

0019

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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

HEARING, VOLUME II

Pages 19 - 270

ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

9:32 A.M.

JANUARY 31, 2013

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1 OLYMPIA, WASHINGTON; JANUARY 31, 2013

2 9:32 A.M.

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

6

7 JUDGE TOREM: This is the consolidated

8 case of Dockets 121253 and 121395. These are

9 competing overlapping applications for a passenger

10 ferry service from Bellingham, Washington, to Friday

11 Harbor. The first case, TS-121253, is the case of

12 Bellingham Water Taxi, and 121395 is San Juan Cruises.

13 We have competing applications and competing protests,

14 and we have an additional protestant appearing by

15 phone today and Commission Staff will be making an

16 appearance as well.

17 My name is Adam Torem, I'm the administrative

18 law judge. Today is Thursday, the 31st of January,

19 2013. It's a little after 9:30, and we're in Room 108

20 at the Commission's headquarters in Olympia this

21 morning.

22 The plan will be to take appearances from all

23 parties. I've got the witness and exhibit lists

24 already submitted in advance, so we will just go

25 through those documents as necessary as each party

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1 testifies. We will take the Bellingham Water Taxi
2 case first this morning, and take as many of those
3 witnesses as we can this morning.

4 And from there what we will do is move into
5 other witnesses we have to take by phone. Later this
6 afternoon, we will have our bridge line available and
7 better teleconferencing to have the parties call in
8 with witnesses that are not making the trip from
9 Bellingham down to Olympia.

10 Let me start with appearances. Bellingham
11 Water Taxi?

12 MR. McNAMARA: Sean McNamara.

13 JUDGE TOREM: Okay. And I think we have
14 all of your contact information already in the record.
15 Thank you, Mr. McNamara.

16 On behalf of San Juan Cruises?

17 MR. WILEY: Pacific Cruises Northwest,
18 your Honor. David Wiley. You have my contact
19 information through the notice of appearance that I
20 filed on Monday.

21 JUDGE TOREM: And Island Mariner Cruises
22 is also making an appearance by telephone.

23 Mr. Buzzard, can you hear me?

24 MR. BUZZARD: I'm here.

25 JUDGE TOREM: So Terry Buzzard will be

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1 appearing on behalf of them. Mr. Buzzard, as we go
2 through and get to a point where you might make an
3 opening statement, that will be offered to you as
4 well.

5 MR. BUZZARD: Thank you.

6 JUDGE TOREM: And for Commission Staff?

7 MR. FASSIO: Michael Fassio, assistant
8 attorney general.

9 JUDGE TOREM: I'd let folks know that
10 they were permitted if they wanted to, to make an
11 opening statement this morning. It should be just a
12 short what you expect the evidence to show.

13 And, again, the focus today is going to be on
14 the statutory qualifications. RCW 81.84, Section 020,
15 Subsection 2 sets out the issuance of any certificates
16 and how they must be determined to certain factors.
17 Those would be the ones we are looking to evaluate.
18 And because this is a joint hearing, I'll be
19 evaluating both the applications of Bellingham Water
20 Taxi and Pacific Cruises Northwest, doing business as
21 San Juan Cruises, jointly.

22 And after today, if necessary, we will set a
23 time for posthearing briefs and determine what the
24 Commission wants to do in the way of issuing one or no
25 permits, I suppose, in this particular region seeking

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1 to serve Friday Harbor. So we will start with opening
2 statements.

3 Mr. McNamara, you can begin. And if you will
4 speak up to make sure that Mr. Buzzard can hear you,
5 that would be great.

6 MR. McNAMARA: Sure. Good morning,
7 everybody. I appreciate the opportunity to be here
8 today. My position in this matter is really pretty
9 simple. In the spring of 2012, the Commission found
10 me and Bellingham Water Taxi fit, willing and able to
11 purchase and to transfer a ferry certificate to
12 provide service to most of the San Juan Islands.

13 Several months later, I applied to extend my
14 service to three more islands, San Juan Island,
15 Cypress and Vendovi Island. This extension will
16 complete a vital loop to serve the bulk of the island
17 residents, as well as offer Bellingham residents and
18 visitors travel options in the San Juan Islands.

19 This service has not been offered in years.
20 The Island Commuter/Pacific Cruises Northwest dwindled
21 their service down to nothing, sold their certificate
22 and then cancelled their final stop, leaving
23 passengers and guests high and dry, no water
24 transportation to or from Bellingham.

25 I have been in the customer service and marine

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1 industry for most of my adult life. I have fished
2 from the Bering Sea to the South Pacific islands. I
3 ran a water taxi and charter business in the San Juan
4 Islands for several years, as well as a very --
5 managed a very profitable and successful jet boat
6 excursion company in Alaska. I'm a hundred percent
7 dedicated to create a viable passenger ferry service
8 from Bellingham to the San Juan Islands. The public
9 has been underserved for many, many years. I hope I
10 will be given an opportunity to finally provide
11 passengers with a reliable passenger service.
12 Thank you.

13 JUDGE TOREM: Thank you, Mr. McNamara.

14 Mr. Wiley, do you want to make an opening
15 statement on behalf of your client?

16 MR. WILEY: Just a few comments, your
17 Honor. As you noted at the start of the record, these
18 are applications that have been consolidated by the
19 Commission for a comparative review. The statute is a
20 very Spartan statute, RCW 81.84. Your primary focus
21 in evaluating these applications is one of determining
22 the fitness and ability of the applicants and the
23 financial, operational and service feasibility of the
24 proposed route, including historic operations on the
25 route.

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1 The issue of need is a very interesting one,
2 to the extent that, as the attorney general has
3 provided, there are numerous case law decisions from
4 the Commission, suggesting that need is rather a
5 different evaluation in the commercial ferry field.
6 And by that I mean, one of the cases that was provided
7 is the Dutchman Marine case, which is an initial
8 order, which found that one applicant's need --
9 witnesses and evidence could be used by the other who
10 presented no witnesses whatsoever to establish need on
11 the route.

12 The attorney general also provided the Aqua
13 Express case, which is a very interesting precedent,
14 which I was involved in for the applicant, to serve
15 between Seattle and Kingston in commercial passenger
16 service. As the other applicant has alluded, there
17 has been a long history of service in the North Puget
18 Sound, some of it not as successful as others. We
19 will talk about market viability in some of our
20 witness testimony today. Seasonality and feasibility
21 first and foremost of the proposed route.

22 One comment that I'll make initially on the
23 exhibits from Mr. McNamara, certainly I will object to
24 written shipper support statements without the ability
25 to cross-examine a witness. I will reserve on anybody

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1 who would appear on the phone. But I think that
2 written shipper support statements, there's no
3 precedent in contested hearings before this Commission
4 for allowing them in, because they are the rankest
5 type of hearsay, and they are unreliable on their
6 face.

7 On the other hand, both applicants I would
8 think will attest to a need for the service. There's
9 no question that a commercial passenger service at
10 some points in the year need to be available between
11 Bellingham and Friday Harbor. The question is the
12 context of that service, the availability of the
13 service, the feasibility, and the financial fitness of
14 the provider.

15 Finally, there's one other legal elephant in
16 the room in this proceeding, which is very important
17 to our client. And that is that the evidence will
18 show what led to the relinquishment of Pacific Cruises
19 Northwest's certificate last summer. A Staff opinion
20 that was offered that said, essentially, that the
21 rules and law of the Commission preclude combined
22 regulated and unregulated service in the same vessel.

23 In other words, the Staff opined that you
24 could not offer excursion and point-to-point service
25 between fixed termini in the same vessel. We

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1 fundamentally believe this conclusion is unsupported
2 by law and request a ruling from the bench on this
3 pivotal issue for Pacific Cruises Northwest, Inc., and
4 also any other operator in regulated service.

5 The availability and ability to provide
6 unregulated accessorial services in the same vessel is
7 absolutely critical to the financial viability of
8 these operations, and any opinion to the contrary is
9 contrary to the public interest.

10 So those are the points that we hope to
11 develop in the record, and we look forward, as we say,
12 to a ruling from the Bench on not just the statutory
13 issues, but the other legal issues raised.

14 JUDGE TOREM: Thank you, Mr. Wiley.

15 Mr. Buzzard?

16 MR. BUZZARD: Yes, sir.

17 JUDGE TOREM: I know you are not
18 supporting an application here, but as a protestant, I
19 want to give you an opportunity to say a few words as
20 to your position in the case.

21 MR. BUZZARD: I had a very difficult
22 time hearing that last bit.

23 JUDGE TOREM: We will see if we can move
24 microphones around closer to where people are
25 speaking. But did you have anything you want to say

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1 for your opening?

2 MR. BUZZARD: I guess my opening, your
3 Honor, is I'm somewhat surprised that Mr. Wiley is
4 even present. I thought that we had a cutoff date of
5 the 16th of any additional witnesses or information
6 coming in. And I received a letter from him on the
7 28th, or dated the 28th, I received it on the 29th,
8 that he would be there.

9 JUDGE TOREM: Well, Mr. Buzzard, he's
10 not here as a witness. He's been hired as an
11 attorney, if you read the paperwork, so there's no
12 point in belaboring that. The other parties can hire
13 an attorney at any point in the proceeding. He chose
14 to. So do you have anything to say about the
15 substance of the case?

16 MR. BUZZARD: I guess not at this time,
17 your Honor.

18 JUDGE TOREM: Okay.

19 MR. BUZZARD: I believe Mr. Wiley being
20 there is a conflict of interest.

21 JUDGE TOREM: Again, if you have a
22 conflict of interest issue with the case, I understand
23 Mr. Wiley has represented perhaps the joint venture
24 between you and Mr. Schmidt, your previous business
25 partner, before. That's not something I have any

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1 jurisdiction over. I have to leave that between you,
2 and Mr. Schmidt and Mr. Wiley to resolve that. I've
3 given it some thought, as I knew the relationship
4 previous. But that's not within the Commission's
5 jurisdiction to handle. And I certainly can't tell
6 someone who they can or can't represent when they are
7 licensed by the state bar.

8 MR. BUZZARD: All right.

9 JUDGE TOREM: So let me leave it at
10 that.

11 MR. BUZZARD: Thank you.

12 JUDGE TOREM: Let me turn to Commission
13 Staff. I've got a microphone dragged over to
14 Mr. Fassio, so hopefully you'll be able to hear him
15 better.

16 MR. BUZZARD: Thank you.

17 MR. FASSIO: Good morning, your Honor.
18 Commission Staff takes no position on either of the
19 two applications today. Staff is here to assist in
20 developing the record. The issues before us today are
21 the two applications and whether or not the applicants
22 meet the statutory requirements for either a new ferry
23 certificate or an extension of service of an existing
24 certificate. And so Staff at this point takes no
25 position on whether either or both or none of those

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1 certificates should be granted.

2 And I do want to respond briefly to
3 Mr. Wiley's statements about additional evidence and
4 issues that he wishes to bring forward at this time.
5 These are new issues which have not come before the
6 JUDGE or any of the parties prior to today. And what
7 I would simply put out there right now is that the
8 issues before us today are regarding the applicants,
9 not about Staff and what assistance or communications
10 may have occurred between Staff and other parties in
11 earlier cases. Informal opinions and technical
12 assistance that was provided is not an issue here
13 today.

14 And so Staff would object to introducing
15 evidence here that would lead to a ruling from the
16 Bench as to the validity of any informal opinions that
17 Staff provided in e-mails or other assistance. That
18 simply would not change the outcome in this case. And
19 counsel's attempt to raise these issues now really
20 would unnecessarily complicate matters here.

21 And it's really -- so Staff is going to object
22 to the bringing forth of additional evidence necessary
23 for additional rulings from the Bench on other issues.
24 That's my preliminary thoughts on what Mr. Wiley has
25 brought up.

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1 JUDGE TOREM: Thank you, Mr. Fassio. We
2 will deal with each of those objections as they come
3 up and handle things one at a time.

4 My focus, again, as I said earlier, is on the
5 statutory provisions for determining and evaluating
6 both of the applications, one for the extension by
7 Mr. McNamara's company, and second a new application
8 from Mr. Schmidt.

9 We're going to start with Mr. McNamara's
10 application this morning. Let's turn to the exhibits
11 that Mr. McNamara previously distributed.

12 I've got 11 labeled exhibits; is that right,
13 Mr. McNamara?

14 MR. McNAMARA: Correct. I may submit
15 another one later on. I didn't have a chance this
16 week, I kind of got swamped, sick kids. So there may
17 be 12 or 13, if necessary.

18 JUDGE TOREM: Each of these is labeled
19 with your initials as though perhaps you would be the
20 sponsor of each of these. Some of them, though, are
21 obviously shipper support statements that would be
22 better addressed, as hinted at my Mr. Wiley, by having
23 the witness themselves adopt the statement and be
24 subject to cross-examination on any other elaboration
25 of what's on a written or that they do under sworn

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1 testimony today. So when we get to those folks, I
2 know that all but one or two are on your witness list.
3 And we can handle any objections as to the written
4 ones as need be when Mr. Wiley objects.

5 MR. McNAMARA: Okay.

6 JUDGE TOREM: Did you want to begin with
7 any of your witnesses or did you want to begin with
8 being sworn in and explaining your documents and
9 position?

10 MR. McNAMARA: Yeah, that's fine. And I
11 was under the impression that most of the witnesses
12 would be later on in the day.

13 JUDGE TOREM: All right. Well, let me
14 have you stand and raise your right hand and I'll
15 swear you in.

16

17 SEAN McNAMARA, witness herein, having been
18 first duly sworn on oath,
19 was examined and testified
20 as follows:

21

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

23 BY JUDGE TOREM:

24 Q Have a seat.

25 A (Complies.)

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1 Q And you can begin your presentation.

2 A Okay. Like I stated in my opening statement,
3 I believe this is a fairly simple issue. I believe
4 it's going to get muddled up with a lot of other
5 things, but the fact remains it's all in the paperwork
6 and all of the filings that have been filed with the
7 UTC for years.

8 I'll just go right down from top to bottom.

9 No. 1 --

10 Q So we are looking at SCM-1.

11 A I'm sure everybody is aware of what this is,
12 but I'll -- I guess I don't need to read the whole
13 thing. It's basically Pacific Cruises Northwest's
14 voluntary cancellation of his certificate that ran
15 between Bellingham and Friday Harbor.

16 JUDGE TOREM: Okay. This is a
17 Commission order, it is dated July 13, 2012, it is a
18 one-page order, and it's in Docket TS-121174, and it
19 otherwise meets the description that Mr. McNamara
20 gave.

21 Any objections to the Commission admitting
22 this document?

23 MR. WILEY: None, your Honor.

24 JUDGE TOREM: Hearing none, SCM-1 is
25 admitted.

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1 A So how it works is you admit it all and then
2 we will talk about it later?

3 Q Some of them will speak just for themselves --

4 A Okay.

5 Q -- some of the Commission orders, unless
6 there's other testimony you want to give as background
7 information, Mr. McNamara. But we can go through them
8 either in the sequence they are presented --

9 A No, that's fine.

10 Q -- or you can testify however you think you
11 should on each of the factors and point me to the
12 exhibits.

13 A Okay. I'll just run down. SCM No. 2, which
14 is Island Commuter's tariff -- time schedule, I should
15 say, from 2011, which shows he operated a total of
16 nine days in the entire year.

17 MR. WILEY: Your Honor, we're not going
18 to have an objection to either 2 or 3, but I think the
19 documents speak for themselves and we don't need them
20 summarized on the record.

21 Q Can you point me just to -- I know Mr. Wiley
22 is ultimately familiar with the documents. When you
23 say there's how many days per year they operated --

24 A Right under all the stops that he goes to, the
25 Saturdays, Sundays and Mondays, Memorial Day,

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1 Independence Day and Labor Day weekends.

2 Q Okay. So this was only a weekend operation
3 for the schedule?

4 A Just the three busiest weekends in the year.

5 Q That's Exhibit 2. And --

6 A Then No. 3, SCM-3 is 2010 time schedule of
7 Pacific Cruises and Island Commuter, which states
8 they've operated about 100 days. Basically weekends
9 only.

10 JUDGE TOREM: Any objections to
11 Exhibits 2 or 3, the time schedules?

12 MR. WILEY: Your Honor, there is a
13 reference to daily operation after June through
14 Labor Day, so I think the description is somewhat
15 confusing by the applicant. But no objections.

16 A I'm just trying to rocket through them.

17 JUDGE TOREM: The description, as you
18 said, Mr. Wiley, speaks for itself. This is an
19 accurate description of the projected schedule for the
20 route. There's no contesting of the accuracy of the
21 document?

22 MR. WILEY: No.

23 MR. FASSIO: Your Honor, if I may, just
24 as a point of clarification, and I assume Mr. Wiley
25 and Mr. Schmidt can speak to the contents of this.

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1 But for the record, neither of these two tariff or
2 time schedules are currently on file with the
3 Commission. Staff's understanding is Island Commuter
4 Service as an entity is no longer operational, is no
5 longer a company that is regulated by the Commission.
6 So both of these can speak for themselves, however,
7 neither of these documents are currently active time
8 schedules that are on file.

9 JUDGE TOREM: That was my understanding,
10 that these were for past seasons, for 2010 and for
11 2011. They may not have applied in 2012. We will
12 hear further testimony. I guess we're talking about
13 the upcoming season, for 2013, to see what, if any,
14 boats will be circulating.

15 So 2 and 3 are admitted. Let's move on to the
16 next ones.

17 A SCM-4 is a shipper support statement from the
18 port director, Marilyn O'Connor.

19 Q Is she going to be available to testify today?

20 A No.

21 Q Okay. Let's deal with the shipper support
22 statements when we get to witness testimony. And if
23 by any chance she's not available, and you can confirm
24 that this afternoon, we will deal with a motion and
25 any objections from there, okay?

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1 So we will skip down to 10 and 11, which are
2 your ridership and revenue forecasts and your
3 pro forma financials. Hopefully, that will do well to
4 get us going onto the meat of the testimony.

5 A Okay. So again, they are self-explanatory, I
6 guess. They are my projections of rider and revenue
7 forecasts, No. 10.

8 Q Okay. I'm looking at the Bellingham Water
9 Taxi pro forma financial statement for Year One.
10 It's, I believe, a one-page document, Exhibit 10. And
11 it looks like a table talking about -- well, I'm going
12 to have you describe it, because to me it's not
13 self-explanatory. I haven't been running boats for a
14 number of years, Mr. McNamara.

15 A Okay.

16 Q The daily commute to Olympia from Pierce
17 County is slightly different than what you do.

18 A Basically, I pulled it out of my application.
19 It's just summer boardings and winter boardings and my
20 estimate of the passengers that will be traveling to
21 and from the stops that I hope to be providing service
22 to. The total revenue in the winter and the summer,
23 the approximate days. It's five days a week, two days
24 a week in the wintertime, and then total ridership,
25 total revenue.

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1 Q Can you go over where -- how many days per
2 week in the summer and winter and your proposed
3 schedules? I know it's in your application, which is
4 part of the record in this case, but it will help to
5 develop, so we're all on the same page, exactly what
6 your plan and proposal is for the service.

7 A Well, again, I just averaged it out. I -- as
8 revenue, I didn't believe that I would -- I didn't
9 want to factor in seven days a week. I plan on
10 operating seven days a week, but I wanted to average
11 it out at five days a week, because it made more sense
12 to me like that.

13 I guess I'm not sure how else to expand on it.

14 Q Just give me a day in the life or a week in
15 the life of the Bellingham Water Taxi as you would run
16 it so I can really understand what the business is
17 going to be.

18 A Okay.

19 Q From there, I can evaluate better the factors
20 in the statute as to whether this is a financially
21 sustainable route and a financially sustainable
22 business, given what you bring to the table.

23 A Okay. Well, as you guys know, this is a
24 start-up for me. I used to run charter boats all
25 throughout the San Juan Islands. My proposed service

0044

1 is to have two round trips a day servicing all the
2 islands on the route, out to Friday Harbor and all the
3 way back in, Orcas, Blakely, Lopez, all the ones on my
4 existing certificate, and hopefully my future
5 certificate. And then what this will do is provide
6 island residents the chance to get into Bellingham,
7 spend the day and get back out to Bellingham, which as
8 far as I know, hasn't been offered in a long, long
9 time.

10 And additionally, I want to do it year round.
11 I would limit my service some in the wintertime as
12 ridership would fluctuate up and down, but I hope to
13 provide the service so people can rely on catching
14 trains, catching planes, shopping, all of those
15 things.

16 Q So with that in mind, let's walk through
17 ridership and revenue forecast. You've got
18 destinations listed in the left-hand column. Would
19 that be the -- is that the geographic order of how you
20 would go from Bellingham to them?

21 A Yes.

22 Q And would Bellingham be --

23 A Well, no, actually, Vendovi would actually be
24 in between Eliza and Sinclair. And that's not a huge
25 thing. It was a private island for years and years,

0045

1 and now it's a State Trust, so who knows what that
2 would -- come about. Yeah, that's basically the
3 order.

4 Q And so I'm looking at the numbers that you
5 have for your -- at the top of the column for summer,
6 average five days a week, and winter, average two days
7 a week. Is that the number of people you expect to be
8 fare paying passengers each day?

9 A No, that's total.

10 Q Per week?

11 A Per week, yeah. Again, I hope to have -- I'm
12 planning on operating seven days a week, but this was
13 just a forecast saying -- lower numbers than I hope
14 will happen, but I think right in the target range of
15 where we can be a viable service.

16 Q And where is the summer and winter schedules
17 that you are projecting begin?

18 A In Bellingham.

19 Q Well, I mean datewise.

20 A I would have to look back in my tariff, but I
21 believe I ran through the end of -- beginning of May
22 through the end of September with summer. And October
23 through --

24 Q Okay. So five months for the summer, seven
25 months for the winter season?

0046

1 A I will have to look back. I may have included
2 all of October.

3 Q You will have to speak up, just to make sure
4 Terry Buzzard can hear you.

5 A Sorry. I might need to look back because I
6 think I might have included October in my summer.

7 Q And I'm just trying to also understand how you
8 came to the numbers that would be 100 per week in the
9 summer and 56 per week in the wintertime. What's the
10 basis for that?

11 A Like I said, I haven't looked at this since I
12 put the application in. I believe it's -- I totaled
13 up the daily boardings under, say, winter, two, two,
14 one, one, two, two, two, multiplied it by two days a
15 week, and that's your 56 a week.

16 Q I'm just not making sense of the numbers that
17 you have on this sheet versus what is in the
18 application itself perhaps might be different. How
19 did you come up with the idea that you would get two
20 daily boardings out of Bellingham or six daily
21 boardings in the summer? Where did these numbers come
22 from?

23 A Well, I used to run a water taxi service for
24 almost five years.

25 Q Where?

0047

1 A Oh, sorry. Charter boat --

2 Q Let's assume that I know nothing --

3 A Okay.

4 Q -- about your business, because you're
5 pretending -- there's nothing in the record except
6 this paper. I can't, if I don't understand it,
7 Mr. McNamara, evaluate anything.

8 A Okay.

9 Q So I need you to really take the
10 explanation -- I'm trying to ask the questions so you
11 can start talking, and you're giving me two-word
12 answers. I don't understand these numbers. And if I
13 have to evaluate it and I don't, there's not going to
14 be a permit at the end of the day for you or anybody.
15 So if I don't understand how to apply the figures --

16 A I got you.

17 Q Paper is not going to sail a boat.

18 A I ran a service for just about five years. It
19 was a charter boat business. Someone would call me up
20 and say, Hey, I want to go to this island at this
21 time, and I would take them. In that experience of
22 five years, I just took basically what I thought
23 people -- the ridership that would come off of each
24 island. I knew how many people I was running off
25 Eliza every single day, x, x, x, x. I didn't run to

0048

1 San Juan Island very often. Most of my services were
2 closer to Bellingham. So it was basically just a low
3 average for me to get a ballpark figure of where I
4 hope to be.

