18 A. Yes.

19 Q. The first one is it says between Blaine,
20 well, it says, I guess it starts passenger and freight
21 service between Blaine and Roche Harbor, Washington, and
22 then it contains restrictions for freight limited to 200
23 pounds per package. You would agree to striking that
24 authority?

25 A. I think you're a horse trader. Yes, I would

0108

1 be happy to relinquish the Blaine to Roche Harbor
2 authority. I will be happy to relinquish the passenger
3 freight service between Bellingham and the San Juan
4 Islands with its flag stops. I do want to retain the
5 passenger sightseeing service between North Bellingham
6 and South Bellingham, because this is something we are
7 using.

8 MR. WILEY: Your Honor, if I could comment
9 just from a legal perspective on this issue. I think he
10 stated on the record that his preference would be to
11 give up the Blaine authority, which he is prepared to
12 do, and that is included also on that third paragraph
13 down there about passenger and freight service. As he
14 indicated, he would rather not give up the flag stop
15 service if he didn't have to, he would if he had to, but
16 he does not intend to use the flag stop service in
17 conjunction with the applied for service as he testified
18 to Mr. Thompson's question.

19 The third issue, and this is the legal issue
20 that I want to comment on, the question of whether the
21 boat rules are a little bit muddled as to whether a
22 route is dormant versus whether a certificate is
23 dormant. There is absolutely no testimony that the
24 certificate in Exhibit 2 is dormant, there's testimony
25 about service. It's just that portions of it are being

0109

1 exercised and portions are not being exercised. And
2 thus, you know, from a legal standpoint, I would
3 obviously since this is a property right prefer that
4 they not have to give up the flag stop other than
5 eliminating the Roche Harbor portion of that third
6 paragraph if they didn't have to. But as you heard, he
7 is willing to do so if that's the view of the
8 Commission. And I realize that the exercise of
9 passenger only ferry routes is a very topical issue
10 right now, as does the applicant, so. But if the legal
11 issue about whether a route is exercised versus whether
12 the authority is deemed exercised is still in my opinion
13 not completely clear in the law. I don't know how
14 Mr. Thompson feels about that, but.

15 JUDGE CAILLE: Okay.

16 Anything further?

17 MR. THOMPSON: I don't think so, no.

18 JUDGE CAILLE: I have one more question.

19

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

21 BY JUDGE CAILLE:

22 Q. In your application, I'm sorry, I think this
23 is really the last one, it says that if the certificate
24 is granted you will begin operations within 120 days of
25 that grant, and that's on, let's see, I don't think

0110

1 there's a page but it's right before the map in your
2 application. It's number 18, paragraph 18.

3 A. Yes.

4 Q. Item 18, or 17, I'm sorry. Is that still --
5 would that still be true today?

6 A. Honestly I need to look at that. You know,
7 that was a number that I anticipated from December 3rd
8 of 2003 looking at that upcoming season. I don't know
9 if 120 days is an exact number.

10 Q. Okay.

11 A. It's not because we don't start operating for
12 another six months anyway.

13 Q. That's what I was wondering.

14 A. So, yeah, I would have trouble with that
15 number. I don't know if that needs to be changed or
16 amended.

17 MR. WILEY: I have a follow up.

18 JUDGE CAILLE: If that needs to be amended,
19 Mr. Wiley, did you want to speak to that?

20 MR. WILEY: Yeah.

21

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

23 BY MR. WILEY:

24 Q. Captain Schmidt, are you aware of a 20 month
25 period in the law for starting up operations, a recent

0111

1 revision to the law?

2 A. That's what I was about to say, I believe
3 we're authorized 20 months, and if it goes over 12
4 months, we need to submit information as to why.

5 Q. And thus I think the question I would pose to
6 you is, are you willing to commit to service within the
7 time period allowed by the law?

8 A. Yes.

9 Q. Or to seek an extension on due cause?

10 A. Yes.

11 Q. Why are boat startups so dicey, if you would,
12 just in terms of projections? And I think it's accepted
13 that there's been a lot of, in this industry, in the
14 regulated industry in Washington, a lot of starts and
15 stops, could you just give us a little information in
16 the record about why it's kind of hard to predict that?

17 A. Well, it's a bit of a gamble for any private
18 company to put something like this together, to buy the
19 equipment, to get the authority, to file for the
20 authority and find out that the rules have changed and
21 you have to wait four months for the PTBA to authorize,
22 the Public Transit Benefit Authority, to authorize the
23 Commission to even accept your application, and then to
24 get everything advertised. A lot of the stuff we do is
25 a year out to two years out in our advertising and in

0112

1 our marketing to different group clients and whatnot.
2 So to get everything in place is quite a project. So
3 sometimes knowing exactly when it's going to be able to
4 all come together gets a little dicey.

5 Q. If you don't learn say until the late winter
6 about new service possibilities, does that affect your
7 startup in that season, for instance?

8 A. It could. It could in that we have to have
9 all the advertising material out sooner than that.

10 MR. WILEY: No further questions, Your Honor.

11 JUDGE CAILLE: All right.

12 Anything further, Mr. Thompson?

13 MR. THOMPSON: No.

14 JUDGE CAILLE: All right, thank you very
15 much, you are excused.

16 THE WITNESS: Thank you very much.

17 JUDGE CAILLE: Let's go off the record just a
18 minute.

19 (Discussion off the record.)

20 JUDGE CAILLE: We have had an off record
21 discussion about potential briefing of some issues,
22 legal issues, and we have set a date of November 19th
23 for simultaneous briefs. Those briefs will be limited
24 to, as I said, legal issues that the parties think are
25 important to bring to the Commission's attention.

0113

1 And, Mr. Thompson, I believe you have a
2 statement outstanding.

3 MR. THOMPSON: If I didn't already do so, I
4 would offer what's been marked as Exhibit 15 into the
5 record.

6 JUDGE CAILLE: Any objection to Exhibit 15?

7 MR. WILEY: None, Your Honor.

8 JUDGE CAILLE: It is admitted into the
9 record.

10 All right, anything further?

11 MR. WILEY: Nothing from the applicant.

12 JUDGE CAILLE: All right, then this hearing
13 is closed, and thank you for coming. We're off the
14 record.

15 (Hearing adjourned at 11:30 a.m.)

16

17

18

19

20

21

22

23

24

25