5 Q Now, you have an existing permit to serve all
6 of these destinations except the three on the
7 application for the extension.

8 A Correct.

9 Q Is that service in operation yet?

10 A No.

11 Q My understanding is that it was granted to
12 you, but you have a certain number of months to start
13 it up.

14 A 20 months.

15 Q And what's the deadline and what's your
16 target?

17 A The deadline is -- I believe it's from when
18 they issued the certificate, which was June of 2012,
19 so when does that make it? Middle of June, this
20 summer, and add eight months, and that would be my --
21 that would be the deadline. I hope to be up and
22 running this spring. I said in my opening statement,
23 I'm 100 percent dedicated to opening a ferry service
24 out of Bellingham. I think it's been far too long
25 that it hasn't been in service.

0049

1 Q Tell me a little bit more about the
2 preparation that you have done. Maybe that's on
3 Exhibit 11. We will go through the exhibits, then
4 I'll see if you want me to admit them if there's
5 sufficient foundation and information. You can make a
6 motion to have them admitted, and then we will see if
7 there are any objections to them.

8 A Okay.

9 Q If they are admitted, of course, they'll still
10 be subject to cross-examination. So I'm just trying
11 to get some of the bare bones out in advance.

12 A Okay.

13 Q So Exhibit 11 is your pro forma financial for
14 the first year, projected income and expenses. Why
15 don't you go through that.

16 A This has changed a little bit since I filed my
17 initial application. As I've worked on my business
18 plan more and more, I'm finding these costs are more
19 and these costs are less, so I updated this.

20 Q This is the updated version, right?

21 A Yes, sir.

22 I'm still working on securing a vessel. The
23 approximate lease or purchase would be, I'm guessing
24 about \$72,000 a year.

25 Q Are you in the midst of any negotiations to

0050

1 meet that figure ballpark?

2 A Yes.

3 Q Okay.

4 A Fuel, again, as I've been working the numbers
5 a little bit more in my business plan, fuel is one of
6 the biggest factors that we have. It just depends on
7 ridership. Two runs a day for the summer and -- or
8 two runs a day, daily in the summer, and then the
9 wintertime, I estimate is about \$5,000 in fuel. Of
10 course that depends on the boat that's being run and
11 how fast you put the pedal to the metal.

12 Q Okay.

13 A Again, these are all estimates. This is a
14 start-up company. I'm making the best guess that I
15 can with a lot of this stuff. Insurance I guessed
16 about \$12,000 a year. Repair, maintenance \$6,000 a
17 year. That could be a lot more. That's a minimum,
18 probably, for most anybody that runs boats. Dock
19 fees, 5,000. Miscellaneous supplies, there's always
20 something going on on boats.

21 Again, with all of this, I was trying to keep
22 it real simple. I've seen Mr. Schmidt's, and he's
23 been running for years, so his is very extensive
24 because he knows all those costs. I've kept this as
25 simple as I can right now.

0051

1 Office expense, \$5,000, phone, 1500,
2 advertising --

3 Q You don't have to read me the numbers. If
4 there anything about how you came to these numbers
5 that you want to tell me that would be helpful.

6 A Nothing in this, really. These are more
7 guesses. I mean, I would like to pay a captain above
8 average wage, which is about 60-, 65,000. One
9 captain, one crew.

10 Q Now, the revenue number that's at the bottom,
11 that's \$327,880. Where did we get that number from?
12 Is that from Exhibit 10?

13 A Yes, sir, the summer and winter revenue added
14 together.

15 Q So the two columns under summer, winter
16 revenue, you added those together and carried it over
17 to here?

18 A Yes, sir.

19 Q And it shows that you're projecting a \$13,380
20 profit for the first year.

21 A Uh-huh.

22 Q Okay. Anything else you want to tell me about
23 the ridership revenue forecast, how you came to those
24 and the pro forma financial statements?

25 A No, sir.

0052

1 JUDGE TOREM: So I take it that's --
2 Mr. McNamara is asking those to be admitted into the
3 record for what his projections are. Any objections
4 to his projections coming into the record?

5 MR. WILEY: Your Honor, I have a number
6 of foundation cross-questions. They'll be a
7 sufficient number that you'll probably want to admit
8 it, but I did want to reserve at this point.

9 JUDGE TOREM: Let's go ahead and save
10 those for cross-examination, Mr. Wiley. I think the
11 document per se, the weight of the evidence will be
12 what we end up with in cross. I'll admit them at this
13 time.

14 Q So right now, Mr. McNamara, we've got
15 Exhibits 1, 2, and 3, 10 and 11 from your original
16 exhibit list, discussed and admitted.

17 And you have the floor, still, to explain why
18 the Commission should grant the extension of the
19 current permit that you referenced back from June
20 should be expanded to these three additional
21 destinations. So the floor is yours, and then I'm
22 going to turn it over for cross-examination.

23 A Okay. I'll just speak off the hip here. This
24 is my first rodeo, so to speak, where I'm completely
25 representing myself in front of a JUDGE and the rest

0053

1 of you guys.

2 Basically, this came about because years ago,
3 I was running a small water taxi service, and I saw
4 the need back then. My struggle with that water taxi
5 was I would be running folks to an island and coming
6 back empty. So it didn't take long for me to realize
7 if I was running on a schedule, I could probably fill
8 the boat both directions. At that time, I applied for
9 another certificate. And Mr. Wiley and Drew Schmidt
10 will remember this, we hashed it out again and settled
11 on a certificate that limited me to an 18-passenger
12 boat.

13 After that, after I was awarded the
14 certificate that same year, I went through a fairly
15 difficult divorce and lost my house and my boat and
16 subsequently let my certificate at that time lapse.
17 And that was revoked or relinquished or taken away by
18 the Commission. I'm in a completely different
19 situation now, so I guess I'm trying to give you some
20 of the history.

21 It's a long -- it's a long history with Drew
22 and I, as we were -- we've always been kind of
23 competitors. And as the years have gone by, I've seen
24 public outpouring out there, and they are not getting
25 the service that they -- that they expect they should

0054

1 be getting. They don't -- most people in the islands
2 and in Bellingham don't know that there's a commission
3 that regulates it, that only one boat or two boats can
4 do it, that they have to live up to this service or
5 they -- or their certificate should be cancelled.

6 MR. WILEY: Your Honor --

7 A So I started asking the questions, and after
8 regrouping and remarrying and moving to Alaska and
9 coming back, I decided I'm ready to do it and applied
10 for the certificate to do it again.

11 I purchased all the stops but one from Pacific
12 Cruises' existing certificate -- or past certificate I
13 should say, and I'm off and running. All I need is a
14 boat. And like I said, I'm trying to be in service by
15 this spring.

16 Q Okay. Some of the things that I want to make
17 sure we cover is the statutory criteria. And again,
18 I'll just read it this one time, and it will apply to
19 both certificates as we go forward.

20 The factors that have to be out there, we have
21 to prove somehow at this hearing for either applicant
22 that you have the financial resources to operate your
23 proposed service for at least 12 months. And the
24 issuance of a certificate, in this case, an extension
25 of yours to Friday Harbor and the other two stops, is

0055

1 not limited to the following factors: We have the
2 ridership and revenue forecasts. We've already talked
3 about that.

4 The cost of the service of the proposed
5 operation, and I think we've looked at that somewhat
6 in your Exhibit 11. An estimate of the cost of the
7 assets to be used in providing the service, a
8 statement of total assets on hand that the applicant
9 will be -- your assets that will be expended on the
10 proposed operation. And you've already covered
11 somewhat a statement of your prior experience.

12 What I haven't seen yet, Mr. McNamara, is any
13 indication as to what assets you have on hand to
14 engage in this \$72,000 a year estimated vessel lease
15 and all the other fees that are there on the cost side
16 of your ledger. So if you can give me some testimony
17 on the assets or the financing that you've been able
18 to arrange or you are negotiating, that will help
19 flesh out the record.

20 A Sure. And that's actually what I brought to
21 submit if I need to, because it's much different than
22 what was in my original application. I've used the
23 guidance of the application and just filled out my
24 existing situation. Basically, I can submit that or I
25 can just go through what I have.

0056

1 Q I've got your original application, and if you
2 want to walk through anything that's changed, that
3 would be a regulatory filing. We would need to have
4 the paperwork to know what we are trying to approve
5 here.

6 Again, for your application, there's one
7 that's been approved already in another docket going
8 back to June, and this extension has to build on that
9 or tell us what's changed.

10 A Yes.

11 JUDGE TOREM: Mr. Buzzard, can you hear
12 us okay there?

13 MR. BUZZARD: Yes, fairly well. Yes,
14 sir.

15 JUDGE TOREM: I'm hearing a little bit
16 more of breathing on your end, so I know we can hear
17 you pretty well. If you can back just a little bit
18 away from the microphone, that will help us on this
19 end.

20 MR. BUZZARD: Well, I'll try to stop
21 breathing.

22 Q All right. Mr. McNamara, you can walk us
23 through the assets to show that you are financially
24 viable to do this for 12 months, so it becomes part of
25 the record in the hearing. If it goes from the

0057

1 original filing, that's fine. If it's something
2 different, you will need to testify to it today so
3 Staff and the other parties can understand what you
4 are actually proposing be approved.

5 A Well, obviously, it was a very long time ago,
6 and a lot has changed in my life since that original
7 filing.

8 Q Well, I think this original filing is
9 July 30th, 2012.

10 A Yeah, which was the middle of the summer. I
11 was still living in Alaska at that time. So I guess I
12 will need to admit this. I brought copies for
13 everybody.

14 Cash on hand -- do you want me to just read
15 through it?

16 Q Do you have copies for everybody? Why don't
17 we hand it out so that --

18 A I have five copies and I can make more.

19 Q If you can hand one to Mr. Wiley, Mr. Fassio
20 and myself.

21 A Okay.

22 Q So you have handed me an updated financial
23 statement.

24 A Correct.

25 Q The date on it is January 24th, 2012. Where

0058

1 would this be different than what's in the
2 application? Can you direct me to the page number of
3 the application?

4 A Yes, that's what I was trying to find here.

5 Q I'm looking at Page 9. Item 12 has a
6 financial statement. Is that the numbers that
7 changed?

8 A Yes.

9 MR. FASSIO: Your Honor, for the record,
10 this is a -- Staff did propose a cross exhibit, which
11 is the commercial ferry application, as well, so we do
12 have that as a proposed exhibit, the application. And
13 it's -- for purposes of the record, that is Page 3 of
14 22.

15 Q Okay. Let's use that. Let me get that copy
16 out and we can refer to that one as your proposed
17 cross-exam exhibit. Let's number this one as SCM-12.

18 JUDGE TOREM: Mr. Buzzard, do you want
19 me to swear in the dog?

20 MR. BUZZARD: Just swear at him.

21 JUDGE TOREM: All right. I want to be
22 able to distinguish between my other witnesses,
23 though, Mr. Buzzard so we will have to see.

24 Q All right. So we have in front of us, then, a
25 proposed update to what I've now got marked from

0059

1 Mr. Fassio's cross-exam exhibits as SCM-12. This is
2 the commercial ferry application that came in on
3 July 30th, 2010.

4 JUDGE TOREM: Is there any objections to
5 admitting the original application?

6 All right. So that's admitted. The page that
7 it's on, Mr. Fassio, is Page 3 of 22. So we're all
8 tracking, the application itself is Page 9. It's the
9 third page of the document, but there's competing page
10 numbers. The Page 3 of 22 is in the upper right-hand
11 corner, and because that's the exhibit, those are the
12 page numbers we will refer to. So if we move around
13 in this particular document, let's use the ones that
14 we have in the upper right-hand corner.

15 Q Mr. McNamara, we're back to you, and
16 explaining how this update is different or how the
17 application has changed since July.

18 A Well, I guess this would be all that's changed
19 in the application for the most part. I think as --
20 as anybody goes along in life, their financial
21 situations change from time to time. So I just
22 updated it as much as I could. In my original one, I
23 was -- I -- I don't know what you -- it's just
24 changed, considerably.

25 Q So what --

0060

1 A I have less cash in the bank at this point,
2 less stocks in other companies at this point.
3 Machinery and tools is a vehicle that's worth probably
4 about \$40,000. And then I have outright owned real
5 estate in Alaska that's worth approximately 350,000.
6 I appraised it at 440,000, but I put 350- because that
7 was probably a more reasonable sale price.

8 Q Okay. So --

9 A So the set -- total of 423- is a line of
10 credit that I could take out potentially if I wanted
11 to, and then notes payable is a balance of \$8,000 to
12 Pacific Cruises Northwest. We came up with a purchase
13 agreement. I would pay him \$2,000 a year for five
14 years or pay it off at any time.

15 Q So previously, the balance was -- on the
16 original application, was 10,000, so that reflects the
17 first payment of 2,000?

18 A Correct.

19 Q Okay.

20 JUDGE TOREM: Let's mark this updated
21 financial statement as SCM-14. The application has
22 been marked as 12, and I went ahead and I thought I'd
23 keep the other letter that Mr. Fassio had as 13.

24 A Okay.

25 JUDGE TOREM: We will add this as

0061

1 Exhibit 14, and this is essentially an updated
2 financials to the application. And it's just the one
3 page.

4 A Correct.

5 Q Now, you brought this along. Is there any
6 other -- besides your sworn testimony today, any other
7 evidence for the numbers here?

8 A Yeah. If I need to submit it now, I have a
9 letter of intent from an investor. I brought copies
10 of that as well.

11 Q Well, before we move on to another source of
12 financing through the investor, I just mean as to
13 these numbers, are there any other background
14 documents that we need to either add to this exhibit
15 or mark as a separate exhibit?

16 A No, sir.

17 JUDGE TOREM: Any objections, based on
18 the representations of Mr. McNamara, admitting SCM-14?

19 MR. WILEY: None.

20 JUDGE TOREM: Okay. That one is
21 admitted as well, then. All right.

22 Q Did you want to continue to testify? That's
23 up to you, or questions that may come in
24 cross-examination as to other investors.

25 A I guess as the day goes on, I'll be testifying

0062

1 more and building my case more.

2 Q Well, this is the time to build your case
3 through your testimony.

4 A Okay.

5 Q The shipper support statements and those
6 witnesses will be the remainder of it.

7 A Okay.

8 Q And as the day goes on, we are going to have
9 your cross-examination, and then I'll shift to
10 examining Mr. Schmidt's application. So I don't want
11 you to think that later on today you are going to get
12 to chime in when you think it's right. This is your
13 time.

14 A Okay. Again, I don't have a lot of fluff to
15 add to the proceedings here. I think it's a really --
16 a fairly simple case. I know that there's going to be
17 a lot thrown in that I'm not aware of. I'm not a
18 lawyer, I don't know the law that well, as all of
19 this. I know that I would like to run a ferry service
20 to provide folks with the opportunity to travel.

21 Q Well, that's --

22 A And there has been monopoly on it for years
23 and years and years, and the residents in the San Juan
24 Islands have suffered for it.

25 Q It's ultimately clear to me that you think you

0063

1 can do a better job than what's been done in the past.
2 At least part of the Commission's interest is, is
3 making sure, if they grant a certificate, it's a
4 monopoly. It's the way we do business, like it or
5 leave it. If we issue it to you and allow you to run
6 to Friday Harbor, the major port in the San Juan
7 Islands, then not only is the Commission counting on
8 you providing the service, so are the people that are
9 going to be served by it, because no one else can do
10 it. So the Commission has to have enough information
11 to know if we agree with you, that you are the person
12 to do this service at least as it's been done in the
13 past, going forward, or better.

14 So if there's anything else you want to
15 testify now going forward on that, this is the time to
16 tell me. And not just the opinion, but the facts
17 showing how you are going to do it.

18 A Okay. But I'm not talking about any of my
19 shipper support statements yet.

20 Q Not yet. This is your testimony, and we will
21 hear from them. I think as Mr. Wiley said, the
22 shipper support statements would help establish for
23 the record that there's a need for this service. And
24 why they think you can provide it or not may be some
25 part of the controversy, if there is any, from those

0064

1 testimonies. But they will show that they want
2 somebody providing a boat. If we get into they want
3 you over anybody else, we can ask those questions to
4 them on the record.

5 A Okay. At this point, I don't have a whole lot
6 more evidence. Again, it's a start-up company, I
7 don't -- presently I don't have a boat. I have
8 options of boats. I do have an existing certificate,
9 which I definitely will fulfill at some point before
10 it runs out. Whether I get Friday Harbor or not, I
11 plan on offering a good service to all the folks that
12 are out there already.

13 I guess I don't have anything else to say
14 besides...

15 JUDGE TOREM: Let me switch, since we
16 started with the Commission's cross-exam exhibits.

17 Mr. Fassio, if you are ready to
18 cross-examine Mr. McNamara from Commission Staff's
19 point of view, and then I'll come back to Mr. Wiley.

20 And, Mr. Buzzard, at some point, I'll see if
21 you have any questions as well.

22 MR. BUZZARD: All right.

23 JUDGE TOREM: So I'm going to move my
24 microphone closer to where Mr. Fassio can make use of
25 it.

0065

1 Mr. Fassio, go ahead.

2 MR. FASSIO: Thank you, your Honor.

3

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

5 BY MR. FASSIO:

6 Q Good morning, Mr. McNamara.

7 A Good morning.

8 Q I'm going to go through some of the exhibits
9 that you filed today, and any of my questions will be
10 in the nature of clarifying questions to make sure
11 that I understand what you have filed.

12 If you could refer just first to your -- this
13 is SCM-12, that has been recently admitted. This is
14 your application. If you will refer to that, please.

15 A (Complies.)

16 Q And specifically starting with Page 6 of 22.
17 It's your certificate. I believe it's your current
18 certificate.

19 A Oh, okay. I have it here.

20 JUDGE TOREM: Mr. Fassio, do you have
21 another copy of the cross exhibit? It would just make
22 it that much --

23 MR. FASSIO: Yeah.

24 Q I want to just clarify, this shows what's in
25 your current certificate; is that correct?

0066

1 A Yes, sir.

2 Q According to this document, it's dated
3 5/31/12, correct? And there's a service date of
4 June 4th, 2012?

5 A Yes.

6 Q And so currently, you had authority between
7 Bellingham and Obstruction Pass. That is on Orcas
8 Island; is that correct?

9 A Yes.

10 Q And with various flag stops in between?

11 A Correct.

12 Q Now, is Obstruction Pass, just for clarity of
13 the record, is that near the Village of Olga on Orcas
14 Island?

15 A Yes.

16 Q And just perhaps you could just explain what
17 is a flag stop? What distinguishes a flag stop from a
18 destination?

19 A In my mind and my understanding on how the
20 Commission rules, is a flag stop is something that I
21 think -- and I don't know for sure, but back in the
22 day, they used to raise the flag and they would stop
23 at the island. But mainly how I see it, I'm always
24 going between X and X, and if somebody calls in and
25 wants me to stop at a flag stop, I'll stop there. But

0067

1 it's not necessarily a place you're going to stop
2 unless you have a reservation or have somebody
3 standing there raising a flag.

4 Q So under your current certificate, you'll be
5 offering a scheduled service between Bellingham and
6 Obstruction Pass on Orcas Island. And if a customer
7 has a need or comes to you and says, I would like to
8 stop at one of the other flag stops that you
9 identified in here, then you would serve that along
10 your route?

11 A Absolutely, correct.

12 Q And you have already testified that you have
13 yet to initiate service under this current certificate
14 and that you believe you have 20 months to initiate
15 service. So subject to check, would that be on or
16 about January 31, 2012 [sic], if we're adding 20
17 months from May 31?

18 A Yes.

19 Q And you recall when you received authority by
20 a Commission order, you were required by that order to
21 file a progress report every six months as to the
22 progress of initiating service?

23 A Yes.

24 Q And did you file a progress report?

25 A I did.

0068

1 Q Within the first six months?

2 A Yes.

3 MR. FASSIO: Staff has identified a
4 cross exhibit.

5 JUDGE TOREM: That's the one I've
6 already marked as 13.

7 MR. FASSIO: It is exhibit SCM-13.

8 JUDGE TOREM: Mr. Fassio, this is the
9 letter dated November 1st; is that correct?

10 MR. FASSIO: That is correct.

11 Q I guess I really have perhaps one question on
12 this, is that you indicated in that letter that you
13 plan to be up and running spring of 2013.

14 A Yes, sir.

15 Q And that was as of November 12th, and you were
16 referring to your existing authority. Has that
17 projection changed in terms of running existing
18 authority, or do you have any updates?

19 A No, it's still my hope. It's been delayed a
20 little bit because this was pushed back so far. This
21 shouldn't change it at all, but it has -- maybe a
22 little bit more of my time has been focused on this
23 hearing. I still...

24 JUDGE TOREM: Speak up, Mr. McNamara.

25 A Sorry. Yes, I still plan on offering service.

0069

1 I'm not guaranteeing it, because I do have the 20
2 months, but I'm certainly doing my best to provide the
3 service as soon as I can.

4 Q And if the extension of your authority is
5 granted in this case, would your plan be to provide
6 the extended service to coincide with the start-up of
7 your service that you have initially, or do you have
8 any -- would it come about at a different time? How
9 do you foresee --

10 A That would start up immediately, right into my
11 existing service certificate.

12 MR. FASSIO: That's the only question I
13 have about that cross exhibit at this time, your
14 Honor.

15 JUDGE TOREM: Do you want me to admit
16 that exhibit?

17 MR. FASSIO: Yes, I would ask that the
18 Commission admit SCM-13, your Honor.

19 JUDGE TOREM: Exhibit 13 is an
20 eight-page document. Any objections to it?

21 MR. WILEY: No, your Honor.

22 JUDGE TOREM: Hearing none, SCM-13 is
23 admitted.

24 Q So, Mr. McNamara, in your current application,
25 you are seeking the additional stop of Friday Harbor

0070

1 on San Juan Island and the expansion of flag stops
2 at Cypress and Vendovi Islands; is that correct?

3 A Correct.

4 Q And in Bellingham -- I'll ask you about your
5 docking locations that you propose in your current
6 application. In Bellingham you will be docking at
7 either Squalicum Harbor, Bellwether Hotel or
8 Bellingham Cruise terminal?

9 A Correct.

10 Q Have you determined yet whether you will be
11 serving all three of those locations or one of the
12 three that works best?

13 A The one that works best, yeah. I won't be
14 touching on all three of those stops.

15 Q Okay.

16 What is your progress in securing the docking
17 locations in Bellingham specifically? What is the
18 current status of your securing those locations?

19 A Well, the commercial -- the ferry terminal
20 where Pacific Cruises runs out of has space. I
21 haven't negotiated a lease with them. Basically, I'm
22 still waiting to -- I've been waiting to see what
23 happens here, waiting to finalize a vessel.

24 Q Have you --

25 A My preference would be in Squalicum, as it's

0071

1 much more protected for year-round operation. But
2 there's not a lot of options.

3 And then my last two years, when I was
4 operating my water taxi service, I operated off of
5 Bellwether Hotel's dock. And I spoke with the general
6 manager there, and he's interested in talking more
7 about possibilities.

8 Q Have you secured docking rights on Orcas
9 Island and Obstruction Pass?

10 A Well, it's kind of an interesting situation
11 out there. There's an area called Lieber Haven. He
12 has a dock. I haven't been out there in years. His
13 name is Dave Baxter, he's a really nice guy, and he is
14 welcome to the service. You never know what state his
15 dock is going to be in. There is a State dock there,
16 as well, that boats use from time to time. So that is
17 definitely a possibility. He's open.

18 JUDGE TOREM: I'm not sure I understood
19 if you answered the question. You gave a couple of
20 places you might pull your boat up to.

21 MR. McNAMARA: Sorry. I haven't
22 secured -- I have nothing in writing. I had a
23 conversation with the owner of Lieber Haven, telling
24 him that I would like to provide service there. He
25 said I could use his dock. But my point was,

0072

1 sometimes, in the past when I've been out there, his
2 dock was in a state of disrepair, and it wasn't real
3 safe for passengers. But right next to his dock,
4 there's a small State dock, that if the boat is small
5 enough, it could dock there.

6 JUDGE TOREM: Do you have to make a
7 leasing arrangement to use that dock for commercial
8 operation?

9 MR. McNAMARA: As far as I know, you
10 probably do. I have not secured it with the State. I
11 used it with my water taxi and didn't have any issues.

12 JUDGE TOREM: So this Lieber Haven, when
13 you said he's welcome to the service, he's welcoming
14 to your service coming there as well, as a mutual --
15 you would serve him, he would be happy to have you
16 serve that dock?

17 MR. McNAMARA: Oh, yeah, absolutely.

18 JUDGE TOREM: Okay. Now I have a better
19 understanding of what you said.

20 MR. McNAMARA: Sorry.

21 JUDGE TOREM: Thank you.

22 MR. McNAMARA: Yes, he's very excited
23 about it.

24 Q And if your extension is granted, you are
25 proposing to add Friday Harbor as a stop on your

0073

1 route, as you have testified. Have you obtained
2 permission, or what is your status of obtaining
3 permission to dock at Friday Harbor at this point?

4 A Again, just a conversation with the
5 harbormaster over there. She's welcome to it, as long
6 as it doesn't conflict with other boats' docking
7 times. If I got closer, I would have to look at who
8 is there at what time. But she's pro. Sign a lease
9 with them and pay a passenger fee. They are welcome
10 to business over there, it seems like.

11 Q So you anticipate that if your extension is
12 granted to Friday Harbor, then you will be able to
13 negotiate a lease and secure docking rights to Friday
14 Harbor as you are initiating.

15 A Absolutely.

16 Q And I want to ask you about your flag stop at
17 Cypress Island and Vendovi Island. I'm going to ask,
18 why do you seek extension of authority to Cypress as a
19 flag stop?

20 A It's a big camping/kayaking area. A lot of
21 people like to kayak out there, or kayak from there,
22 or get dropped off and kayak around the San Juan
23 Islands. So I'm passing the island in the boat
24 anyway, and I would like to provide as much service as
25 I can to every island. I don't want to drive by an

0074

1 island and not provide the service if it's possible.
2 I named it in there just for future -- future
3 possibilities, I guess.

4 Vendovi is the same thing. Just in the last
5 several years it's -- it was a private island for I
6 don't know for how long, but a very long time. But
7 now they've put a state park or have limited use for
8 day hiking and stuff out there. That's why I added
9 Cypress, because you're driving right by it.

10 Q To your knowledge, are there residents that
11 live on Cypress Island as well?

12 A There are a few, yes. I don't know a lot
13 about how they get back and forth. I think there's a
14 caretaker up there. Yeah, it's kind of a -- there's a
15 lot of history on all the islands out there. I'm not
16 sure how many people actually live in Cypress. It's
17 not a big destination.

18 Q And you are going to be provide year-round
19 service to Cypress?

20 A Flag stop service, sure, yes.

21 Q And --

22 A It's an interesting spot, because it's been in
23 a lot of other certificates, but there's no dock on
24 Cypress Island. It would be a beaching situation,
25 where you beach the boat and people would hop off.

0075

1 Q You don't need to secure a dock to stop at?

2 A No.

3 Q So you just pull the boat up?

4 A Drive it on the beach and put a ramp down or
5 put a ladder down and unload passengers on the beach.
6 And again, that depends on the vessel, whether you can
7 do that or not.

8 Q When you described earlier -- and we will go
9 back to your information on your expenses and docking
10 fees. Like Cypress Island is not something that would
11 involve any docking fees?

12 A No. I think there may be a state permit that
13 you need to have to drop people off there, like Sucia
14 and some of the other state parks up there require you
15 to have a state permit, but it's very minimal.

16 Q Is the boat that you are looking at purchasing
17 capable of landing on a beach at Cypress Island as you
18 have described?

19 A Yes. When I ran my water taxi, that was
20 probably -- 30 percent of my business was passengers
21 who wanted to land on a beach somewhere in the San
22 Juan Islands. There's a lot of private residences out
23 there and a lot of state parks where you just pull up
24 on the beach and let them out.

25 Q Let me ask you briefly about Vendovi Island

0076

1 flag stop. You mentioned that this was a private
2 island that's now been purchased. Is that the
3 San Juan Island Preservation Trust that purchased
4 that?

5 A Yes.

6 Q They purchased it in 2010?

7 A Something like that, yeah.

8 Q Does anybody live there, to your knowledge?

9 A Not to my knowledge. They might have a
10 caretaker or something on the island now, but no.

11 Q And have you obtained any permission or do you
12 understand the requirements for what it would take to
13 dock at Vendovi Island?

14 A I haven't obtained permission. Like I said,
15 it's just come up to where the public is going to be
16 allowed to access the island. It's a beautiful
17 island, and I think their plan is to have hiking,
18 maybe Boy Scouts and that kind of thing go over to the
19 island and explore it. But no, I haven't talked to
20 the San Juan Island Preservation Trust directly.

21 Q Are you aware that, at least according to the
22 website for San Juan Island Preservation Trust, it
23 currently says the island is open for visitation daily
24 from May to September, but closed to visitors from
25 October to April?

0077

1 A Yes.

2 Q So given it's closed in winter, will you be
3 offering flag stop service only during the summer
4 months, then?

5 A Well, I would think I could continue to offer
6 it. I think if there's nobody out there then yeah, of
7 course I'm not going to stop. I'm not going to break
8 their rules. If they wanted to get a group of
9 volunteers to work on the trails in the winter or
10 something like that, I would offer that stop for sure.
11 But if it conflicts with their rules, I wouldn't.

12 Q And are you aware of the visitor guideline
13 there, again on their website, that says that there
14 are no groups larger than ten unless prior
15 arrangements are made at the San Juan Island
16 Preservation Trust? Are you generally aware of that
17 restriction?

18 A Yes.

19 Q And if you offer service to the island, how
20 will you address that issue if larger groups want to
21 visit?

22 A Just directly with them. I would imagine it's
23 going to be pretty close. It's a pretty fragile
24 environment, because it's kind of been locked in a
25 time bubble. So they don't want thousands of people

0078

1 out there starting fires and camping and stuff like
2 that. So I would notify them, Hey, I have a group of
3 20 people who want to come over, would that be okay?
4 If that's not, we will work around it.

5 And it's the same as Eliza Island, it's a
6 private island. You can't just drop anybody off
7 there. You have to be the property owner or know
8 somebody on the island. There's a year-round
9 caretaker who is there.

10 Q I would like to turn to some of the issues
11 about -- relating specifically to financial fitness,
12 and your vessel that you are planning to purchase for
13 the authority that you are seeking.

14 Do you anticipate that the vessel that you
15 need to service your extended authority would differ
16 in any way from the vessel that you would purchase if
17 your authority wasn't -- under your -- let me rephrase
18 that.

19 Do you believe that the vessel that you would
20 purchase, if you are granted the extension, would be
21 different, or would you need a bigger vessel than if
22 you are not granted the authority and you merely are
23 serving between Bellingham and Orcas Island?

24 A Yes.

25 Q So you think you would need a larger vessel --

0079

1 A Yes.

2 Q -- to do that?

3 A I believe that a considerable amount of --
4 more passengers would travel between San Juan Island
5 and Bellingham. There's a high population -- not a
6 high population, but that's the highest population of
7 residents. Maybe Orcas has a few more. But that's
8 kind of the jewel out there. You know, when people
9 think of the San Juan Island, they want to go to
10 Friday Harbor. So yeah, that definitely may influence
11 what I lease or purchase.

12 Q On your application on Page 2, under listing
13 vessels that are owned, you say vessel to be leased,
14 purchased upon approval. What size vessel -- can you
15 give us an idea of how many passengers that vessel
16 would hold, again for your service to Friday Harbor?

17 A I would like to get it between 35 to 49
18 passengers for Friday Harbor. I think down the road,
19 once it's an established route and people can rely on
20 the service, it could be up to 100 passengers, easily.

21 Q And do you know whether that's going to be
22 leased or purchased, or have you not made that
23 decision yet?

24 A Yeah, it's still -- I'm just jumping between
25 vessels right now. You can see in my progress report,

0080

1 there's several different boats there.

2 Q But do you understand that you would need to
3 have a certificate of inspection from the Coast Guard
4 for your vessel before you are permitted to operate
5 it?

6 A Yeah, definitely.

7 Q Do you know approximately how long that
8 certification would take once you acquire the vessel?

9 A All the boats that I've considered right now
10 all have their existing certificate of inspection,
11 COI, as they call it. Most people who own boats won't
12 let that go or lapse, because it's difficult from the
13 Coast Guard to get it back. Not difficult, but you
14 don't want to let it lapse.

15 Q If I could turn to your ridership forecast, I
16 believe that's Exhibit SCM-10. I have a few questions
17 about that exhibit.

18 I would like to pick up on a few questions
19 that JUDGE Torem asked you, just regarding
20 clarification. As we're looking at the -- you've
21 listed summer daily boardings, winter daily boardings.
22 I take it this describes your total service, inclusive
23 of what you already have, as well as what you would be
24 getting if the Commission approves an extension.

25 So looking at this chart, when it says,

0081

1 Bellingham summer daily boardings, is that six people
2 getting on in Bellingham and traveling to some other
3 location on your route?

4 A I believe I figured it, those are folks coming
5 to Bellingham.

6 Q And where would they be coming to Bellingham
7 from, from all other locations?

8 A Yeah. Basically, I've got it so all the other
9 stops I'm thinking these people are coming from
10 Bellingham going to these islands on a daily basis.
11 Six people coming into Bellingham.

12 Q So --

13 A It looks like this probably could have been
14 redone to make it a little more user-friendly, but it
15 is what it is.

16 Q I guess I want to understand. For example,
17 when you say Cypress and there's 2 next to Cypress,
18 what does that number mean?

19 A Two passengers. I estimate dropping two
20 passengers off or picking two passengers up from
21 Cypress.

22 Q Dropping off or picking up?

23 A Yes.

24 Q And San Juan, is that the same, either
25 dropping off ten passengers or picking up ten

0082

1 passengers?

2 A Yes. Again, it's a start-up. I base this on
3 my water taxi experience. It's just an uneducated
4 guess.

5 Q And just so I understand, I would like to
6 understand the difference between rural ridership
7 forecast here and -- in absence of an extension of
8 authority. So if there are 39 summer boardings, all
9 inclusive of your extended certificate, how many
10 boardings are represented by merely the extended
11 portion, I guess, looking at these numbers?

12 A Well, I just -- I guess you would just
13 subtract San Juan Island and Vendovi and Cypress, and
14 that would be 13.

15 Q And then in winter, it would be...

16 A About three, sorry.

17 Q So do you have -- and again, I guess we don't
18 have -- I'm asking you to perform a calculation and
19 that's not necessarily fair. But do you have some
20 sense of the revenue, just a ballpark sense of the
21 revenue differences, or the revenue that would be
22 generated?

23 A I guess if you add up -- San Juan Island is
24 70,000. And what do you have here for Cypress?
25 That's 84,000. Add Vendovi in there, which Vendovi is

0083

1 a real crap shoot. Who knows what's really going to
2 happen with Vendovi. I'm hoping to get to them.
3 \$91,000 difference.

4 Q So basically --

5 A It's considerable.

6 Q So basically, you have about 16 -- potentially
7 16 passengers that are represented by that. In your
8 calculations it's \$70 per round trip for a revenue
9 figure?

10 A Correct.

11 Q Okay.

12 A And again, that's an average as well. In my
13 tariff, I've got the closer islands at \$60 round trip,
14 mid islands, say like at Orcas, at 70. And San Juan
15 Island at 80. So split that.

16 Q I don't have any other questions on that page
17 now.

18 If I could turn to your SCM-11 exhibit. And
19 your add vessel expenses, I understand you testified
20 earlier that these are just estimates and that you are
21 still in the process of looking at a vessel. So you
22 will know the actuals when you actually obtain the
23 vessel; is that correct?

24 A Yes.

25 Q Again, these expenses are -- all of these

0084

1 expenses are assuming that your extension is granted.
2 These are all inclusive expenses of the overall
3 authority that you will have at the end of the day?

4 A Correct. And again, they are not as detailed
5 as they will be once I have a better sense of the
6 vessel and office space and docking and all of that.

7 Q Under dock fees, you've listed an annual of
8 \$5,000. Can you expand on what makes up that dock
9 fee, the 5,000 estimate? What docks are involved in
10 that?

11 A Again, it depends on the size of the vessel.
12 You know, say it's at the Bellingham Cruise Terminal,
13 it's by foot, so it could be anywhere from \$200 to
14 \$500 a month. Friday Harbor and Bellingham both
15 charge passenger fees, privilege to use their
16 facilities. So I'm not sure what it is in Bellingham
17 anymore. When I was there last, I believe it was \$5 a
18 head if you weren't renting space in their cruise
19 terminal and 250 if you were. I believe it's similar
20 in Friday Harbor.

21 Dave Baxter, the owner of Lieber Haven resort,
22 he's kind of open for discussion on that. He thinks
23 maybe two dollars a head, or maybe he gets a free
24 ride.

25 Q And you mentioned you didn't have any dock

0085

1 fees that -- you didn't calculate an estimate of dock
2 fees in for Cypress and Vendovi in that calculation?

3 A No. Or Eliza or Sinclair.

4 Q And you've listed captain and crew expenses.
5 Are you -- well, you're a captain of a vessel.

6 A Yes, sir.

7 Q And you've been -- is that you, the captain,
8 or would be hiring a boat captain?

9 A That would be me for the first year. Not
10 entirely. I would probably have some relief, but it's
11 a ballpark figure. Me and possibly one relief
12 captain.

13 Q In the previous exhibit, I asked you to kind
14 of separate out the revenue ridership portion of that
15 with respect to the addition of Bellingham -- or the
16 addition of Friday Harbor, Cypress and Vendovi. I
17 would like to get a sense from you on your expenses,
18 how much of these expenses here would be, I guess,
19 related to the addition of those stops?

20 A I think probably the biggest one would be
21 fuel. It's a farther run to Friday Harbor. Probably
22 could knock off \$25,000 easily, if you're not making
23 the run to Friday Harbor. All the other expenses
24 would be the same, similar.

25 I mean, I don't anticipate that insurance is

0086

1 going to be any different. Obviously, the dock fees,
2 if you're not paying anything at Friday Harbor, you
3 can take off the dock fees there. Most expense is
4 passengers. If you are carrying a lot of people, you
5 are paying more for docking.

6 Q So this statement indicates that you expect to
7 earn a profit in the first year on all of your
8 operations; is that correct?

9 A Correct.

10 Q And you testified that you would have -- that
11 some of your expenses, your fuel expenses could be
12 significant. You also have revenue. Would the -- I
13 guess what impact on profit does the addition of your
14 extended authority have on this statement versus if
15 you didn't have it? Would you still earn a profit if
16 you didn't have that?

17 A I don't think so. I mean, if you go back, it
18 would be about 90,000 --

19 MR. WILEY: I can't hear him, Your
20 Honor.

21 JUDGE TOREM: Can you speak up, because
22 I'm having trouble hearing you too.

23 A Sorry, I'm turning my head.

24 Back to the ridership, it was about a \$90,000
25 difference. So if you took just \$25,000 off here, it

0087

1 probably wouldn't be -- it would not be as profitable
2 the first year.

3 Again, my numbers on here I think are fairly
4 low. Orcas has -- boy, it's got to be at least two or
5 three thousand year-round residents, and they would
6 definitely benefit from the service. So I shot pretty
7 low on my estimates here. Hopefully, we can do more
8 than that.

9 Q Thank you.

10 And on your updated financial statement,
11 SCM-14, as you testified, I believe you testified that
12 your estimate, looking at that, you have about
13 \$423,000 line of credit between various cash and other
14 holdings that you have to draw on as needed to support
15 the business; is that correct?

16 A Correct. My current business plan I'm looking
17 at some private investors, SBA loans, that kind of
18 thing. So again, a lot hinges on what kind of boat
19 I'm going to be getting into and how much money I'm
20 going to be spending out of my own pocket.

21 Q So if your ridership estimates that you've
22 projected here don't pan out, and you don't see the
23 kind of revenues that you projected, do you feel that
24 you have sufficient reserves in your accounts and the
25 like to still survive financially --

0088

1 A Yes.

2 Q -- if you were to lose money in the first
3 year?

4 A Yes.

5 MR. FASSIO: One minute, your Honor. I
6 just want to make sure I've covered everything.

7 (Pause in the proceedings.)

8 Q One clarifying question. It may come up, and
9 I don't want to address the shipper support statements
10 right now, but there's a reference to a company called
11 Bounding Main, LLC, but I don't see that in your
12 application.

13 A Yeah.

14 Q Can you could briefly just --

15 A Sure. Bounding Main was a corporation I had
16 in Alaska. We started a small restaurant up there
17 that we didn't really follow through with. It wasn't
18 real successful. But that was a corporation. So when
19 I first put my application in, I said, well, I should
20 put it under my corporation. But when I went to do
21 that, I was still in Alaska, and it was registered in
22 Alaska. So it was easier for me to do a sole
23 proprietorship to get through the application process.
24 And depending on what happens here, I'll be forming a
25 corporation and changing my name and all of that

0089

1 before I start service.

2 Q Currently, you are a sole proprietorship
3 operating as Bellingham Water Taxi?

4 A Yes. Bounding Main is still in Alaska, but it
5 will probably be dissolved.

6 Q And you are the sole owner?

7 A My wife and I.

8 MR. FASSIO: I believe that's all the
9 questions I have at this time, your Honor. Thank you.

10 MR. McNAMARA: Thank you.

11 JUDGE TOREM: Okay. I think we've hit
12 that spot in the day where it's 5 after 11:00. We
13 will take a break for at least ten minutes. Let's try
14 to be back in place at 11:15. We will have
15 Mr. Wiley's cross-exam. I may have Mr. Wiley switch
16 sides of the table so you guys can look at each other.
17 But we will come back in ten minutes.

18 (A brief recess.)

19 JUDGE TOREM: Let's go back on the
20 record. It's about 17 after. We've moved Mr. Wiley
21 to the other side of the table to sit across from
22 Mr. McNamara. Mr. Buzzard is still on the phone with
23 us. While we were at the break, we talked a little
24 bit about accommodating other witnesses that might
25 testify before lunch. And so if I can get the

0090

1 court reporter's indulgence to take a little bit later
2 lunch, we will, before we move upstairs. We will take
3 care of the witnesses that have to go this morning,
4 and see -- if we can get it all done today, great. If
5 not, we have all day tomorrow as well scheduled.

6 Mr. Wiley, are you ready to ask your cross
7 questions of Mr. McNamara?

8 MR. WILEY: I think so, Your Honor.

9 JUDGE TOREM: So let's keep our voices
10 up so everybody can hear and press on.

11 Mr. Wiley, your witness.

12

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

14 BY MR. WILEY:

15 Q Good morning, Mr. McNamara.

16 A Good morning.

17 Q I think I can simplify things in terms of the
18 questions that I'm going to ask you, and they are
19 going to be related to the latter exhibits, the 10,
20 11, 12, 13, 14 exhibits.

21 MR. WILEY: And are we at 14 yet, your
22 Honor?

23 JUDGE TOREM: (Nods head.)

24 Q And also a little bit on your background.

25 You mentioned your previous boat operator

0091

1 experience in Puget Sound. Could you refresh my
2 memory about what that was, please?

3 A Sure. I owned a small water taxi service.

4 Q And --

5 A Basically, it's just like on-demand basis.
6 You call and we take you to the island that you would
7 like to go to.

8 Q So when was that?

9 A Let's see, that was from 2001, '2, through
10 2006, I believe.

11 Q When you say it was a small water taxi
12 business, what type of service was it? You described
13 it as on-call. What do you mean by that, so we can
14 visualize the boat and the service?

15 A Think of it just like a taxi in the city here.
16 You call them up and you say, Hey, I want to go have
17 dinner at Anthony's downtown. What time? I schedule
18 them and take them to that island. So a little
19 different, but it's basically, you call up and I take
20 you to the islands that you want to go to.

21 Q So it's on-call, on-demand service. What kind
22 of vessel did you utilize to provide that?

23 A The first couple years, it was a rebuilt
24 Glasply with six passengers and under. It was Coast
25 Guard certified. I rebuilt it from the ground up, and

0092

1 that's how I got started. And then in the last two
2 years of my business, I leased a 30-foot aluminum
3 chambered boat that had a COI of 12 passengers.

4 Q And that was -- where did you -- did you serve
5 from Bellingham to the San Juans? Where were your
6 origins and destinations?

7 A From Bellingham to basically anywhere you
8 wanted to go in the San Juan Islands. State parks.
9 There's a lot of beautiful state parks up north.
10 That's how I got the idea initially.

11 Q What was the name of your business?

12 A Pacific Sea Taxi.

13 Q And why did you -- by the way, was 12
14 passengers the largest vessel you have captained in
15 Puget Sound, up to now?

16 A Yes.

17 Q And why did you decide to apply for a
18 certificate? Did you believe that that would be a
19 more lucrative business than your on-call taxi
20 service?

21 A In part, yes.

22 Q And that was in 2006 that you applied for
23 authority?

24 A I believe. I would have to go back. I'm sure
25 you're probably aware of it too.

0093

1 Q I don't recall the date.

2 A I believe it was about 2005, 2006. I'm not
3 sure. I know that process took a long time.

4 Q Prior to applying for authority, had you ever
5 been cited by the Commission for operating without
6 authority?

7 A No.

8 Q Had you ever been warned that you needed a
9 certificate to perform the service you were
10 performing?

11 A No.

12 Q You got the certificate in 2006 or 2007, you
13 testified, and you never initiated the service, right?

14 A No.

15 Q Okay.

16 A It wasn't 2007.

17 Q When was it?

18 A We could look back. I know it's in your
19 exhibits.

20 Q If you say it wasn't 2007, do you think it was
21 earlier or later?

22 A Earlier.

23 Q Around in the middle part of the past decade.
24 Is that a fair statement?

25 A Sure.

0094

1 Q You were issued a certificate and then you --
2 that certificate was cancelled for inactivity,
3 correct?

4 A Correct.

5 Q And where were you when that -- you moved to
6 Colorado, didn't you?

7 A Correct.

8 Q What were you doing there?

9 A Honestly, putting my life back together.

10 Q Were you in a business?

11 A In Colorado?

12 Q Yes.

13 A No, sir.

14 Q So you weren't employed in Colorado when you
15 relinquished your certificate?

16 A I was employed.

17 Q Okay.

18 A Not as a captain.

19 Q What were you doing?

20 A I was working for heavy equipment operators,
21 some work on the side. I'm a photographer, so some
22 freelance work.

23 Q So it wasn't related to the maritime industry
24 at all?

25 A No.

0095

1 Q Okay.

2 Then catch us up chronologically. You then
3 went to Alaska; is that correct?

4 A Yes.

5 Q And when was that?

6 A Oh, let's see, 2007, I believe.

7 Q And --

8 A I can expand on it, if you want.

9 Q Yeah, that's fine.

10 A 2007, I was haired with Cruise West as a mate
11 and worked for them for the summer. That's where I
12 met my wife. We both loved Alaska, so that's where we
13 ended up.

14 Q Then after the summer of 2007, when you worked
15 for Cruise West, what did you do?

16 A I was a mate.

17 Q On the Cruise West after that time?

18 A No, with Cruise West for that summer.

19 Q After that time, after you --

20 A No, I left Cruise West.

21 Q Then what did you do?

22 A I moved to Alaska.

23 Q Okay.

24 A And ever since I moved to Alaska, I was
25 employed with River Adventures. It's a jet boat tour

0096

1 in the Chilakat Valley, Haines, Alaska, serving mostly
2 cruise ship passengers. I did that for four years.

3 Q So when you were serving cruise ship
4 passengers, that's on side trips once they get to the
5 port? Is that what you're talking about?

6 A Uh-huh.

7 Q And River Adventures did what?

8 A Jet boat tours in the Chilakat Valley.

9 Q On a river, I assume?

10 A Yeah. Very shallow river, 24-passenger
11 vessels.

12 Q Okay. So that takes us to 2012 --

13 A Correct.

14 Q -- does it not?

15 How did you happen to -- have you moved back
16 to the state of Washington?

17 A Yes.

18 Q And when was that?

19 A My wife -- moved my wife and kids down here in
20 the spring. I finished my contract with River
21 Adventures this past summer, and down I'm here full
22 time as of September.

23 Q And in the spring of 2012, is when you applied
24 to transfer the certificate that you've spoken of and
25 that Mr. Fassio has asked you about; is that correct?

0097

1 A Correct.

2 Q Why, by the way, did you never initiate
3 service under the prior certificate?

4 A Why did I? I had every intention to. I'm not
5 sure if anybody has gone through a divorce, but I had
6 a pretty tough divorce. My wife had some mental
7 problems, which in turn I didn't have the money to do
8 it. I didn't initiate service, and I didn't feel like
9 I wanted to -- I had five years at that time. I could
10 have kept filing progress reports, which I didn't.
11 Because I didn't -- I didn't have, at that time, the
12 resources or really the energy to do it, because I was
13 just regrouping from a pretty terrible divorce.

14 Q When you owned that certificate or held that
15 certificate for that brief interval, did you ever own
16 a boat to provide regulated service under the
17 certificate?

18 A I had a lease option with a boat for my water
19 taxi business, yes.

20 Q My question was whether you own --

21 A I did not own it outright, no.

22 Q And was that water taxi vessel the one you
23 referred to as the aluminum 12-passenger vessel?

24 A Yes.

25 Q Are you currently employed?

0098

1 A No.

2 Q What is your current source of income?

3 A Savings.

4 Q So you are living off savings. And how long
5 have you lived off savings for?

6 A Two months, three months.

7 Q Are you generating any income to purchase or
8 lease a vessel at the present time?

9 A No. I mean through stocks and other things,
10 you know. I mean, not much in stock, but real estate.
11 Everything incurs a little bit of money, but no, I'm
12 not employed.

13 Q So you're not employed and you are not
14 generating a sufficient income to purchase a vessel at
15 the present time?

16 A Well, that's to be determined. If I want to
17 go and cash out everything I have, I'll have \$420,000
18 and I could easily afford a loan.

19 Q Those are assets, though, that's not income.
20 My question went to income. Are you generating any
21 income currently that's sufficient to purchase a
22 vessel?

23 A No.

24 Q Now, let's go to SCM-14, which is your updated
25 financial statement. I also want to go to -- you've

0099

1 mentioned the assets, so I don't think you've really
2 clarified some of the differences in your original
3 application financial statement and the updated
4 financial statement, which is SCM-14.

5 Do you have both of those in front of you? In
6 other words, the original page, Page 9 of your
7 application?

8 A I have it.

9 Q Okay, good. Just if you would mark that, I
10 will probably be asking you to go back and forth.

11 You explained the cash on hand diminution.
12 The stock in other companies has gone -- is that stock
13 publicly traded stock, equity in publicly traded
14 companies, is that what you're referring to?

15 A Which? Are you referring to my new one?

16 Q The stock -- it's Line 4.

17 A I understand. Are you referring to SCM-14 --

18 Q Yes.

19 A -- or 12.

20 Q Either one for the purpose of my question.
21 When you say "stock in other companies," does that
22 relate to publicly traded companies or --

23 A Yes, yes.

24 Q So there was a significant reduction, almost a
25 tenfold reduction in stock between the updated

0100

1 financial and your earlier application financial.

2 What's the explanation for that?

3 A Again, I've been living off -- slowly selling
4 away some investments, cars. I have three children
5 now.

6 Q I know what that takes.

7 A Eating through the savings, yes.

8 Q How about machinery, tools? You identified a
9 vehicle. What is that?

10 A It's a brand-new SUV.

11 Q And do you own that outright?

12 A Yes.

13 Q And an SUV is a passenger vehicle for your
14 personal use, I assume?

15 A (Nodding.)

16 Q You have to answer audibly so the reporter can
17 get it.

18 A Me personally and business. I'm running
19 around in it.

20 Q But you transport your children and your wife,
21 et cetera, in that vehicle too?

22 A Yes.

23 Q Okay.

24 Real estate listed below. And it shows on
25 SCM-14, owned real estate, Alaska, \$350,000. Is that

0101

1 your personal residence in the Haines area?

2 A Yes.

3 Q And that, I believe your testimony is you own
4 that house outright; is that correct?

5 A Yes.

6 Q There's no mortgage on it?

7 A No.

8 Q How did you purchase that house? With cash
9 from what?

10 A My wife and I purchased it when we moved to
11 Alaska.

12 Q Was your wife employed?

13 A Presently, no. Well, as a full-time mom.
14 That's the hardest job.

15 Q Outside the house, I should say.

16 JUDGE TOREM: Let's just establish she's
17 probably underpaid.

18 MR. WILEY: Yes.

19 A Very much.

20 Q Okay. Now, Exhibit SCM-14 is what is commonly
21 referred to as a balance sheet, isn't it? You know
22 what a balance sheet is, don't you?

23 A Yes.

24 Q This isn't the first time that I'll use this
25 expression for some balance sheets. It's kind of an

0102

1 imbalance sheet in your case, because the assets and
2 liabilities don't -- and net worth don't show up in
3 parity. So that's why I'm asking you some of these
4 questions.

5 Notes payable. Is it correct to say that you
6 don't have any personal debt, other than a reference
7 to credit, which was in your original application? It
8 says notes payable, accounts payable, other
9 liabilities.

10 A Gotcha. I mean, there's probably some small
11 credit card debt here. Like I said, this is a
12 start-up business for me. It's not as detailed as an
13 existing business would be.

14 Q I understand that, but as you know, you have
15 to show financial fitness, so we have to explore what
16 your assets on hand are.

17 A Yes, I understand that.

18 Q So I'm trying to get to the obligation side of
19 the balance sheet to find out what you owe. Where do
20 you live in Bellingham? Do you have an apartment or
21 how do you -- do you have a house, or a roof over your
22 head? It's not listed here, and that's why I'm
23 asking.

24 A Well, I assume -- the reason why I haven't
25 listed everything, there's a point where you don't

0103

1 necessarily want the entire world to know your
2 financials. This is published on the website. So
3 this was just a ballpark thing for me. In Bellingham,
4 I live in a house that's paid off as well.

5 Q You haven't listed it?

6 A No, I haven't, because I don't own it. My
7 wife's trust owns it.

8 Q And what other assets do you have to show the
9 Commission and for the record of this application,
10 that you could -- that are deployed for this business?

11 A None.

12 Q The real estate that you list as -- and you
13 told us the valuation. Did you say you had a line of
14 credit on it?

15 A No, not currently.

16 Q Do you know -- there was an article in the
17 Wall Street Journal as recently as last week about
18 home equity lines of credit. Do you know anything
19 about the circumstances of lending on home equity
20 lines of credit at present?

21 A I haven't looked into it.

22 Q You don't know if the market is tight and
23 qualifications are very difficult in terms of income
24 proof and verification to receive a home equity
25 line --

0104

1 A Oh, I'm sure they are.

2 Q So it wouldn't surprise you to learn that very
3 few people generally, according to trade literature,
4 can qualify for home equity lines of credit under the
5 current market conditions?

6 A Or loan on your house.

7 Q So it wouldn't surprise you?

8 A Actually, it would surprise me. I believe
9 that this -- that I could get a loan on this house.
10 Paid outright and it appraised for \$440,000. It's
11 presently rented, by the way, as well, if you haven't
12 put down the income.

13 Q Are you aware that income verification is
14 required for home equity lines of credit, not just
15 equity valuation, right?

16 A Yes.

17 Q But proof of repayment capability is required?

18 A Yes.

19 Q And at present, again, you don't have any
20 ongoing income source to repay a line of credit; isn't
21 that true?

22 A Well, I do have a rental income from this
23 house.

24 Q How much is that?

25 A It's 1800 a month.

0105

1 Q Other than the \$1800 a month and some
2 dividends on \$5,000 worth of stock, do you have any
3 income source to repay a home equity line of credit on
4 your Haines, Alaska property?

5 A Presently, no.

6 Q Do you currently own any vessel?

7 A No.

8 Q What did you do with your aluminum -- that was
9 just a lease option and you declined to acquire the
10 boat, is that what happened?

11 A Yes.

12 Q Have you looked -- SCM-13, do you have that in
13 front of you?

14 A Yes.

15 Q You looked at some vessels for purchase, I
16 see, and so you have testified today. Are you aware
17 of what the purchase conditions are for vessels --
18 first of all, let me say this: There are a lot of
19 vessels for sale, aren't there, in the marketplace
20 right now?

21 A Yes.

22 Q And are you aware of the credit conditions for
23 acquiring a vessel presently?

24 A Yes. Well, no, but I know it's difficult.

25 Q You know it's difficult?

0106

1 A Yes.

2 Q And we have a witness here today who can speak
3 to some of that. But would it be a fair statement to
4 say that the market credit for used vessels is very
5 restricted at the present time?

6 A Yes.

7 Q What caused you to apply for the present
8 extension certificate, not with respect to Vendovi or
9 Cypress, but for Friday Harbor?

10 A Well, honestly, I had some phone calls last
11 winter from friends of mine down here that told me
12 that there was absolutely no service out of Bellingham
13 to the San Juan Islands, so I applied.

14 Q The current -- again, I'm asking about the
15 current extension application, not the --

16 A Right. I felt like I needed to go back a
17 little bit. So that permit was cancelled, and I saw
18 that it was cancelled, and I believe it would complete
19 a viable loop to the San Juan Islands, so I applied.

20 Q When you referred to "that" permit, I assume
21 you are referring to BC-10 and the certificate of
22 Pacific Cruises Northwest, Inc.?

23 A Correct.

24 Q And how did you find out that permit was
25 cancelled?

0107

1 A I looked on the UTC's website and happened
2 upon it.

3 Q And that was shortly after you purchased the
4 authority that you now hold and the certificate that
5 we've discussed previously; is that correct?

6 A Correct.

7 Q So you saw the certificate being cancelled,
8 and then you decided to apply for the certificate that
9 was relinquished, the point of authority, meaning
10 Friday Harbor; is that correct?

11 A Correct.

12 Q And when you applied for that, when was that?
13 That was sometime last summer, was it not?

14 A When I applied for the extension?

15 Q Yes.

16 A Yes.

17 Q And were you in the state of Washington then
18 or were you in Alaska?

19 A I was in Alaska.

20 Q And --

21 A Well, I was bouncing back and forth. My
22 family was here.

23 Q And when you applied for that certificate, you
24 hadn't commenced any operations under your existing
25 certificate that you recently transferred; is that

0108

1 correct?

2 A Correct.

3 Q Did you plan on initiating service in the
4 summer of 2012 ever?

5 A No.

6 Q When you applied for the present authority,
7 did you plan to initiate service in 2012 at all?

8 A For Friday Harbor?

9 Q Yes.

10 A No.

11 Q Did you --

12 A It wasn't until the end of the summer.

13 Q On what basis did -- do you currently
14 intend -- I assume by your testimony that you
15 currently intend to provide year-round service if this
16 application is granted?

17 A Yes.

18 Q What market survey or study have you performed
19 that would allow you to conclude that you could
20 sustain a viable service by offering wintertime
21 transportation?

22 A I haven't done a study. I simply have my old
23 experience from running around in the islands and the
24 outpouring of public support.

25 Q But operating a taxi service is very different

0109

1 than offering a regular route, fixed termini,
2 scheduled, regulated services --

3 A I --

4 Q -- is it not?

5 A Ys.

6 Q You've kind of got to let me finish my
7 question for the record.

8 A Sorry.

9 Q And your answer is yes.

10 But again, my question went to whether the
11 seasonality issue was reviewed by you in terms of
12 sustaining a viable operation. Have you done any
13 investigation of the ability to offer a viable service
14 if you provide winter -- year-round service between
15 Bellingham and Friday Harbor?

16 A My only investigation has been state studies
17 that I've found. Again, talking with the public,
18 trying to get a sense -- this is a start-up company,
19 trying to get a sense of how much people would use it.
20 I did not perform my own study.

21 Q Aside from word of mouth and a reference to
22 state studies, have you done any economic analysis,
23 financial due diligence, on serving a route year round
24 between Bellingham and Friday Harbor?

25 A Just what we've gone over. Just my

0110

1 estimations of what -- no, I have not done an
2 extensive survey.

3 Q My question just went, had you done any --
4 asked if you have done any economic analysis?

5 A Just my own financials.

6 Q And that --

7 A Calculating how many people I think will run
8 in the winter and how many people I run in the summer,
9 so yes.

10 Q So yes. Is that your pro forma ridership and
11 revenue study?

12 A Actually, I have a business plan as well.

13 But --

14 Q Well, the business plan isn't in the record --

15 A No, it's not.

16 Q -- and isn't offered as an exhibit, so --

17 A You asked me, so my answer is yes, I have done
18 more extensive than when I first applied, yes.

19 Q So what is your business plan? When did you
20 work on it? Who worked on it with you? Give us some
21 foundation on that. And it's after you applied, so I
22 would like to hear about it.

23 A Is that going to be evidence?

24 Q Well, you have made it so by saying that
25 you've got a business plan.

0111

1 A Okay.

2 Q So I need to know what that entails.

3 A I've been working on it since I've first put
4 my application in. And it entails breaking down all
5 the financials as much as I can possibly do it,
6 estimating ridership from looking at, honestly, other
7 companies that are operating around the San Juan
8 Islands or have operated in the past, and making an
9 educated guess on how many people I think I can move
10 back and forth.

11 Q How come you haven't produced that as evidence
12 in support of your application? If you've made a
13 study, why aren't you producing it?

14 A Well, I guess I didn't feel like it was a
15 study. It was just my personal business plan, which
16 usually it's a fairly confidential document that
17 I'm -- I certainly don't want to lay on the table for
18 my competitors to see.

19 Q Well, did you draw any conclusions about the
20 viability of your proposed service in that study,
21 including the wintertime?

22 A Yes, I believe it's viable.

23 Q And other than this alluded to business study
24 that you proposed, do you have any other basis?
25 You're not presenting it to us because of competitive

0112

1 concerns. Do you have any other basis or
2 substantiation for asserting that a year-round service
3 will be viable financially?

4 A Well, I go by my heart, and I believe that it
5 is.

6 Q Other than your heart, that's it, right?

7 A Well, I mean --

8 Q Let's go --

9 A -- I believe that a lot of people have tried
10 it. When somebody tells me I can't do something, it
11 only makes me want to try harder. I hear all the
12 reasons why you don't believe I can do it. However --

13 Q Let's go to your financial statement, which I
14 believe is SCM-10.

15 JUDGE TOREM: 11 is the financial
16 statement and 10 is the ridership study.

17 MR. WILEY: Thank you, your Honor.

18 Q You alluded to this as part of your study or
19 the major basis of your study, and I would like to ask
20 you some questions about what you are including there.

21 First of all, on the first line item, loan
22 payment vessel, \$72,000. How are we to determine
23 whether that's a purchase or a lease?

24 A Again, it's an estimate of a payment of a
25 boat --

0113

1 Q So it's a purchase?

2 A -- in the 400- to \$500,000 range.

3 Q By the way, the vessel that you submitted in
4 SCM-13 is considerably more expensive than 4- or
5 \$500,000, isn't it?

6 A Yes, if you read it in detail, that -- my
7 ultimate dream would be to build a boat and it would
8 be over \$1 million.

9 Q 1.2 to 1.6 you estimate?

10 A Yes.

11 Q Going back to the vessel line item, that's a
12 loan payment, I assume, by the reference. What's the
13 term of the loan? What's the interest rate that's
14 assumed? Who is the lender? I mean, can you give us
15 some additional detail to this kind of pro forma
16 estimate?

17 A Again, it was just a simple -- I haven't
18 looked into all the percentage rates and lenders and
19 all of that. It was just a quick estimate, an
20 approximation of what I thought I could lease a boat
21 for.

22 Q What passenger capacity was -- did you assume
23 in that?

24 A Again, I'm looking -- at the time I was
25 looking at three different boats with different

0114

1 passenger capacities, between 20 and 49.

2 Q And would that vessel necessarily have a
3 certificate of inspection, or would you have to obtain
4 that if it were new?

5 A It would have an --

6 Q It would.

7 A -- existing.

8 Q What about repositioning the vessel if you buy
9 it outside of the Puget Sound area? Are those costs
10 included in the --

11 A No, they are not.

12 Q So that's really all the flesh you can add to
13 the bone of the vessel loan payment right now, in
14 terms of what you are intending by that \$72,000
15 reference is 6,000 a month, correct?

16 A Yes.

17 Q Fuel, 85,000. Now, you talked about 25,000
18 not being incurred if you didn't go to Friday Harbor.
19 But let's assume you're going to Friday Harbor,
20 because that's what this application is about. So the
21 \$85,000 is a figure that you are projecting to be
22 incurred annually. How many gallons are you
23 projecting that's going to include and at what price
24 per gallon?

25 A If you buy it in bulk, I'm hoping to get it

0115

1 for 3.50 to 3.80. I estimated it as 40 to -- a vessel
2 to burn between 40 to 50 gallons an hour.

3 Q At what speed?

4 A 20 to 25 knots.

5 Q Averaged?

6 A 20.

7 Q 20 knots, 40 to 50 gallons at 3.50 to 3.80 a
8 gallon if you buy in bulk. Is that your testimony?

9 A Yes.

10 Q And does the math come out, if I were to do
11 the math on my calculator, to 85,000 under that
12 analysis?

13 A Close to it, yes.

14 Q Insurance is the next line item, \$12,000.

15 That's a very reasonable figure. I think we will have
16 testimony today. What does that pertain to? Is that
17 hull insurance? Is that property damage? Is that --
18 there's a lot of types of insurance. I'm wondering
19 what that includes.

20 A Hull insurance, boat insurance, insurance for
21 the port, if I'm at the Bellingham Cruise Terminal.

22 Q And you --

23 A Again, it's just a rough estimate of what I
24 expect insurance to cost.

25 Q Is your testimony that you could insure a 20

0116

1 to 50, 40-passenger vessel annually for hull and
2 liability insurance at \$12,000 a year?

3 A Yes.

4 Q Okay.

5 What about other types of insurance, like
6 Workers' Compensation insurance, employee, other types
7 of employee, theft insurance, all other kinds of
8 insurance, are you saying that that's subsumed under
9 the \$12,000 figure?

10 A This is basically for the vessel. Vessel
11 expenses.

12 Q Wouldn't relate to business interruption and
13 other types of commercial insurance that would be
14 required to operate this business, would it?

15 A No.

16 Q And you don't know what the premiums for that
17 type of insurance are, do you?

18 A No.

19 Q Repair and maintenance, \$6,000 a year. You
20 acknowledged, as an aside to your testimony, that
21 that's pretty light; that's a pretty fortunate figure,
22 isn't it?

23 A Yes.

24 Q If you had to replace an engine, what would
25 that cost?

0117

1 A 40 to \$80,000.

2 Q It would eat that up in one fell swoop,
3 wouldn't it.

4 A Yes.

5 Q And it's not unusual in this type of service
6 to replace vessel engines in a four- to six-year
7 cycle, is it?

8 A No. It depends on how hard you're pushing the
9 gas.

10 Q Yeah, well, 20 to 25 knots sustained is fairly
11 hard on vessels, is it not?

12 A Depending on the vessel.

13 Q What other types of maintenance? Does this
14 include parts and labor? I mean, what's included in
15 your line item there?

16 A Under repair and maintenance?

17 Q Yes.

18 A Chip in paint, I don't know. There's always
19 money to be spent on boats, as anybody who has ever
20 been around boats knows. So it's probably a low
21 estimate.

22 Q It's very low, is it not?

23 A However -- well, again this is --

24 Q You would have to be under the luckiest star
25 in the world to have only \$6,000 in repair and

0118

1 maintenance to operate between Bellingham and Friday
2 Harbor all year long.

3 A Again, it was an estimate of the start-up
4 business. I'm sure these numbers will change once I'm
5 actually in business.

6 Q And they could go considerably higher,
7 couldn't they?

8 A They could go higher.

9 Q Dock fees. You testified that this was the
10 San Juan and Orcas fees and the Bellingham fees at
11 \$5,000 annually?

12 A Possibly, yes.

13 Q Does that also include the per passenger
14 charge that some of these ports charge?

15 A A very low estimate for it, yes.

16 Q Again, some of those charges are \$2 a
17 passenger, aren't they?

18 A Yes.

19 Q So that could really -- if you have a thousand
20 passengers, that would be \$2,000 for one year alone,
21 wouldn't it?

22 A Yes.

23 Q And you are also intending to provide the
24 lease payments out of that \$5,000 under dock fees?

25 A The lease payments...

0119

1 Q For the dock space.

2 A Yes.

3 Q Do you happen to know what Bellingham would
4 charge? For instance, the port you referred to, the
5 moorage space where Mr. Schmidt's operations are. Do
6 you happen to know what those are?

7 A At present, no. I knew what they were.

8 Q You haven't updated your research since 2006?

9 A No. I'll bet it's probably still around \$5 if
10 you don't lease space there.

11 Q A foot?

12 A \$5 per passenger.

13 Q So these are all material expenses, are they
14 not?

15 A Uh-huh.

16 Q And so --

17 A And they are also based on ridership.

18 Q Yeah, and we've also talked about if you have
19 a thousand passengers as your pro forma revenue, your
20 annual ridership is 4684, is it not, under your
21 proposal? If you're talking \$5 a passenger, that's a
22 lot of money, isn't it?

23 A Uh-huh.

24 Q And that would vastly exceed the \$5,000 that
25 you put in as a line item for expenses, would it not?

0120

1 A Yes.

2 Q Miscellaneous supplies, \$2,000. What are
3 those?

4 A Dock lines, fenders, radio antennas.

5 Q Antennas?

6 A Antennas. I don't know.

7 Q Antennas would be a lot more than -- if you've
8 got a few of them, a lot more than 2,000 wouldn't
9 they?

10 A It could possibly be, yes.

11 Q What about the office, the \$5,000 office? Is
12 that -- where did you presume or assume that would be?
13 What's the square footage of the office? What are the
14 lease terms? Can we have a little flesh on those
15 bones in terms of what you are assuming there?

16 A Again, I feel like I'm repeating myself.
17 These are ballpark figures. I thought these were
18 fairly fair numbers. Obviously, it looks like I
19 should have added more up here. But I think I will
20 probably not use \$5,000 for an office. I'll run it
21 out of my house.

22 Q Is that what your business plans presumes,
23 that you'll run the office out of your house?

24 A Maybe the first year.

25 Q What sort of alternative space have you looked

0121

1 at? Have you looked at where offices are in, for
2 instance, in Friday Harbor? Would you have an office
3 there?

4 A Not initially.

5 Q How would people be able to purchase tickets
6 to come back one way from Friday Harbor without some
7 sort of office there?

8 A Well, I'm hoping to do a kiosk or they can
9 purchase them on board or online.

10 Q Is the kiosk cost included in your office line
11 item?

12 A No.

13 Q Have you done any investigation of the current
14 commercial office market in Bellingham, where you
15 would have your headquarters, as to the cost per
16 square foot to rent space to have a business?

17 A No.

18 Q The phone, \$1500, that seems incredibly low to
19 me if you have a cell phone and have kids on your cell
20 phone, because \$1500 doesn't even usually handle a
21 personal residence cell phone charge, would you not
22 say? I mean, they are about \$200 a month, aren't
23 they, if you have multiple lines?

24 A Yes, but if you have one line, it's about \$100
25 a month, or \$1200 a year.

0122

1 Q Was that a landline, then, that you were
2 referring to?

3 A It's my cell phone and a land line.

4 Q And if you had employees on the vessel whom
5 you had to contact on a cell phone, would you expect
6 them to pay for their own cell phone?

7 A Yes. Are you asking me if I need to call an
8 employee --

9 Q Or they need to call you.

10 A -- if I'm going to provide them with a cell
11 phone?

12 Q Right.

13 A No.

14 Q So you're going to expect an employee to have
15 their own cell phone and pay their own charge for
16 business-related communications on the vessel to you?

17 A I believe that if the employee is on the
18 vessel with me, they wouldn't need to call me.

19 Q Well, let's say you have another captain. You
20 indicated you would like to have another captain, and
21 you have a mate on the deck, and you want to call them
22 about picking up a passenger at a flag stop on
23 Vendovi. Would you expect that employee who takes the
24 call from you to pay for their own telephone service?

25 A No.

0123

1 Q So what does this phone expense of \$1500
2 consist of that you've assumed? Is it a landline and
3 a cell phone or --

4 A Yes.

5 Q -- what is it?

6 A Land line.

7 Q One land line?

8 A One landline and one cell phone.

9 Q It doesn't have any other capabilities in
10 terms of multiple lines for the businesses?

11 A Presently, no.

12 Q Advertising, \$15,000, what does that relate
13 to, please?

14 A Again, it's a rough estimate. As I've learned
15 from my past company, that advertising is very
16 important, so I wanted to put more money into
17 advertising.

18 Q What would you be advertising?

19 A My service.

20 Q What would your service consist of? Would it
21 just be passenger, regulated passenger service, or are
22 you going to have other activities on that vessel that
23 you need to advertise?

24 A Mainly passenger and freight service.

25 Q Mainly passenger and freight service.

0124

1 So you're not proposing to provide any other
2 accessorial services like whale watching, dinner
3 cruises, concessions on the vessel or anything else
4 that you would be advertising for?

5 A There may be concessions on the vessel. The
6 vessel may be chartered when it's not in service. But
7 as I stated in my opening statement, I'm 100 percent
8 dedicated to doing a ferry service.

9 Q When you said it may be used for charter, I
10 assume that would be something you advertise the
11 availability for the vessel on; is that correct?

12 A Sure.

13 Q And you are estimating \$15,000 a year for
14 year-round service advertising?

15 A Yes.

16 Q Is that again based on any review of media
17 costs or radio costs or any other kind of media that
18 you would be advertising on?

19 A No, it's just a guesstimation.

20 Q You have a thousand dollar vehicle lease
21 expense. What does that relate to, please?

22 A It's not a lease expense, just a vessel -- or
23 a vehicle expense as far as fuel and maintenance.

24 Q For a vehicle that's used with the business?

25 A Yes.

0125

1 Q Which you don't own at the present time,
2 correct?

3 A Well, I -- no.

4 Q The captain expense for \$65,000, does that
5 include what we refer to -- do you know what the
6 expression "fully loaded cost" means?

7 A No.

8 Q Okay.

9 The \$65,000, that's just base salary, isn't
10 it?

11 A Well, it's the total.

12 Q Does that total include medical, pension,
13 FICA, all the other sort of employee costs that
14 employers have?

15 A Well, since I was in this going to be the main
16 captain, then no, I didn't believe I needed to provide
17 all of those things for myself.

18 Q If you are an employee of a corporation, you
19 don't have to provide withholding tax?

20 A Well, sure.

21 Q So that doesn't include your FICA expense on
22 the wages, does it?

23 A Again, I haven't broke it down to the extent
24 that you are looking for right now.

25 Q Well, when we're trying to do feasibility and

0126

1 economic feasibility of a route, all those kind of
2 costs are relevant to the analysis, would you not
3 agree?

4 A Yes.

5 Q So the captain expense may not include medical
6 insurance, for instance, correct?

7 A I'm hoping that that's enough, yes, to include
8 it, to pay for it, yes.

9 Q What other fringe benefits does that include,
10 assuming it's not you, and it's somebody you hire?

11 A That's all.

12 Q So it doesn't include any fringe benefits,
13 medical, dental, pension, anything like that?

14 A Not at this time.

15 Q The crew person, \$40,000. Is that the same
16 answer that you just gave on the captain in terms of
17 the fact that this does not include other employee
18 costs?

19 A No, because that will be an employee, so --

20 Q So tell me what the \$40,000 consists of,
21 please.

22 A Well, again, that was a guesstimation. That's
23 what I would like to be able to pay a full-time crew.

24 Q Is that -- somebody's working year round as a
25 crew person on your service. Is that an annual

0127

1 salary? Is it an hourly wage? How is that
2 calculated?

3 A I would love to have one crew that could work
4 on salary, but that's probably not going to happen.
5 So that's the main deckhand.

6 Q Does the Coast Guard require more than one
7 deckhand when the vessel gets to a specific length?

8 A Yes.

9 Q Could you describe that?

10 A I'm not sure if it's length or decks, but I've
11 been told it's a crew for every deck. A captain is
12 considered a crew. If it's two -- say a two-deck
13 boat, then two -- a captain and crew would be two.
14 Two-crew.

15 Q That would include the captain and the mate;
16 is that correct?

17 A Captain and mate or captain and deckhand, yes.

18 Q I'm just getting to the two based on your
19 testimony that's based on the number of decks. Isn't
20 that what you testified?

21 A That's my understanding, that it's per deck.
22 I'm sure that there's a length issue. I'm sure that
23 you know the answer to that.

24 Q I don't know, Mr. McNamara. I think some
25 other people in the room do, but I'm honestly asking

0128

1 you a question I don't know the answer to.

2 A Okay. Well, the boats that I've been looking
3 at are certified for 20 to 40 people, say. It says a
4 captain and a crew. One captain, one crew, and that's
5 what the Coast Guard requires on that vessel.

6 Q And then if you were to acquire a vessel that
7 is over 40 feet, is it your understanding that you
8 would have to staff it with more than a captain and a
9 mate?

10 A No.

11 Q What -- is there any length of vessel at which
12 you have to staff a commercial marine vessel with more
13 than a captain and one mate?

14 A Most likely.

15 Q But you don't know where?

16 A I don't know where that breaking point is. I
17 know boats over -- some boats over 100 feet just have
18 two crew on board.

19 Q Going back to your crew line item, is it your
20 testimony that that represents compensation to more
21 than one person? That's what I understood your answer
22 to be.

23 A Sure.

24 Q And is that based, then, on an hourly wage,
25 since you said you would like to offer a salary but

0129

1 you didn't think you could?

2 A Sure, yes.

3 Q And what is that hourly rate, please?

4 A \$15 an hour.

5 Q For how many hours, since it's going to be
6 more than one person? I'm just trying to get into the
7 40,000 --

8 A Well, again, I'll have to go back again and
9 say this was a ballpark.

10 Q If you have any notes that you want to refer
11 to to answer that, that's fine.

12 A No, that's fine. I'm not trying to hide
13 anything. This was a ballpark figure for me. I think
14 that that was a fair wage for folks. Again, it would
15 depend on how many days I was running in the summer,
16 how many days in the winter, time off, this and that.

17 Q I would like to do the math just to -- based
18 on your testimony that it's \$15 an hour. And let's
19 see what that --

20 Do you know how many hours that would
21 constitute?

22 A No. I guess I could do the math as well.

23 Q Because if you are running year round, that's
24 a lot of hours. And \$40,000 seems to me to be rather
25 light if you are offering year-round service and

0130

1 only -- and paying \$15 an hour.

2 MR. FASSIO: Your Honor, I'm going to
3 raise an objection, I guess. The witness has
4 testified as to his estimate for expenses for captain
5 and crew. I think we're getting into -- I think
6 counsel is beginning to argue with the witness a
7 little bit on this point. And I'm not sure how much
8 benefit can be gained by trying to do
9 back-of-the-envelope calculations on the record, for
10 the witness to sit here today --

11 JUDGE TOREM: Mr. Wiley, I think you can
12 take Mr. Fassio's suggestion that we've probably
13 gotten all we can from these numbers. I think you
14 have made your point and you can make it in your
15 closing argument.

16 MR. WILEY: Fine, your Honor. I've got
17 a number of questions on the ridership and revenue
18 forecast. I think we should probably take our break
19 around this time. When did you want the shippers on?

20 JUDGE TOREM: I haven't determined that
21 yet. It's now a little after twelve o'clock. You
22 still have how many -- how much time would you
23 estimate?

24 MR. WILEY: 10 or 15 minutes.

25 JUDGE TOREM: And would you be willing

0131

1 to finish that cross-examination at a later time
2 today?

3 MR. WILEY: Sure.

4 JUDGE TOREM: Okay. Let's take a break,
5 then, from Mr. McNamara's testimony. You will still
6 be subject to Mr. Wiley finishing the questions he has
7 on the ridership study. Let's go off the record for a
8 moment and schedule some things here as we can.

9 (A brief recess.)

10 JUDGE TOREM: We're going to go back on
11 the record. We've managed to get Bert Webber on the
12 telephone line, and we still have Mr. Terry Buzzard
13 with us. I'm going to swear in Mr. Webber. He's been
14 advised who is present in the room.

15 So, Mr. Webber, if you will raise your right
16 hand.

17 MR. WEBBER: My right hand is raised.

18

19 BERT WEBBER, witness herein, having been
20 first duly sworn on oath,
21 was examined and testified
22 as follows:

23

24 JUDGE TOREM: All right. Thank you.

25 Mr. McNamara?

0132

1 And let us know if you can't hear one of us at
2 some point.

3 Mr. McNamara, go ahead.

4 THE WITNESS: Okay, thanks.

5

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

7 BY MR. McNAMARA:

8 Q Good morning, Bert.

9 A Hi, Sean.

10 Q I just have 13 quick questions, here. We will
11 rocket through them as fast as you want and add
12 anything if you would like.

13 No. 1, please state your name and where you
14 live.

15 A My name is Bert Webber, my address is 3935
16 Cliff Side Drive, Bellingham, Washington, ZIP code
17 98225.

18 Q Okay. Thank you.

19 No. 2, do you travel to or from the San Juan
20 Islands?

21 A I do.

22 Q How often would you say you travel?

23 A It has varied over the years. Right now maybe
24 two or three times a year. In the past, it's been
25 more than that.

0133

1 Q Do you use the state ferry?

2 A I have used the state ferry, and I've also
3 used private vehicles.

4 Q Have you experienced any problems with the
5 state ferry?

6 A None, other than most people, long lines and
7 not very convenient schedules, making it difficult to
8 get to where you want to go, when you want to get
9 there.

10 Q No. 6, have you used any ferry or charter
11 services out of Bellingham?

12 A Yes, I've used a ferry services. Do water
13 taxis count in this?

14 Q Sure.

15 A Yeah. So I've used water taxis to get from
16 Bellingham to Eliza. We have a summer cabin on Eliza,
17 so transportation there is always of interest. I've
18 chartered a boat at one time to take a group of people
19 from Bellingham to Eliza. It was called the SQUITO
20 [phonetic], I think it was. I have traveled through
21 the islands on my own boat frequently.

22 Q Okay.

23 A Is there any part of that question I didn't
24 answer?

25 Q No, that's great.

0134

1 And in those ferry or charter services, did
2 you have any problems?

3 A No problems. There's always the difficulty of
4 having -- getting to where you want to go when you
5 want to get there. And there are some taxi services,
6 but they tend to be more expensive.

7 Q Okay. Just a few more, five more, five or six
8 more.

9 No. 8, have you heard of or used the ISLAND
10 COMMUTER?

11 A I do know about the ISLAND COMMUTER. I've
12 never used it, to the best of my knowledge. But I
13 used a charter boat that ran through the San Juan
14 Islands, the commuter from time to time, either here
15 or Friday Harbor. That was quite a long time ago. At
16 some point along the way, it seemed to disappear, I
17 didn't see it any longer. I don't remember when that
18 was, though.

19 Q So you think they stopped operating or --

20 A I know they were weren't going to Eliza any
21 longer. And I don't know for sure about the other
22 ports of call that they used to go. But all I can say
23 is I didn't see it anymore.

24 Q To your knowledge, there wasn't any public
25 advertising that they were limiting their service?

0135

1 A Not to my knowledge, no.

2 Q Do you feel there's a need for a reliable
3 passenger ferry service to and from Bellingham?

4 A I do. Transportation to the San Juan Islands
5 is always an issue. It seems to me that the State is
6 increasingly less interested in increasing ferry
7 traffic service to the San Juan Islands from
8 Anacortes. The terminal there is always congested, it
9 seems. So there's I think an alternative need, and I
10 think Bellingham is an appropriate destination for
11 people at the islands to get to the city when they
12 need city facilities or they need city amenities.

13 Q Sure. Okay. Just three more, Bert.

14 Do you feel that island communities would
15 benefit from this service, being able to get to
16 Bellingham?

17 A I think so. You know, there's always a lag,
18 as they grow, in providing the kinds of services that
19 they need, medical services and retail services. And
20 I think there will be an interest of people wanting to
21 come into Bellingham to shop, if nothing else, to go
22 to Costco.

23 Q And I know you said you have your own boat or
24 you've been on charter boats, but would you use this
25 service and if you did, how often?

0136

1 A You know, I probably would not use it very
2 often, since I'm not a resident of the islands, unless
3 it has a stop at Eliza. If there's a service that
4 stops there, then I can see using that numerous times
5 during the spring and summer.

6 Q And last question, if there's anything else
7 you want to state for the hearing here?

8 A Nothing that comes to mind right off, no.

9 MR. McNAMARA: Thank you.

10 JUDGE TOREM: All right, thank you,
11 Mr. Webber. This is JUDGE Torem again. I'm going to
12 turn it over to the assistant attorney general, Mike
13 Fassio, to see what questions he might have.

14 THE WITNESS: Okay.

15

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

17 BY MR. FASSIO:

18 Q Good afternoon, Mr. Webber.

19 A Hi there, Mike.

20 Q Hi.

21 Did you mention that you are a charter boat
22 captain currently?

23 A Not currently, no. It was, I don't know, four
24 or five years ago that we gave up that occupation.

25 Q And how long were you in the charter business,

0137

1 I guess?

2 A 12 years, 12, 13 years.

3 Q And you discussed your -- that you would use
4 the service to visit Eliza Island. Do you ever have a
5 need to visit Friday Harbor?

6 A Not a need, no, but oftentimes a desire.

7 Q And I guess -- let's see, where do you work?

8 A I don't. I'm retired now. I was at Western
9 Washington University for 25 years.

10 Q And you mentioned that you normally take
11 the -- when you need to visit the islands, do you
12 normally take the ferry service, if you go out, out of
13 Anacortes?

14 A That's right, yes.

15 Q About how long does it take someone to get
16 from Bellingham to --

17 A Friday Harbor?

18 Q -- yeah, to Friday Harbor. In your
19 experience, how long does it take you?

20 A You know, it totally depends on the speed of
21 the boat.

22 Q Well, I'm saying from leaving your house to
23 getting there?

24 A Going eight knots, three and a half hours
25 would be --

0138

1 MR. McNAMARA: Oh, do you mean from --

2 Q I guess I'm trying to get a sense, if you
3 wanted to leave your house in Bellingham, drive down,
4 use the ferry service and arrive at Friday Harbor, in
5 your experience, about how long of a trip is that? I
6 mean, how long does it take you from the time you
7 leave the house to the time you arrive?

8 A Totally variable. It's half a day. You've
9 got to commit at least half a day to it, to get from
10 Bellingham to Friday Harbor.

11 MR. FASSIO: I don't have any further
12 questions.

13 JUDGE TOREM: All right. Let me see if
14 Mr. Wiley has any questions.

15 MR. WILEY: I just have one, your Honor.

16

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

18 BY MR. WILEY:

19 Q Hello, is it Mr. Leadbetter?

20 JUDGE TOREM: Webber.

21 Q Webber, I'm sorry.

22 A Yeah, you have a Webber here.

23 Q I'm sorry, Mr. Webber. I crossed you with
24 another witness.

25 You said that you had a desire to have service

0139

1 between Bellingham and Friday Harbor. I'm wondering,
2 would a commercial ferry service that was seasonal,
3 that had two to three vessels of varying lengths up to
4 149 passengers, would small and large vessels seasonal
5 be something that would be of a benefit and a
6 convenience to you?

7 A Not much, but I think maybe you didn't
8 understand my earlier testimony. My particular
9 interest is travel between Bellingham and Eliza
10 Island.

11 Q Right. I did understand that. When you said
12 that you had a desire, a generalized desire, for
13 service to Friday Harbor, I wondered if that would
14 extend to whether a seasonal company with two to three
15 passenger vessels -- two to three vessels that carry
16 up to 149 passengers, would be of any benefit and
17 convenience to you in the circumstance when you had to
18 go to Friday Harbor?

19 A If I had to go to Friday Harbor, I would
20 surely look at that as an option. But I think the way
21 my life is right now, I would probably choose to try
22 to find a low occupation time on the state ferry and
23 take the state ferry. Not impossible for sure.

24 MR. WILEY: Thank you.

25 MR. McNAMARA: Could I redirect?

0140

1 JUDGE TOREM: Mr. Buzzard, you've heard
2 this testimony. Do you have anything you want to ask?

3 MR. BUZZARD: No, I don't believe so.

4 JUDGE TOREM: Okay. Mr. McNamara, you
5 have a follow-up?

6

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

8 BY MR. McNAMARA:

9 Q I think what Mr. Wiley was indicating with
10 that question is that Pacific Cruises Northwest has
11 three vessels. My question to you: Are they -- have
12 they been providing that service, even though they
13 have those three vessels?

14 A Not to my knowledge. And, you know, I would
15 add on to that answer, that it seems in our society,
16 time gets more and more valuable. And as I understand
17 those vessels, they are all fairly slow. And I think
18 it would be interesting for the service between
19 Bellingham and Friday Harbor, if it didn't take so
20 much time, to allow people to get back and forth in a
21 day, if that was possible. I think it would be,
22 depending on the right vessel. So that's what I take
23 to that question.

24 MR. McNAMARA: Okay. Thank you.

25 JUDGE TOREM: Does that raise any other

0141

1 questions? Mr. Wiley, I see you making notes there.

2

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

4 BY MR. WILEY:

5 Q Mr. Webber, do you know how long the sailings
6 between Friday Harbor and Bellingham last for Pacific
7 Cruises' vessels and what speed they travel at?

8 A No, but I -- the one I know of is the VICTORIA
9 STAR. Is that one of them?

10 Q Yes.

11 A Yeah, whether their top speed makes 12 knots,
12 I'm not sure. But I think not as fast as the modern
13 technology could provide.

14 Q And you don't know the speed of their other
15 vessels either, do you?

16 A No. But they are all pretty slow.

17 Q And what's that based on?

18 A They're all just displacement hulls, and in
19 order to drive them and past displacement hull speed,
20 it takes an awful lot of fuel, and people are more and
21 more reluctant to drive those big boats at hull speed.
22 The islands -- I don't know, you could check with
23 Terry. It seems like Terry has slowed down the ISLAND
24 KEEPER a little bit to save fuel. I think that that's
25 an indication that they're not going to go as fast as

0142

1 people would like to have them go. A lot of fuel
2 expenditure.

3 MR. WILEY: I have no further questions.

4 JUDGE TOREM: Any other questions,
5 Mr. Fassio?

6 MR. FASSIO: Just a quick question,
7 Mr. Webber. Hold on just a moment, please.

8

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

10 BY MR. FASSIO:

11 Q So you talked about an interest, perhaps, or a
12 desire to visit Friday Harbor and how long it would
13 take, how long it has taken you on the ferry. Would
14 you be more likely to visit Friday Harbor and the
15 islands if it was a -- or would you be more likely to
16 visit the islands if there was service direct from
17 Bellingham? I'm speaking for you personally.

18 A Yeah. I think so, yes. Yeah, it would
19 provide yet another option, wouldn't it?

20 Q But would you find yourself, I would say --
21 would you have a need to visit -- to go straight to
22 Friday Harbor, or do you have more of an interest in
23 visiting islands like Eliza and perhaps other islands?

24 A As I said before, Eliza is my primary
25 interest, but those islands are all jewels. I could

0143

1 see having an interest in going to Lopez, and I also
2 have reason to visit people that I know on Orcas. So
3 it's hard to say that Friday Harbor would be a single
4 destination.

5 MR. FASSIO: Thank you.

6 JUDGE TOREM: Gentlemen, any other
7 questions for Mr. Webber?

8 MR. McNAMARA: No.

9 JUDGE TOREM: All right. Mr. Webber, I
10 understand you have an afternoon engagement, so thank
11 you very much.

12 THE WITNESS: I appreciate your
13 accommodating me and it's quite wonderful that I
14 didn't have to be there today. Let me give thanks for
15 the technology.

16 JUDGE TOREM: You would have had to
17 commit at least half a day.

18 THE WITNESS: Yeah, that's right.

19 JUDGE TOREM: All right. Thank you for
20 your time.

21 THE WITNESS: Thanks. Okay, bye, bye,
22 now.

23 JUDGE TOREM: All right. Mr. Buzzard,
24 you should still be on the line?

25 MR. BUZZARD: Am I here?

0144

1 THE WITNESS: Do you have a question?

2 JUDGE TOREM: No, Mr. Webber, you're
3 free to go.

4 THE WITNESS: Okay, I'm gone.

5 JUDGE TOREM: We're going to go off the
6 record again for just a moment here. It's 12:25.

7 (Lunch recess.)

8 JUDGE TOREM: We are ready to go back on
9 the record at 1:35. I understand we have on the line,
10 Terry Buzzard is back on the phone line, as is
11 Mr. Thor Hanson. Our agreement before lunch was that
12 we would try to honor Mr. Hanson's time commitments
13 and get the phone hung up by about two o'clock.

14 So we are going to go ahead, Mr. Hanson, and
15 swear you in wherever you are right now. So if you
16 will raise your right hand wherever you are. I'm
17 doing that here in Olympia.

18

19 THOR HANSON, witness herein, having been
20 first duly sworn on oath,
21 was examined and testified
22 as follows:

23

24 JUDGE TOREM: I'm going to have
25 Mr. McNamara ask you a series of questions. He will

0145

1 turn his microphone on. I'm going to turn mine off.
2 In order for the court reporter to hear you, I'm going
3 to have you speak loudly and deliberately as you give
4 your testimony so we can all hear you here in the
5 hearing room, okay?

6 THE WITNESS: Sure. How is this coming
7 through now?

8 JUDGE TOREM: A little better. We're
9 going to try to be quiet and just have one person on
10 this end talk at a time. But as loud as you can make
11 it, better.

12 THE WITNESS: I will try to speak
13 loudly.

14 JUDGE TOREM: Thank you.

15

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

17 BY MR. McNAMARA:

18 Q Mr. Hanson, can you hear me? It's Sean
19 McNamara.

20 A Hi, Sean. Yeah, I can hear you loud and
21 clear.

22 Q Good. Thanks for joining us today. I just
23 have a short list of questions here for you. Why
24 don't you please state your name and where you live
25 full time.

0146

1 A Sure. My name is Thor Hanson. I live on
2 San Juan Island.

3 JUDGE TOREM: Sean, have him spell it,
4 please.

5 Q Could you spell your name and --

6 A Oh, sorry. Thor Hanson, T-H-O-R, last name
7 Hanson, H-A-N-S-O-N. And I live on San Juan Island,
8 about four miles south of Friday Harbor.

9 Q Okay. Thank you.

10 And you've -- I've used one of your
11 exhibits -- or one of your support statements, so do
12 you remember filling out that statement?

13 A I do.

14 Q And could I adopt it, or would you like it
15 adopted as part of your testimony?

16 A Sure, that's fine. Everything there is
17 accurate.

18 Q Okay. Thank you.

19 So let's start into it. It's just a few
20 questions here. Do you travel to or from San Juan
21 Islands?

22 A Yes, I do.

23 Q And how often would you say you travel?

24 A Well, it varies. I'm employed -- I'm
25 self-employed as a biologist and an author, and there

0147

1 are periods of time where I travel quite a bit for
2 work. You know, several times a month. And then
3 other periods where it may be a couple of months
4 before I take another trip. So it varies throughout
5 the year.

6 Q Okay. Thanks.

7 And do you use the state ferry for the bulk of
8 your travel?

9 A The bulk of my travel is by state ferry.
10 Occasionally by airplane.

11 Q Okay. Thank you.

12 Any problems with the state ferry system,
13 anything you would change if you could?

14 A I'm sure it's the typical problems of missing
15 them on occasion. I think probably the main challenge
16 for me with the state ferries is the amount of time
17 involved.

18 Q And now, have you used any charter services or
19 ferry services out of Bellingham?

20 A Let's see, I -- several years ago, there was a
21 foot passenger service to Bellingham which I did use,
22 but haven't now for several years.

23 Q Do you recall who -- what company that was?

24 A I'm sorry, I don't recall the name of it, but
25 it would have been -- I'm sure it was in service in

0148

1 the summer of 2008.

2 Q And this is all new to me, Thor, so I'm going
3 to ask the JUDGE a question.

4 MR. McNAMARA: Would you like me to read
5 through his statement at all or it's just admitted as
6 evidence?

7 JUDGE TOREM: He's adopted it as part of
8 his testimony. If the document itself is admitted, it
9 would be part of the record.

10 MR. McNAMARA: Okay.

11 JUDGE TOREM: If there's something you
12 want him to elaborate on, Mr. McNamara, you can go
13 ahead and do that.

14 MR. McNAMARA: Okay.

15 Q So in your experience in the past, has it been
16 easy for you to get to Bellingham?

17 A Well, Bellingham is a bit of a challenge just
18 in that, you know, if I have an appointment there or
19 an offer for some kind of work or something, you know,
20 there's quite a lot of travel time involved and
21 expense, in that I take the ferry to Anacortes and
22 then drive from there. So I can think of a couple of
23 occasions, you know, over the past several years,
24 where I've turned down things in Bellingham just
25 because of the hassle of getting there.

0149

1 Q So there's never been a -- in your mind, a
2 real reliable service that gets you from San Juan
3 Island to Bellingham?

4 A Well, I would say, you know, you're going to
5 get there, but you better book half a day of
6 transport.

7 Q Gotcha. And in your profession, would you be
8 mostly summer or would you -- would it be beneficial
9 for you to be a year-round -- to have that opportunity
10 to travel between Friday Harbor and Bellingham year
11 round?

12 A Oh, it would be great year round, frankly. I
13 can think of two trips in the next few months where I
14 would use that service.

15 Q All of these might be kind of repeating myself
16 a little bit here, but I want to get through my list
17 just because I wrote it.

18 Do you feel the island communities would
19 benefit from such a service, a year-round service that
20 would connect Friday Harbor to Bellingham?

21 A I think so. I really do. If people had a
22 service they could count on to Bellingham, I think you
23 would see a lot more people traveling there for
24 business, for pleasure, for doctor appointments, what
25 have you. I mean, I have known and know now people

0150

1 who actually commute from the island to Bellingham for
2 work. I suspect many of them would consider a service
3 like this to be a great boon.

4 Q Two more questions I just want to throw in
5 here. Years and years ago, there was a State study
6 done where a boat operated for the winter only and --
7 do you remember that? A direct --

8 A I have a memory of a State-supported grant
9 program to Bellingham. I couldn't put a date on it
10 for you, but I think yeah, I think that's probably the
11 one you are talking about.

12 Q Did you ride that boat?

13 A Probably. I can't say for sure, but I suspect
14 that I probably did.

15 Q And then --

16 A It has been sort of intermittent over the
17 years. Occasionally something will pop up to get to
18 Bellingham, and I usually do try it when it's there.

19 Q But there was no real explanation as to -- or
20 when that stopped or if it would come back or anything
21 like that?

22 A I think the general feeling in the -- on the
23 island is that when these opportunities for foot
24 service to Bellingham arise, they often have sort of a
25 temporary feel to them. And so I don't think we've

0151

1 had a service that was sustained long enough for
2 people to really alter their habits or plans in a
3 permanent way.

4 Q Okay, thank you.

5 Just one more question. If there's anything
6 else that I have missed that you would like to state
7 for the record?

8 A Oh, I guess I would just state that I think
9 that folks that I know would be thrilled to have
10 reliable foot service to Bellingham. And as an
11 islander, we're always looking for more transportation
12 options.

13 Q Okay. Thank you.

14 MR. McNAMARA: Nothing further from me.

15 JUDGE TOREM: This is JUDGE Torem again.

16 Mr. Hanson, I'm going to have a couple of the other
17 attorneys here introduce themselves to you, and you'll
18 hear their voices. There's Mr. Michael Fassio, he
19 represents Commission Staff that handles these kind of
20 ferry applications. He's going to have an opportunity
21 to ask you some questions.

22 And another competing applicant, Mr. Drew
23 Schmidt, has hired an attorney named David Wiley.
24 He'll have an opportunity to ask you some questions.
25 And there's another gentleman on the line, Mr. Terry

0152

1 Buzzard, who is also involved in these lines of work,
2 he may also have some questions.

3 So pardon the round robin questions, but it
4 should go fairly quickly.

5 Mr. Fassio first?

6 MR. FASSIO: Yes.

7

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

9 BY MR. FASSIO:

10 Q Hello, Mr. Hanson.

11 A Hi there.

12 Q Just a couple follow-up questions. You have
13 spoken about your need to travel to Bellingham. Do
14 you also personally ever have need or occasion to
15 visit any of the other San Juan Islands?

16 A Oh, yeah, for sure. I have quite a lot of
17 family on Orcas Island. I'm actually speaking to you
18 from my father's place on Orcas Island today. So I do
19 move around to different islands as well.

20 Q How about Cypress Island?

21 A Only for pleasure. I don't -- I have been to
22 Cypress a number of times, but usually to visit the
23 natural area there.

24 Q All right.

25 If there were a service, would you use a ferry

0153

1 service as an alternative route to get you from your
2 home in Friday Harbor to Orcas Island or Cypress, for
3 example?

4 A Certainly to Orcas, perhaps to Cypress. It's
5 a place that I've enjoyed hiking and camping in the
6 past. I don't have a boat personally now, so it would
7 be a place I would love to take my family sometime.

8 Q Thanks. And you mention in your support
9 statement, flight options from Bellingham
10 International Airport. So do you use Bellingham as a
11 starting place of call to go visit other places as
12 well?

13 A Currently, I don't. But it's a place that I
14 would like to be able to fly out from, if it was more
15 convenient. You know, you can get to quite a lot of
16 places from Bellingham now. And I would also point
17 out that catching a train or catching buses is so much
18 more easy from Bellingham than it is from Anacortes.
19 If one travels as a foot passenger on the state ferry
20 to Anacortes, you are sort of at the end of the road,
21 where you get off the boat there, and you also have a
22 lot of wait and a lot of hassle to try and get any
23 kind of transport out there. Whereas Bellingham is a
24 lot more efficient.

25 Q And I take it that your travel on your job

0154

1 takes you beyond Bellingham on a number of occasions?

2 A Yes, that's right. I do travel for research
3 and I travel for giving lectures and to conferences
4 and that type of thing.

5 Q Okay. Thank you.

6 A Sure.

7 JUDGE TOREM: Mr. Wiley?

8

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

10 BY MR. WILEY:

11 Q Hi, Mr. Hanson. Dave Wiley, I represent
12 Pacific Cruises Northwest, who has also applied for
13 authority to serve between Bellingham and Friday
14 Harbor today.

15 A Okay. Hi.

16 Q Hi. I just wanted to ask you a few brief
17 follow-up questions. You mentioned that you are
18 seeking year-round foot ferry service availability.
19 Do you have any differences or variations in your
20 traveling patterns, where you travel more in the
21 winter than the summer or the spring or the fall? Can
22 you describe that for us?

23 A Oh, I'm not sure there is a seasonal pattern
24 to it per se. For me, it's influenced by when I have
25 speaking engagements, and particularly as an author,

0155

1 when I have a book come out, I do an awful lot of
2 traveling for that. So the last time would have been,
3 oh, I had a lot of travel in June, July and August,
4 and through the fall. That was in 2009. And then
5 it's sporadic throughout the year. It can be winter,
6 it can be -- I'm going, you know, next month I'll be
7 in New York. And then in May I'll be down in
8 New Mexico. I don't know about the summer yet. So it
9 comes and goes year round.

10 Q And do you evaluate whether you use the
11 Washington State ferry system based on whether you
12 need a car once you get to the mainland?

13 A Well, at this point, the state ferry is sort
14 of the only game in town. So there are -- you just
15 sort of tend to take the ferry anyhow. But there are
16 times when it would be nice not to have a car, you
17 know, to be able to go as a foot passenger and leave
18 the car behind.

19 Q I guess at present, I was weighing the airline
20 option in my reference to a car, understanding there's
21 no current service between Bellingham and Friday
22 Harbor by a commercial foot ferry. But are there
23 times where you would take the plane because you
24 didn't need a car, for instance, if you went to
25 Bellingham?

0156

1 A I haven't -- no, that's not true, I have -- I
2 should also add I have a lot of family in Bellingham,
3 and a year or so ago was traveling there quite a bit
4 to care for my mother. At that time, I did some
5 flying to Bellingham, because I didn't need a car, and
6 I didn't -- time was of the essence, so I used a
7 plane. It would have been an instance where a
8 passenger ferry would have been a great help as well.

9 Q That was my question, whether that would be a
10 direct option for the plane service to Bellingham when
11 you didn't need a car. And I think you are saying
12 yes, that it would be a great option?

13 A Oh, to have a boat?

14 Q Yes.

15 A Yeah, I would have been on the boat a lot for
16 something like that.

17 Q Now, when you -- in supporting this
18 application, you've listed convenience and
19 accessibility as some of the factors that weigh in
20 your desire and need for a commercial foot ferry
21 service between Bellingham and Friday Harbor. Is cost
22 a factor for you?

23 A Oh, yeah, sure. Cost is part of the equation
24 as well. But in terms of cost, I also factor in my
25 time as a big part of cost.

0157

1 Q Right. So even if the commercial foot ferry
2 service were to be, say, up to four times what the
3 Washington State ferry would charge to go to
4 Anacortes, you would consider expending that extra
5 cost for -- in exchange for the reduced personal time
6 and the convenience?

7 A Yeah, I -- yeah, time is of the essence. So
8 if I have a travel option where I can actually work
9 while I'm traveling, which I would be able to do on a
10 boat, you know, I always think about that, and factor
11 in the time I'm behind the wheel or waiting in line
12 someplace to get on a boat is certainly wasteful.

13 Q I think my final question goes to, you listed
14 reliability as a factor that you need in terms of the
15 transportation outlet. Is it important -- do you
16 understand that reliability also depends on the
17 financial viability of the operator in offering the
18 service?

19 A Yeah, I guess that's an underlying truth of
20 any transport.

21 Q So in other words, it's important that they be
22 profitable in order to continue to offer consistent
23 service between Bellingham and Friday Harbor, I'm sure
24 you understand.

25 A Yeah, I would guess so. You can ask the state

0158

1 ferries about that.

2 Q That's part of our problem, Mr. Hanson. We're
3 competing with a subsidized system. Thank you very
4 much.

5 A Sure. You're welcome.

6 JUDGE TOREM: Mr. Buzzard, anything that
7 you want to add for Mr. Hanson?

8 MR. BUZZARD: Not a thing. Thank you.

9 JUDGE TOREM: All right. Thank you.

10 Mr. Hanson, I'm going to see if Mr. McNamara
11 has anything else for you and then I'll cut you loose.

12 THE WITNESS: All right. Thanks.

13 MR. McNAMARA: Nothing further from me,
14 thank you.

15 JUDGE TOREM: All right, Mr. Hanson.
16 Good luck with your next publication and your travel
17 schedule. And you can hang up your line now. Thanks
18 for participating.

19 THE WITNESS: Okay.

20 JUDGE TOREM: Take care.

21 All right, gentlemen, I think we will go off
22 the record for a couple minutes and discuss the
23 procedure going forward here as to which witnesses to
24 put on or whether we continue with Mr. McNamara's
25 testimony. So let's go off the record.

0159

1 (A brief recess.)

2 JUDGE TOREM: We're back on the record.

3 We took a few moments to sort out what we're going to
4 do. We will go back to Mr. McNamara and resume his
5 cross-examination. Just before we do that, I want to
6 ask Mr. McNamara, because we didn't do it while
7 Mr. Hanson was on the phone, did you want to move for
8 the admission of Exhibit SCM-5 at this time?

9 MR. McNAMARA: Yes.

10 JUDGE TOREM: Are there any objections
11 to that exhibit?

12 MR. WILEY: Is SCM-5 Mr. Hanson's?

13 JUDGE TOREM: It is Mr. Hanson's
14 statement.

15 MR. WILEY: No objection with the
16 testimony, your Honor.

17 MR. FASSIO: No.

18 JUDGE TOREM: All right. SCM-5 will
19 also be admitted. So we got that piece of
20 housekeeping taken care of.

21 Mr. Wiley?

22 I will remind Mr. McNamara, you are
23 still under the same oath as this morning. And we
24 will resume his cross.

25

0160

1 C R O S S - E X A M I N A T I O N (Continued)

2 BY MR. WILEY:

3 Q Yes, Mr. McNamara. This is a little awkward
4 here from this angle, but I will try to turn.

5 Mr. McNamara, as I indicated, I have some
6 questions on your ridership and revenue forecast
7 exhibit, which is RCM-11.

8 MR. WILEY: Is it, your Honor, or 10?

9 JUDGE TOREM: 10.

10 Q 10. If you have that in front of you now,
11 great.

12 My questions really go to trying to decipher
13 the design of this so it makes some sense in terms of
14 how I'm reading it. It's less technical and more sort
15 of conceptual. And I think His Honor tried to ask
16 some of the questions that I had, and Mr. Fassio as
17 well, so hopefully I'm not plowing over the same
18 ground, but trying to get a little more explanation.

19 What you have done here in the far left corner
20 is put the destination. And the one I'm most having
21 problems with is the first entry, Bellingham, because
22 I don't know where that origination point is. I
23 thought, as you normally read these kind of charts,
24 you would find -- Bellingham, San Juan, ten
25 passengers, I get that on the summer daily boardings.

0161

1 But I don't then understand how that relates to the
2 Bellingham entry of 6 and 2. And I apologize if this
3 is more obvious than I'm making it.

4 A No, it's not more obvious. And looking back
5 on it, I guess it could be far more easier to read.
6 That was my estimation of folks that would be coming
7 into Bellingham from all of these islands.

8 Q Oh, okay.

9 A So basically --

10 Q Inbound to Bellingham.

11 A -- into Bellingham, whether I picked one up on
12 Lopez or five up in Friday Harbor.

13 Q So there's no way to distinguish, for our
14 purposes now on this chart, how many are coming from
15 San Juan into Bellingham by looking at the entry for
16 Bellingham, is there?

17 A No. Again, it's just a guesstimation.

18 Q And so the similar -- the winter daily
19 boardings, are you saying that there's two people
20 coming back to the mainland into Bellingham in the
21 winter on one sailing, or is that both sailings? You
22 haven't told us how many sailings you're going to have
23 in the winter. I assume just one.

24 A Again, yeah, it's just a ballpark figure.
25 I've cut it way down because, as the seasoned veterans

0162

1 here know, winter is harder. But I think that that's
2 a real key thing, for people to have a reliable
3 service that they can count on year round.

4 Q Yeah, I would agree that winter is brutal for
5 operators on this route. The question is: Are you
6 saying in Column 2, which is the second column from
7 the left, which is entitled "Winter Daily Boardings,"
8 are you saying that that 2 is two eastbound passengers
9 into Bellingham per day in the winter?

10 A Yes.

11 Q Okay. And then you are saying that that could
12 be from San Juan or Eliza or Lopez or Orcas?

13 A Yes.

14 Q And you are saying that that would generate --
15 then do I go over to the right, fourth column to the
16 right -- fourth column from the left, other than the
17 destination point, where it says \$140, you are
18 generating \$140 in revenue on that eastbound movement
19 into Bellingham?

20 A Correct.

21 Q Okay. And so the countervailing summer
22 revenue into -- eastbound into Bellingham, as I'm
23 reading it, would be 420, although I don't know where
24 that revenue is being generated, because you talked
25 about a tariff that was 60, 70 and 80 stepped, based

0163

1 on distance from Bellingham, right?

2 A Correct.

3 Q So in your analysis here, you didn't factor in
4 gradations in price, in terms of generating tariff
5 rates, in terms of generating that revenue, correct?

6 A Between the three? Among the stops, no. I
7 just took, you know, 60, 70 and 80, so I just took the
8 70 in the middle. It's just an average.

9 Q Okay. Well, let's look at -- let's focus on
10 the winter, because that's where you and I may have a
11 disagreement on the viability of the service, and I
12 want to ask you about that.

13 In the winter, you are saying that you would
14 generate eastbound \$140, and then westbound you'd
15 generate the difference between 140 and 980? Is that
16 what you're saying? I'm trying to figure out the
17 chart.

18 A No, and like I said in the beginning, it does
19 seem a little confusing now that I'm looking at it. I
20 basically just put the passengers times the amount of
21 money they would be spending either way, and that was
22 the revenue for that island and that -- whether winter
23 or summer.

24 Q I got it until the last part of that sentence.

25 A Okay.

0164

1 Q I think what you are saying, and correct me if
2 I'm wrong, is that, based on the tariff rate and two
3 people eastbound into Bellingham, that that would be
4 \$140 in revenue, which assumes that they are paying
5 \$70 a person, correct?

6 A Correct.

7 Q That's a round-trip fare, isn't it?

8 A Yes.

9 Q So you're assuming by that 140 that two people
10 are going round trip from Bellingham in the winter on
11 an average day of the winter?

12 A From Bellingham.

13 Q Yeah. And you would acknowledge, would you
14 not, that it's costing a whole heck of a lot more than
15 \$140 for you to run that boat for that day in the
16 winter?

17 A Correct.

18 Q It's probably costing you 20 times that or at
19 least 10 or 20, isn't it?

20 A Most likely, yes. I mean, probably not 20
21 times, but if you say it's not just the two
22 passengers, we'll bring that up to 14 passengers
23 total. And as I said, it's a ballpark figure, and I
24 shot for pretty low so I could be happily surprised if
25 it was ten times more people.

0165

1 Q So even assuming that it's the 14 passengers,
2 and they are paying -- how do I get to that revenue
3 figure, by the way, on this chart for the 14? Is that
4 the 980?

5 A I believe, yeah, for 14.

6 Q Okay. You would acknowledge, would you not,
7 that even at 980, it costs a whole heck of a lot more
8 to run the boat than \$980?

9 A Sure. That way.

10 Q And --

11 A The fuel.

12 Q And I assume viability financially, I mean,
13 you're not seeking this route to lose money?

14 A No.

15 Q So would you acknowledge that winter service
16 is very risky and less balanced with a very healthy
17 revenue stream the rest of the year?

18 A Yes.

19 Q And does your Exhibit 10 make any assumptions
20 about what would be a break-even point just to earn
21 back your costs from your service?

22 A No, it doesn't here.

23 Q And I believe either His Honor or Mr. Fassio
24 asked you about a cost of service study. You know
25 what I mean by that, don't you?

0166

1 A Yes.

2 Q Okay. And I think it's fair to say that you
3 haven't performed any actual cost to service value on
4 this route to determine whether your proposed rate
5 would be profitable, correct?

6 A Again, in my business plan that I didn't
7 submit here today, it's a little more detailed.
8 Again, this is a starting point for me, as this is a
9 start-up company. I'm just looking to provide a
10 service that hasn't been provided. And all those
11 numbers won't be very apparent if I do get into it.

12 Q Does the fact that it hasn't been provided, at
13 least in the winter in recent years, does that have
14 any bearing on your analysis? In other words, do you
15 have any knowledge as to whether the year-round
16 service ever broke even for the people who offered it?

17 A I'm not aware if it has or hasn't. Because it
18 hasn't been offered for a long time. I do realize
19 that it's a very -- it's a difficult -- difficult
20 thing to do in the wintertime. But 15,000 people in
21 the San Juan Islands, all needing to fly or shop or
22 anything like that, if they can rely on a service,
23 they know it's going to be there Monday morning,
24 they'll travel.

25 Q But again, you haven't done any formal study

0167

1 that would suggest to you that those 15,000 people
2 will definitely use the ferry in sufficient quantity
3 to make it profitable?

4 A No, it's not a formal study, it's simply
5 talking to the public and hearing what they need.

6 Q Are you aware that the Commission has
7 statutory standards for regulating rates of regulated
8 industries that are under their jurisdiction?

9 A Yes.

10 Q And are you aware that the law requires that
11 all rates established by the Commission for
12 application by regulated carriers are just, fair,
13 reasonable and sufficient?

14 A Yes.

15 Q And do you have an understanding as to what
16 sufficiency means in that context?

17 A Probably not as much understanding as you
18 might have in that.

19 Q Well, if you could -- do you have any
20 understanding of what sufficiency means in terms of
21 the rates that have to be established on this route?

22 A I guess I would need you to clarify that a
23 little more for me. As far as funding goes, as far as
24 studies go?

25 Q My question goes to the tariffs that are

0168

1 assessed and approved and authorized by the Commission
2 on this route. Do you have any understanding as to
3 what sufficiency would mean in that context?

4 A No.

5 Q Is there anything else in Exhibit 10 that you
6 could provide by way of comment in terms of reading
7 across the chart that would help me understand some of
8 the assumptions? Is there anything else, for
9 instance, in the Bellingham column where I could
10 correlate some of the numbers that you provided to get
11 to the totals that you provide? Is there anything by
12 way of explanation that would help me correlate the
13 columns with some of the totals, I guess is my
14 question, that you haven't already provided?

15 A I mean, I think it's fairly self-explanatory.
16 Look at the Bellingham line. Go over to the summer
17 revenue of \$420 per day to Bellingham, and multiply
18 that by an average of five days per week, which is 100
19 days.

20 Q Is it your testimony, for instance, that if I
21 multiply 4,684 --

22 A No.

23 Q -- by 70, I will get to the total revenue
24 combined of 273 plus 54,880? I have not done that,
25 I'm just wondering if that's how you --

0169

1 A No. It's if you take the 420 from the summer
2 revenue, \$420 a day, multiply it by 100 days, where it
3 says summer average, five days a week, 100.

4 Q Okay.

5 A That's \$42,000 for summer revenue.

6 Q Okay.

7 A If you jump over to the winter --

8 Q And then --

9 A -- coming into Bellingham.

10 Q And then the winter, I would multiply 280
11 times --

12 A Well, if you jump down to Eliza.

13 Q Oh, okay. 140, can we go with 140, the winter
14 revenue? I would multiply that times --

15 A 56.

16 Q And that's how I would get to what number,
17 54880?

18 A No, the winter revenue in the Bellingham line,
19 which is 7840.

20 Q And again, in terms of how you apportion the
21 origin point from the -- into Bellingham eastbound,
22 that's just sort of a guesstimate on your part that
23 there would be 4 or 6 or 10 passengers, is that true?

24 A Correct.

25 Q And if -- for instance, the San Juan revenue

0170

1 is a large part of your overall revenues, is it not?

2 A Correct.

3 Q And if you were high on that assumption in
4 your projection, that would significantly impact your
5 projected revenue and profit, would it not?

6 A I may have shot very low for these, I believe.

7 Q My question is, if you were high, too high and
8 too optimistic, would it significantly impact the
9 profitability and the revenue you project for this --

10 A Sure.

11 Q -- overall route?

12 A Sure.

13 MR. WILEY: No further questions, your
14 Honor.

15 JUDGE TOREM: Mr. Buzzard, did you have
16 any questions you wanted to ask of Mr. McNamara?

17 MR. BUZZARD: Not at this time, no.

18 JUDGE TOREM: Mr. Fassio, did the
19 questioning by Mr. Wiley raise any more questions for
20 you?

21

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

23 BY MR. FASSIO:

24 Q Well, one follow-up on the last few questions
25 about the ridership statements, Mr. McNamara. And

0171

1 your chart indicates that you calculated this on a
2 summer average of five days a week, but in fact, you
3 are proposing to offer a daily service of seven days a
4 week, right?

5 A Correct.

6 Q So this is conservative if you averaged --
7 it's a conservative estimate, and you haven't taken
8 into account perhaps two additional days that were in
9 your application?

10 A Yes. I mean, it was -- again, it's a starting
11 point for a start-up company. And they are just
12 ballpark figures that I thought we could definitely do
13 at a minimum. But yes, I plan on running seven days a
14 week in the summer, so it could increase considerably.

15 Q Well, that's your current plan in your
16 application, to run a seven-day service in the summer?

17 A Yes.

18 Q And your winter average here on this chart you
19 say two days per week, but in looking at your time
20 schedule filed in your application, you are planning
21 to operate four days a week, Friday through Monday; is
22 that correct?

23 A Correct.

24 Q So would you say if that's two days a week,
25 then four days a week would be double that? Or do you

0172

1 have any sort of estimate, or are you sticking with
2 these estimates in terms of that?

3 A Well, I guess since I don't have anything
4 else, any other exhibits, that I'll have to stick with
5 this one. Again, it was just a low estimate, because
6 I wanted to be happily surprised if it was more. I
7 was just trying to average it out, you know, not high,
8 not too low.

9 Q Mr. Wiley asked you a few questions about --
10 relating to the cost of running a service in the
11 winter and the cost of running it in the summer.
12 Obviously from this chart, it appears you get far more
13 summer revenue than winter revenue. But you would
14 also be running fewer sailings in winter as well, so
15 would you have less expenses involved in operations in
16 the wintertime based on fewer sailings?

17 A Yes. There's be less fuel burned, less hours
18 paid.

19 Q And just as a further matter of clarification
20 on this one chart, because we talked Bellingham having
21 two winter boardings, so if I went down the list and I
22 saw Eliza is two, St. Clair is one, Cypress is one, is
23 that assuming a round trip from Cypress, round trip,
24 all the way through and back?

25 A Yes.

0173

1 Q And the same with San Juan, someone leaving or
2 coming to San Juan, doing a round trip?

3 A Correct.

4 MR. FASSIO: No further questions.

5

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

7 BY MR. WILEY:

8 Q On the basis of Mr. Fassio's question about
9 your conservatism on Exhibit 10 and what your tariff
10 and time schedule as filed said, you indicated that it
11 was conservative in terms of ridership; is that
12 correct?

13 A Correct.

14 Q If you were to double the number of days of
15 sailing in the winter and add two in the summer, would
16 that not also consequently increase your costs of
17 service in providing those additional days?

18 A Well, of course, but you would also be
19 generating more revenue.

20 Q That wasn't my question. It was to the cost
21 of service.

22 MR. WILEY: Thank you. I have nothing
23 further.

24

25

0175

1 in 2007 or '8? I'm talking about this year and last
2 year.

3 A I don't know what would have put us in a
4 prehearing conference if it wasn't protested initially
5 in that application. I can look back.

6 Q Let's pretend that the Commission records
7 probably would reflect if there was a prehearing
8 conference, and they are usually indicative. There
9 was no prehearing conference in the docket. This was
10 a transfer of the Bellingham and Obstruction Pass
11 service, including the various flag stops that are
12 listed. What did you file in order to get permission
13 from this Commission to serve those routes and then
14 the 20-month window to do so?

15 A I filed an application.

16 Q Did it look much different than this one?

17 A A new ferry certificate, a new application for
18 a ferry certificate.

19 Q And did you file anything much different than
20 what I'm seeing in this docket?

21 A "This docket" meaning just Friday Harbor?

22 Q Everything we are seeing today is in this
23 document, all this financial information. Did you
24 give a lot more details when you got permission to
25 serve all these other ones that --

0176

1 A No, sir.

2 Q And my indication shows that on May 31st,
3 there was an open meeting, and the Commissioners sat
4 up where I'm sitting now. And on a consent agenda,
5 which I understand to be no discussion, no questions,
6 just a bang of the gavel and it's done, your
7 certificate was approved, and you had 20 months to
8 start running it from there; is that right?

9 A Correct.

10 Q Does that reflect the May 31st date on that
11 other exhibit we saw earlier today?

12 A Yes.

13 Q Did anybody question if you could provide a
14 viable service that you were proposing at that time?

15 A Not to this extent.

16 MR. FASSIO: Your Honor, I'm sorry to
17 interrupt. But Staff may be able to provide some
18 procedural background on these two dockets before
19 Mr. McNamara testifies further.

20 The docket that you are referring to is a sale
21 and transfer application. Mr. McNamara would have
22 filed a sale and transfer application jointly with the
23 transferor, which would have been Pacific Cruises
24 Northwest. And then Commission Staff would have
25 reviewed that application, issued data requests and

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1 reviewed the financial fitness of the applicant
2 receiving the service, which was Mr. McNamara. And
3 then I believe that is what happened. It would have
4 gone before the Commission on its open meeting agenda.

5 MR. WILEY: JUDGE Torem, when he's
6 through, I would like to make a comment as well.

7 (Pause in the proceedings.)

8 MR. FASSIO: Yes, your Honor, so on a
9 nonprotested sale and transfer application, Staff does
10 a review of the statutory requirements to see that the
11 applicant meets those, including a review of the
12 financial fitness, so that it can be assured that the
13 applicant receiving the sale and transfer has the
14 fitness to operate for 12 months. That would have
15 been done on a nonprotested basis in the sale and
16 transfer application.

17 What Mr. McNamara is initially referring to is
18 an application for a new ferry service, which was
19 protested -- this is well prior to that, which was
20 protested, and there was, I believe, if I recall, a
21 prehearing conference, but that was ultimately
22 withdrawn.

23 So that particular proceeding would have been
24 similar to this one, but it was ultimately withdrawn.
25 And what came out of that was a settlement agreement,

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1 and subsequent to that, Staff worked with all the
2 parties on the sale and the transfer application.

3 JUDGE TOREM: Mr. Wiley?

4 MR. WILEY: Yes, your Honor. I would
5 venture to say that aside from Ms. Ingram, I've
6 probably been involved in the most boat certificate
7 applications, either new or transfer. There's no
8 question legally that the review on a transfer, an
9 unprotested transfer, is very, very relaxed. I don't
10 believe any data requests were issued in this case. I
11 don't know, I've never seen them in an unprotested
12 transfer of a boat certificate before. Ms. Ingram
13 would know if there were data requests issued, I don't
14 know. But there's no question that the statutory
15 review standards are far more relaxed in an
16 unprotested transfer, than they are in a contested new
17 entry application.

18 JUDGE TOREM: I have no doubt, almost
19 seven years here at the Commission, if there's a
20 settlement of some sort or a nonprotested application,
21 the amount of scrutiny is much less. The statutory
22 standard doesn't say, hey, there's no protest, we can
23 just willy-nilly grant these certificates.

24 MR. WILEY: It doesn't, your Honor.

25 JUDGE TOREM: What I'm suggesting is

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1 there is an indication of fiscal and financial fitness
2 that was allowed to pass to this applicant when he got
3 these island stops. And I'm asking Mr. McNamara if
4 anything has really changed, other than the updates
5 he's given us today. Because there's going to be some
6 indication in the record that Mr. McNamara was found
7 fiscally and financially responsible to operate just
8 about every other stop in the San Juans, but the big
9 ticket of Friday Harbor, that has to be taken by these
10 other documents.

11 MR. WILEY: My comments went solely to
12 the scope of review.

13 JUDGE TOREM: I understand. And so I'm
14 a little bit frustrated with where Mr. McNamara is
15 sitting today, and looking as he's not an accountant,
16 hasn't run a business before, and it's clear from the
17 record, your cross-examination and the sophistication
18 of the paperwork, wasn't a concern sufficient to this
19 Commission Staff, to the degree it is all of a sudden
20 today, to all the other business interests in the
21 room. Then, Mr. McNamara, fine, go serve these other
22 islands, is the message I get. But when we come
23 before it, now for the big ticket of Friday Harbor,
24 we've got protests, we've got other people that are
25 interested in that pot of gold at the end of the

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1 rainbow, and suddenly now it's at issue.

2 It puts me in a tough position to do what's
3 right for the people of Friday Harbor and the people
4 of Bellingham who want the service, to not recognize
5 that there's a certain presumption that goes with the
6 certificate he already holds.

7 And so I just want to put that point on the
8 record while Mr. McNamara is still here for
9 cross-examination, that it's not unnoticed, he holds a
10 certificate. Hasn't started, hasn't initiated
11 service. The only other certificate holder in the
12 room is on hold up in Bellingham, and he's not
13 operating. He's on a discontinuance for 12 months,
14 for whatever the reason is, because he doesn't have a
15 boat either.

16 So we have a very difficult time here with
17 monopoly grants, and the guide for public interest to
18 have service granted, and yet I've got one presumption
19 in the room of fiscal fitness without a boat, another
20 one that's on hold for 12 months without a boat, and
21 your client, who is clearly going to come and want to
22 make some waves this afternoon, as to be the most
23 fiscally fit with three boats but no permit.

24 So it puts a difficult conundrum here if we
25 continue to not give scrutiny when there's no

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1 protests, and allow people to go out and expend the
2 money has already been discussed today, and venture
3 their capital, and give them a risk and give them a
4 time frame, and hold them to a different standard,
5 when somebody says, well, I want to serve that port
6 too.

7 So from where I'm sitting, the statutory
8 standard is the same, whether there's a protest or
9 not. The level of scrutiny, I'll give it to you
10 there, sure, it is a lot different. And so it just
11 makes it difficult. When Staff allows a candidate
12 like this to obtain a certificate, it comes with an
13 endorsement and an imprimatur of this Commission that
14 says they are fiscally fit to do everything they've
15 got a certificate for.

16 I'm looking at a minor extension for two flag
17 stops and a big ticket. And so there's got to be some
18 presumption that goes into the hearing the way it's
19 postured, who is before today me with a permit and who
20 is before me today without. So I just want to be
21 clear so you can structure your case accordingly the
22 rest of the afternoon.

23 That doesn't mean there's any predecision.
24 It's sort of a frustration of how this morning
25 developed and what the evidence has shown so far. The

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1 burden is the same for both applicants. You are both
2 here. But there's one that I have to acknowledge has
3 a foot in the door by already having a certificate to
4 serve the bulk of the islands.

5 So for me, if it comes down to who is more
6 fiscally fit, I have to look at the operations of one
7 versus the other. Can I split them up? You'll have
8 to make that case, Mr. Wiley, when it comes down to
9 it, whether today or in a posthearing brief. And I
10 would appreciate it if Staff would take a position
11 eventually as to which company they really think can
12 serve the needs of the sailing public in Bellingham
13 and the Islands.

14 For Staff to come in and say you don't have a
15 position on either of these applicants, you've
16 allowed a position to be implied by issuing the
17 certificates that you've done in the past. You've
18 passed judgment on these companies that they've
19 statutory and regulatory muster. And that is your
20 position, unless you can tell me otherwise.

21 I hope it's not a mistake that it was granted,
22 because I understand Mr. McNamara is now under
23 contract to make substantial additional payments
24 toward the competitors that are in the room to be able
25 to operate even what he's been granted thus far.

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1 So pardon the commercial interruption there,
2 but I think that's where the case is postured as we go
3 into the rest of the afternoon and tomorrow.

4 Mr. Buzzard, I heard you wanted to chime in
5 there. Now I'm done, I'll get off my soapbox for a
6 moment and turn it back to you.

7 MR. BUZZARD: That's fine, your Honor.
8 I only have one comment. I certainly have a boat.

9 JUDGE TOREM: Yes. I wasn't sure that
10 you did from the last time. But if you're clarifying,
11 when we get to testimony from you, I'd like to hear
12 about your boat under oath, okay?

13 MR. BUZZARD: Absolutely.

14 JUDGE TOREM: Thank you, Mr. Buzzard.

15 Mr. McNamara, did you have additional
16 witnesses ready to put on at this point? I haven't
17 heard anybody else call in.

18 MR. McNAMARA: No, like I said, I just
19 need to text and make a few phone calls and see if I
20 can try to get Rogan Jones. The other two I need to
21 call.

22 JUDGE TOREM: Mr. Wiley, are you
23 prepared to put on any of your witnesses that are
24 already -- who are on the list for today?

25 MR. WILEY: Yes. Mr. Oplinger, if

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1 that's satisfactory with you.

2 JUDGE TOREM: Mr. McNamara, if you don't
3 have an objection, I would like to put Mr. Oplinger on
4 and turn him loose. I think he'd be leaving after
5 day.

6 So, sir, I'm trying to think where's the best
7 microphone I can get you at. It might be at the end
8 of this table. Just pull that one down, because it's
9 plugged in. And once we've put Mr. Oplinger on, we
10 will take a break.

11 (Discussion off the record.)

12 JUDGE TOREM: We will take
13 Mr. Oplinger's testimony, and this will be part of
14 Pacific Cruises Northwest's case. This is sort of a
15 joint venture here today in front of the tribunal.
16 After that, we will take a break and we'll decide,
17 Mr. McNamara, when you can schedule your witnesses.
18 And then as we come back here, will proffer as to this
19 additional witness we got a letter about earlier in
20 the week, who has come and wants to testify today,
21 rather than having you back tomorrow, if we are all
22 here.

23 Mr. Oplinger, I'm going to ask you to stand
24 and raise your right hand.

25 THE WITNESS: (Complies.)

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1

2 KEN OPLINGER, witness herein, having been
3 first duly sworn on oath,
4 was examined and testified
5 as follows:

6

7 JUDGE TOREM: Can you spell and state
8 your name.

9 THE WITNESS: Ken Oplinger, the last
10 name is O-P-L-I-N-G-E-R.

11 JUDGE TOREM: All right. Thank you.
12 Mr. Wiley?

13

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

15 BY MR. WILEY:

16 Q Hi, Mr. Oplinger. I thank you very much for
17 your time today. Would you please provide your
18 business address and your employer for the record?

19 A Yes, it's 119 North Commercial Street, Suite
20 110, in Bellingham. I'm the president and CEO of the
21 Bellingham/Whatcom Chamber of Commerce and Industry.

22 Q Generally, what are your job responsibilities
23 in that capacity?

24 A It's my responsibility to be the voice and
25 representative of the business community in and around

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1 Whatcom County.

2 Q And what does the Bellingham Chamber do, just
3 generally for the record? I think most of us know
4 what they do, but just generally.

5 A Our responsibility is to address the needs of
6 the business community. That's done through both
7 advocacy work on their behalf with government
8 entities, both locally and outside the area, providing
9 them opportunities to interact with each other and
10 generally try and make sure they have an environment
11 in which they can be profitable.

12 Q And in that capacity, you are here today
13 representing the Chamber; is that correct?

14 A I am.

15 Q And you are also a private citizen living in
16 the Whatcom County area, are you?

17 A I am. I'm also a member of the city council
18 in the City of Blaine.

19 Q And so with some of my questions, I may ask
20 you to distinguish your private citizen capacity in
21 terms of your needs versus your trade associations and
22 who you are representing here today.

23 A I appreciate that.

24 Q Could you please describe your personal
25 leisure or travel needs that might take advantage of

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1 regulated commercial ferry service between Bellingham
2 and Friday Harbor?

3 A My family and I have traveled for leisure
4 purposes to the San Juans probably on a once-a-year
5 basis during the nine years we've lived in Whatcom
6 County.

7 Q And how about for your association, what do
8 the businesses that you represent, that you lobby for,
9 that you interact with, what sort of benefit and
10 convenience would the provision of regulated
11 commercial ferry service between Bellingham and Friday
12 Harbor mean for those businesses?

13 A Well, generally, the assumption has been that
14 it would be a substantial benefit. Bellingham is the
15 commercial center for the Northwest corner of
16 Washington state. We have, as has been testified to
17 earlier, a major airport, the third largest airport in
18 the state, from which people throughout the area can
19 access nine different Western U.S. cities. He have
20 the largest medical center. And so we do have a
21 number of people in the San Juans that come to
22 Bellingham for medical purposes. We also have the
23 primary regional retail center for the area, as well.

24 Q As a matter of fact, there's a Medevac service
25 from Orcas Island and some of the larger San Juan

0188

1 islands directly to Bellingham, is there not?

2 A That's correct.

3 Q And would you expect that for follow-up care
4 and other medical services, people from San Juans
5 would use a commercial foot ferry service to go from
6 Friday Harbor to Bellingham?

7 A That would be my assumption, yes.

8 Q Is the current situation without any
9 authorized commercial ferry service between Bellingham
10 and Friday Harbor of concern to you, and if so, why?

11 A Well, I would say it's of concern just in the
12 sense that we would like to see regular service. We
13 believe that it would provide both economic benefit to
14 Whatcom County, as well as the citizens of the
15 San Juan Islands. And essentially limiting access to
16 the largest retail center, either through the state
17 ferry through Anacortes and some sort of land
18 transportation from there, or via a small plane
19 service to Bellingham, I think limits the ability for
20 folks in the islands to be able to get to Bellingham
21 for any reasonable rate of pay.

22 Q Does the availability of vessels of varying
23 size and capacity also benefit your citizens in
24 Bellingham and Whatcom County to go between there and
25 Friday Harbor?

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1 A I think for the most part, the citizens of
2 Whatcom County would not be overly concerned with the
3 types and size of vessels insofar as the vessel is
4 able to navigate the waters, especially in the
5 wintertime, when it is not pleasant to be out there.
6 Obviously, smaller vessels, would cause a problem.

7 Q And I guess my question was going to larger
8 groups that might be traveling together, you know, 40
9 or 50 people, the Chamber, et cetera, and I wanted you
10 to comment on that.

11 A Yeah, I would say that for ability both from
12 the San Juans to Bellingham and back again, it would
13 be important to have the accessibility for larger
14 groups, absolutely.

15 Q What, in your view as the president of the
16 Chamber, what would be the impact of denial of this
17 application on your business or economic development
18 plans for Whatcom County? I assume it wouldn't be
19 helpful. Could you elaborate, please?

20 JUDGE TOREM: Can you please clarify as
21 to which application you are talking about?

22 Q I'm talking about Pacific Cruises Northwest,
23 Inc.

24 A Well, I think, you know, the -- anything that
25 would further this ongoing issue of not having a good,

0190

1 reliable direct service would certainly be a
2 detriment. It would cause, especially businesses in
3 Bellingham, to continue to not look at the San Juan
4 Islands as a reasonable area in which they could
5 conduct business and expect the customers.

6 Q And with respect to Pacific Cruises Northwest,
7 Inc., are you familiar with Mr. Schmidt, the owner and
8 shareholder of Pacific Cruises?

9 A I am.

10 Q And what has been your experience with
11 Mr. Schmidt over the years, please?

12 A Mr. Schmidt is certainly a very active member
13 of the business community. He and I have worked
14 directly, both on projects for his business
15 specifically, as well as access issues for folks being
16 able to get to Victoria, sort of broadly for all of
17 the private ferry services over the last several
18 years.

19 Q And with respect to service to the San Juan
20 Islands, are you also familiar with Mr. Schmidt's
21 efforts to develop that transportation link and make
22 it convenient and available to citizens in Whatcom
23 County?

24 A I am. Mr. Schmidt ran a service in the winter
25 of 2005, with the assistance of the Whatcom Council of

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1 Governments, who had obtained a grant to be able to
2 run the trial service and determine what the usage
3 might be. That service, even though it was in the
4 winter, which my understanding was it needed to be in
5 that time frame because of boat availability, actually
6 had numbers that certainly would not allow the service
7 to run on its own without the subsidy, but were, I
8 would say probably higher than what we had originally
9 expected. There was interest in the San Juans for the
10 service.

11 There was also an effort made by the community
12 to reach in the San Juans, to help drive that service.
13 And early on, during that time frame, a number of us
14 went over on the boat and spent the day in Friday
15 Harbor, marketing the new service, encouraging the
16 citizens there to avail themselves of the opportunity.

17 Q We have proposed for admission into the
18 record, this proceeding, the Whatcom Council of
19 Government passenger-only ferry study. That's what
20 you are referring to, are you not?

21 A I am.

22 Q And during that time with the winter pilot
23 project, the fares were heavily subsidized, were they
24 not?

25 A That's my understanding, yes.

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1 Q And as you review that program, and the
2 experience in your discussions with Mr. Schmidt, do
3 you understand the importance of having the provider
4 be viable in terms of the revenues it recoups from the
5 route?

6 A Absolutely. I can recall having a
7 conversation both with Mr. Schmidt, as well as with
8 the COG, as the subsidies drew to a close. In fact,
9 that while it was very positive to see the interest
10 that there was, it was certainly not a service that
11 would be viable without the subsidy.

12 Q And you've heard testimony today about the
13 competition with the Washington State ferry service
14 and what private providers face in offering service
15 between Bellingham and Friday Harbor. Do you have any
16 understanding as to whether the comparison between
17 those fares is something that impacts the use and
18 route between Bellingham and Friday Harbor?

19 A I would certainly have to think that it does.
20 And the difficulty I know for residents in the San
21 Juan Islands is that while they have a heavily
22 subsidized service they can access, it takes them to a
23 community that is not able to provide nearly the level
24 of services that Bellingham does. And so as was
25 earlier testified to by a resident of the Islands, I

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1 think having to weigh that cost benefit of spending
2 more money but getting to a city that can actually
3 give them services that they are demanding is
4 something that they all have to weigh when those
5 opportunities avail themselves.

6 Q If you were faced with a service that was
7 seasonal, that couldn't operate in the winter, would
8 you still support its availability to your businesses,
9 your citizens in Whatcom County if that was the only
10 way it could remain viable?

11 A Well, certainly if that was the only way it
12 could remain viable, and viable long term. I think
13 part of the issue is making sure that we have service
14 that, while it may not meet the year-round needs,
15 everyone knows exactly when it starts and ends, and
16 roughly what the price is going to be, and they can
17 plan for usage during those times.

18 Q Can you tell us today, in summary, why you are
19 here in support of the application of Pacific Cruises
20 Northwest, Inc.?

21 A Because I think, as I have worked with Drew in
22 the past, that he has demonstrated both broadly and
23 specifically on this red center question, that he has
24 run a company that can not only provide those
25 services, but do so in a way that works with both

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1 communities, and that we certainly want to continue to
2 see that service provided ongoing, in a way that's
3 going to benefit all of us.

4 Q Thank you, Mr. Oplinger.

5 MR. WILEY: I tender the witness, your
6 Honor.

7 JUDGE TOREM: Mr. Oplinger, before I
8 pass you for cross-examination, I wanted to follow up.

9

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

11 BY JUDGE TOREM:

12 Q Mr. Wiley had a question about the importance
13 of the financial viability of, I think in this case,
14 Mr. Schmidt's company, in partnership with the Council
15 of Government's pilot program for that passenger-only
16 ferry. Can you again explain the need for that and
17 the importance from your business perspective for a
18 financially viable private partner?

19 A Yes, I believe that we do ourselves more harm
20 if we move forward with a service that we can't be
21 absolutely certain will be viable into the future in
22 the time frames that we have stated it will provide
23 its service in. So if we have limited service, but we
24 know with certainty that that service will be able to
25 move forward in future years in those time frames, I

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1 would say that that takes precedence, in my mind, over
2 service that we are less certain will be able to
3 continue, even if it provides service over a longer
4 time period.

5 Q And can you distinguish for me the difference
6 between whether that's equally important in a charter
7 service availability versus the scheduled service?

8 A I don't know that I can really testify to
9 that. It would seem to me that for the San Juans, for
10 the folks there, having a scheduled service would be
11 more important. From Bellingham side, when we go,
12 it's more for recreational purposes. The charter
13 service would probably have more impact on us than it
14 would on the San Juans. My guess is for the people in
15 the San Juans, that scheduled service would be more
16 important.

17 JUDGE TOREM: Let me see if the other
18 parties have questions for you, sir.

19 We'll start with Mr. McNamara. Do you have
20 any cross-examination questions?

21 MR. McNAMARA: Yeah, just a couple here
22 and see where it leads to.

23

24

25

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

2 BY MR. McNAMARA:

3 Q So your relationship with Drew Schmidt is
4 purely a business level?

5 A That's correct.

6 Q And did you know him before at all? I mean,
7 was he --

8 A Prior to my coming to the community to take
9 over the Chamber in 2003, I did not know Mr. Schmidt,
10 no.

11 Q Is it true that he sat on the board that hired
12 you in your current position?

13 A He was on the board at the time, and he served
14 as chair for a year as well, that's correct.

15 Q Are you aware that Pacific Cruises owns -- has
16 owned this certificate to go between Bellingham and
17 Friday Harbor for years and years and years?

18 A That's my understanding, yes.

19 Q Okay.

20 Are you aware that he -- that in 2010, they
21 operated for approximately 100 days in the summer
22 running that service?

23 A I don't know what the time frame was in 2010.
24 I do know that generally speaking, he provides the
25 service during the summer, so it wouldn't surprise me

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1 to hear that was the case in 2010.

2 Q Yeah, approximately.

3 So are you aware that he filed with the
4 Commission in 2011 to run nine days the entire year?

5 A Am I aware of that?

6 Q Are you aware of that?

7 A I'm not aware of that, no.

8 Q Okay.

9 Is it your position to support, being the
10 president of the Chamber of Commerce, to support one
11 business over another?

12 A I'm not here to support one business over
13 another, I'm simply here to speak on behalf of
14 Mr. Schmidt.

15 Q Okay.

16 A My testimony should not be taken in any way to
17 suggest that I do not see financial viability of any
18 other company that's in these proceedings.

19 Q In that 2005 study, do you recall how many
20 people were -- took the ferry back and forth?

21 A No, I don't recall.

22 Q Or the amount of the grant?

23 A I don't recall the amount of the grant, but
24 from the questions from the other counsel, it appears
25 that this has been submitted into the record, and I

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1 would certainly stipulate to whatever that study
2 showed.

3 MR. McNAMARA: I guess I have nothing
4 further at this time.

5 JUDGE TOREM: Mr. Fassio, any questions
6 for this witness?

7 MR. FASSIO: No, your Honor.

8 JUDGE TOREM: And Mr. Buzzard?

9 MR. BUZZARD: No, sir, I don't believe I
10 have any.

11 JUDGE TOREM: Mr. Wiley, do you have any
12 follow-up?

13 MR. WILEY: No, I don't, your Honor.

14 JUDGE TOREM: Mr. Oplinger, anything
15 else you want to share with me and the Commission for
16 the record?

17 THE WITNESS: No, sir.

18 JUDGE TOREM: Okay. Thank you very much
19 for your testimony today.

20 THE WITNESS: It's my pleasure.

21 JUDGE TOREM: All right. It's about a
22 quarter to 3:00. Let's take a break. Come back about
23 5 to 3:00, and hopefully be back on the record shortly
24 thereafter.

25 (A brief recess.)

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1 JUDGE TOREM: We are back on the record
2 here about 7 minutes after 3:00. My understanding is
3 that Mr. McNamara was able to get one of his remaining
4 three witnesses to call in. We have Rogan Jones on
5 the bridge line. Mr. Buzzard is still on the bridge
6 line and all the other parties are back as has been
7 represented.

8 Counsel what I propose is that we swear in
9 Mr. Jones, take his testimony on the shipper support
10 angle here. He does not have a shipper support
11 statement, so this is just straight witness testimony.
12 When we are done with that, we can talk a little bit
13 more about scheduling and how to proceed for the rest
14 of today and plan for tomorrow.

15 Mr. Jones, as we sit here, are you in
16 Bellingham?

17 MR. JONES: Yes, I am.

18 JUDGE TOREM: All right. Well, there in
19 Bellingham, if you will raise your right hand. I'm
20 going to do the same here in Olympia. I will swear
21 you in long distance.

22
23
24
25

0200

1 ROGAN JONES, witness herein, having been
2 first duly sworn on oath,
3 was examined and testified
4 as follows:

5
6 JUDGE TOREM: Thank you, Mr. Jones. If
7 you can state and spell both your first and your last
8 name for the record.

9 THE WITNESS: Rogan, is my first name,
10 R-O-G-A-N, and the last name is Jones, J-O-N-E-S.

11 JUDGE TOREM: I'm going to turn you over
12 to Mr. Sean McNamara. He'll ask you some questions.
13 And as I described when we were off the record, I've
14 got two other attorneys here. And clearly, you know
15 Mr. Buzzard, if he has any additional questions for
16 you of a nonsocial variety.

17 Mr. McNamara, your witness.

18

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

20 BY MR. McNAMARA:

21 Q Good afternoon, there, Rogan. Thanks for
22 calling in. I'll just rocket through these questions
23 pretty quickly.

24 First, do you travel to and from the San Juan
25 Islands?

0201

1 A Yes, I do.

2 Q And about how often would you say you do that
3 in a year?

4 A Probably a few weeks, three or four weeks in
5 the summertime and then two or three times maybe in
6 the wintertime, or the fall/wintertime.

7 Q In that travel, do you mainly use the state
8 ferry?

9 A I do in the winter. I don't in the summer.

10 Q Okay. In the summer, how are you getting back
11 and forth through the islands?

12 A We -- Bellingham and we take it out usually.
13 I mean, we do now exclusively.

14 Q I'm sorry, it cut off for a second there. Did
15 you say you have your own boat?

16 A Yes, we've got a little a 24-foot boat.

17 Q So when you do take the state ferry, do you
18 notice any problems?

19 A The state ferry? Yes. It's almost impossible
20 to get off the island without spending all day Sunday.
21 We've got kids so we only get out there on the
22 weekends usually. It's easier to get out there, but
23 getting back ties up all of Sunday these days.
24 They've cut down a lot of runs.

25 Q Thanks.

0202

1 Have you used any ferry services or charter
2 services out of Bellingham?

3 A We used to. We used to catch a ride on the --
4 what we called a foot ferry, but it's a whale watching
5 cruise out of Bellingham.

6 Q And how often would you use his services in
7 the summer?

8 A We would use it one or two times, and our
9 friends would use it also. Sometimes we would take
10 them out on our boat, and it would be rough on a
11 Monday, and we would stay out there, and then our
12 friends could catch it on Obstruction Pass and get
13 back to Bellingham. We wouldn't have to run across in
14 the boat. We wouldn't able to run across in our boat.

15 Q Do you remember the last time you or any of
16 your friends out there used that service?

17 A I want to say about three years ago.

18 Q Three years? And --

19 A I might be slightly wrong, about three years
20 ago.

21 Q And do you remember the name of that company
22 or that boat?

23 A Well, yeah, we called it the foot ferry, but
24 it was San Juan Cruises out of Fairhaven. It might
25 have a different name. Yeah, that's what we called

0203

1 it. ISLAND COMMUTER, it was called San Juan Cruises.

2 Q When they stopped -- when they quit stopping
3 there at Obstruction Pass, did they notify you or your
4 friends?

5 MR. WILEY: Your Honor, I'm going to
6 object to any points besides the ones that are
7 relevant to this application. I think we've had
8 foundation on that. Really, this is a request for
9 Vendovi and Friday Harbor and the other island is --

10 JUDGE TOREM: Cypress.

11 MR. WILEY: -- Cypress.

12 MR. McNAMARA: I'm just --

13 JUDGE TOREM: Mr. McNamara, why don't
14 you rephrase the question as to -- if you want to
15 inquire on this line, it has to be as to support that
16 he brings a current need for it. If you want to
17 inquire about a past need or not, I'll let you go into
18 that in a limited fashion.

19 MR. McNAMARA: I guess I was simply
20 trying to establish that there was a certificate.

21 MR. WILEY: We don't contest that, your
22 Honor.

23 MR. McNAMARA: Okay.

24 JUDGE TOREM: Mr. Jones, you said you
25 were using San Juan Cruises in the past?

0204

1 THE WITNESS: Yes.

2 JUDGE TOREM: Can you explain why you
3 stopped using them?

4 THE WITNESS: Well, my understanding, I
5 heard they stopped stopping at Obstruction Pass.

6 JUDGE TOREM: So Obstruction Pass was
7 the destination you were trying to get to?

8 THE WITNESS: That was the one our
9 guests and we used many times, yes.

10 JUDGE TOREM: Did you ever use them to
11 get back and forth to Friday Harbor?

12 THE WITNESS: We had friends that went
13 out there to Friday Harbor. Yes, we did.

14 JUDGE TOREM: Okay. Mr. McNamara.

15 Q Just a couple more here, Rogan. So do you
16 feel there's a need presently for a reliable passenger
17 ferry service from Bellingham to Friday Harbor?

18 A I do. Yes, I do.

19 Q Would you, or would anybody you know, use that
20 service year round?

21 A I would. It would be really helpful for me
22 personally in the summertime, and if it's running in
23 the winter, I think it would be helpful. Yes, I would
24 definitely use it for business and for personal
25 reasons.

0205

1 Q Last one. Is there anything that you would
2 like to state that I'm missing here?

3 A Well, I hope a ferry could return from
4 Bellingham to the San Juans. It's a long drive to
5 Anacortes, and there is less service from there for
6 the cars. And I think it's good for economic
7 development. I don't know if that's been brought up.
8 But I think it would help the Islands, and I think it
9 would help Bellingham's economy. I can't see how it
10 could hurt.

11 MR. McNAMARA: All right. Thank you.
12 That's all for me.

13 JUDGE TOREM: Mr. Fassio?

14 MR. FASSIO: I don't think I have any
15 questions, your Honor.

16 JUDGE TOREM: Mr. Wiley?

17 MR. WILEY: No questions, your Honor.

18 JUDGE TOREM: Mr. Buzzard?

19 MR. BUZZARD: Not a question. You're
20 getting off easy, Rogan.

21 THE WITNESS: Okay.

22 JUDGE TOREM: Mr. Jones, again, your
23 testimony is mainly to show me and the Commission what
24 the need is for services out there. Is there anything
25 else you wanted to describe? I think your last answer

0206

1 may have been it.

2 THE WITNESS: Unless there's something
3 else I could answer, I don't think I have anything
4 else to state.

5 JUDGE TOREM: Okay.

6 Mr. McNamara, any last thoughts while we've
7 still got him on the line?

8 MR. McNAMARA: No, your Honor.

9 Thanks, Rogan.

10 JUDGE TOREM: Thanks. It was all day
11 waiting for the five minutes, but it's been helpful,
12 Mr. Jones. Thanks for your patience. You can hang up
13 on your end.

14 THE WITNESS: Okay. Great. Thank you.

15 JUDGE TOREM: Counsel, I understand
16 there's still two outstanding witnesses that have been
17 listed, Ms. Osterhaus and Mr. Leadbetter. They've
18 been notified to call in. They are not on the line,
19 as far as I know now, but may be available later.
20 We'll see, depending on their work schedules.

21 Mr. McNamara?

22 MR. McNAMARA: Yeah, I need to call
23 them, if they were going to call in again. I've got
24 the same list of questions for all of my witnesses.
25 Basically, I know I'm not supposed to go backwards,

0207

1 but I'm trying to show that the service hasn't been
2 provided. They are going to say the exact same thing.

3 JUDGE TOREM: Let me see if I can save
4 you a moment here. Your Exhibit 8 and Exhibit 9 are
5 shipper support statements of these two witnesses.

6 Mr. Fassio and Mr. Wiley, have you had a
7 chance to review proposed Exhibits SCM-8 and SCM-9?

8 MR. WILEY: I need to go take a look at
9 them, Your Honor.

10 JUDGE TOREM: We have time left today
11 and tomorrow. We don't need to hurry up and adopt
12 these statements or admit them in place of testimony.
13 But I think it would be a nice courtesy for
14 Mr. McNamara if we get to the end today, and if they
15 haven't given their testimony, if we need to
16 inconvenience them tomorrow or we can just stipulate
17 to the admissibility of these documents in place of
18 testimony. If there's a need for cross-examination on
19 either one, certainly I would like to have it, but if
20 there's not, and these will suffice, it's up to
21 Mr. McNamara, if you want to waive calling them.

22 You may be able to work out with Mr. Fassio
23 and Mr. Wiley and Mr. Buzzard that these statements do
24 the trick. It doesn't sound as though this is a piece
25 of the case that's going to be the most controversial

0208

1 or contested.

2 MR. FASSIO: Your Honor, in reviewing
3 the statements, I do believe that Staff did have an
4 issue with the shipper support statements as
5 stand-alone. The reason being in the case of
6 Mr. Leadbetter, that's SCM-9, reading the
7 transportation need, it indicates boat transportation
8 between Bellingham and Eliza Island.

9 JUDGE TOREM: And that's not part of the
10 expansion.

11 MR. FASSIO: And that is not part of the
12 expansion. And so if the applicant cares to call this
13 witness, perhaps the witness will be providing
14 testimony that relates to the specific need in the
15 application.

16 JUDGE TOREM: And is that the same
17 concern with Ms. Osterhaus and Sinclair Island?

18 MR. FASSIO: It's a similar concern,
19 yes, your Honor.

20 JUDGE TOREM: So these may still not be
21 relevant as to the extension application before me
22 today, Mr. McNamara. These witnesses could testify
23 about Cypress, Vendovi or Friday Harbor?

24 MR. McNAMARA: Maybe Vendovi, and I'm
25 not sure of that. I'm sure that Shirley has the --

0209

1 may go Friday Harbor if she has the opportunity.
2 Mainly this was to -- both of these were to show again
3 the service was not being provided.

4 JUDGE TOREM: Let me suggest to you that
5 the only three ports of call outside of Bellingham,
6 which is your origination, would be Vendovi, Cypress
7 and Friday Harbor ports. And so with these shipper
8 statements that are still outstanding, Captain Shuster
9 and Dr. Shields, who you haven't suggested would
10 testify otherwise, if they don't contain indications
11 of connection between Bellingham and those three that
12 you're asking for extension, they wouldn't be
13 relevant.

14 And for the other two witnesses, if you check
15 with them, if they can't testify about the three, then
16 it may be a waste of their time, because they would be
17 subject to probably successfully ruled upon objections
18 to the relevance and admissibility of their testimony
19 here.

20 Mr. Wiley?

21 MR. WILEY: Yes, your Honor. Without
22 sounding facetious, they would be clairvoyant as well,
23 because they are both dated before this application
24 was even submitted. So on that basis, on its face, I
25 would object as well to the two statements, the

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1 Osterhaus and the Leadbetter statements.

2 JUDGE TOREM: Well, certainly their
3 personal testimony wouldn't precede us by the dates,
4 so we will see what happens.

5 At this time, Mr. McNamara, do you have any
6 other testimony or evidence to present?

7 MR. McNAMARA: No. I'm okay letting
8 them go. SCM-6, Todd Shuster does talk about between
9 Bellingham and San Juan Island. I would like that
10 admitted.

11 JUDGE TOREM: And is there any reason we
12 can't subject this witness to cross-examination by
13 telephone?

14 MR. McNAMARA: Yeah, he's actually
15 delivering a sailboat from one coast to the other, so
16 he's somewhere out in the middle of the ocean right
17 now.

18 JUDGE TOREM: To the best of your
19 knowledge, he's unavailable?

20 MR. McNAMARA: Yes, sir.

21 JUDGE TOREM: All right. But you still
22 want to offer this Exhibit 6 at this time for
23 admission? Let me see if there's any objections to
24 it.

25 Mr. Wiley?

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1 MR. WILEY: Yes. The reason I object,
2 there are factual assertions that I would like to ask
3 him about in the support statement, first paragraph,
4 and whether he authored it, whether it was authored by
5 the applicant. You know, while I'm sympathetic to his
6 seafaring ways, I think it's prejudicial without being
7 able to cross-examine.

8 JUDGE TOREM: And would that prejudice
9 be cured by granting it lesser weight or simply by
10 admitting it and considering it, it's prejudicial to
11 your interests and to your client's interests?

12 MR. WILEY: Well, maybe the applicant
13 could give some foundation on the exhibit in terms of
14 how this witness had some of these facts, some of the
15 statement -- I certainly wouldn't object to the
16 reference to a need for service between Bellingham and
17 Friday Harbor, but that's as far as I'll go.

18 JUDGE TOREM: Okay. So some of the rest
19 of this you are saying is unnecessary as --

20 MR. WILEY: Yes, is potentially
21 prejudicial.

22 JUDGE TOREM: Mr. Fassio, did you have a
23 position on this, SCM-6?

24 MR. FASSIO: I think just in general,
25 the Commission always prefers to have the testimony of

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1 live witnesses over shipper statements, unless there
2 is a stipulation from -- to the parties and the Bench.
3 We don't have a particular position on the contents of
4 the statement itself. It appears to be relevant to
5 the extent that it does reference this application
6 docket and a need for service to Bellingham and
7 San Juan Island. And while we would appreciate the
8 ability to cross-examine this witness, we're not going
9 to object on the basis that we can't cross-examine
10 him.

11 So with that in mind, strong objections either
12 way.

13 MR. WILEY: Your Honor, one other point
14 if I might be allowed, just because I think I'll see
15 you in other proceedings, probably. I do not want to
16 indicate a waiver on any prospective basis of the
17 ability to cross-examine shipper testimony. It has
18 been a hallmark of the Commission and a requirement in
19 all the years that I have practiced here, that shipper
20 testimony must be subject to cross-examination. So by
21 indicating a limited only objection, I don't want you
22 to interpret that I don't have objections to not being
23 able to cross-examine.

24 JUDGE TOREM: No, I don't read too much
25 into it, Mr. Wiley. The circumstances of this case

0213

1 and having the shipper testimony we've already had and
2 probably will have from your client tomorrow, will
3 adequately buttress the record to show the need.

4 I'm going to sustain your objection today, you
5 may be surprised, and exclude this one simply because
6 when I look at what's proposed, it's not going to add
7 anything to the case.

8 And I want to preserve the integrity of the
9 process to suggest that Captain Shuster's testimony,
10 if I admitted it, wouldn't be subject to
11 cross-examination, Mr. McNamara. And it also may be
12 cumulative to some of the testimony you have provided
13 yourself today. So just so the record doesn't have me
14 or anybody else basing an opinion on someone whose
15 testimony wasn't examinable, something to be inquired
16 further into. So I'm going to exclude SCM-6 at this
17 time, and sustain the objection based on all the
18 concerns that Mr. Wiley more succinctly expressed.
19 And the limited ones from Staff, too. But we will
20 keep 6 out.

21 If we can get Mr. Leadbetter and Ms. Osterhaus
22 to testify to the relevant parts, we can consider them
23 later. Otherwise, it looks like their statements as
24 they stand won't be relevant.

25 And I think Dr. Shields may be subject to

0214

1 that same concern. SCM-7 makes a reference to Eliza
2 Island as well, and doesn't have any other
3 indications. She references a vacation property
4 there. And while she very well may go into some of
5 the other places, it's not very obvious from the face
6 of this statement.

7 That leaves SCM-4 from the port director of
8 Friday Harbor. And I believe you testified to much of
9 the effect of her willingness to have your business.
10 So I don't know if you wanted to see about getting her
11 available or if you want to make a similar motion to
12 have that entered subject to the objections of the
13 other counsel.

14 MR. McNAMARA: So if these are not
15 entered, I can't speak in any detail to any of these
16 further on in the trial -- or in the hearing?

17 JUDGE TOREM: It may feel like a trial,
18 Mr. McNamara. You certainly can give personal
19 testimony, and again while we are still in your
20 case --

21 MR. McNAMARA: I can reference them?
22 Sorry.

23 JUDGE TOREM: You can state whatever is
24 in your personal knowledge. I just will hear it from
25 you and have to filter that through any

0215

1 cross-examination as to how you know that, these
2 facts. It's always better for a fact finder to hear
3 it directly -- well, for lack of a better term,
4 directly from the horse's mouth and go forward from
5 there. So if you think it's very, very important that
6 I hear Ms. O'Connor, the port director's testimony, as
7 to why she would like your business in her harbor,
8 other than the obvious financial help to her business,
9 get her on the phone or get her here. But again, you
10 can make a motion right now to admit this. If there's
11 an objection, I can rule on it.

12 MR. McNAMARA: I'll make a motion to
13 admit it. I mean, it doesn't state supporting one or
14 the other. It states they need service in Friday
15 Harbor.

16 JUDGE TOREM: Okay. So this one,
17 Counsel, are there objections to this particular
18 support statement?

19 MR. WILEY: Which one?

20 JUDGE TOREM: This is SCM No. 4, it's
21 directly after the tariffs.

22 MR. WILEY: This is Ms. O'Connor's
23 statement, correct, your Honor?

24 JUDGE TOREM: Correct.

25 MR. WILEY: To the extent that it

0216

1 addresses service between Friday Harbor and
2 Bellingham, I don't believe I have an objection.

3 JUDGE TOREM: Mr. Fassio, any Staff
4 concerns on this one?

5 MR. FASSIO: No objection. We would
6 stipulate to the admission of this exhibit.

7 JUDGE TOREM: Mr. Buzzard, this is
8 Exhibit 4. Any objection from your end?

9 MR. BUZZARD: None, sir.

10 JUDGE TOREM: Okay. Then I will admit
11 Exhibit 4. And, Mr. McNamara, before we close your
12 case subject to Mr. Leadbetter and Ms. Osterhaus
13 perhaps coming forward with relevant testimony,
14 Exhibits 1 through 5 have been admitted. 6 has been
15 excluded based on an objection I sustained. 7, 8 and
16 9 have not yet been offered or have any testimony
17 supporting them to come in. 10, 11 and 14 that you
18 supplied this morning have all come in. And
19 Exhibits 12 and 13 that the Commission Staff had in
20 cross-examination also came in.

21 So all of your exhibits that have been offered
22 have been admitted, except for No. 6, and 7, 8 and 9
23 have not been offered or admitted.

24 MR. McNAMARA: Okay. And I can't object
25 to that?

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1 JUDGE TOREM: You can't object to?

2 MR. McNAMARA: I don't see any point,
3 really, in calling in Shirley Osterhaus or Eric
4 Leadbetter, because they are going to state basically
5 what everybody else has today.

6 JUDGE TOREM: Okay. Well, you have
7 that --

8 MR. McNAMARA: I don't want to waste
9 their time.

10 JUDGE TOREM: So then the real question
11 is do you have any personal evidence, testimony or
12 otherwise, from your application for extension that
13 you want to put on before we close your case and move
14 solely into Pacific Cruises, focusing on their
15 application considered jointly in this hearing?

16 MR. McNAMARA: Yes, because --

17 JUDGE TOREM: You still have opportunity
18 to cross-examine and inquire into any witnesses that
19 Mr. Schmidt puts on through Mr. Wiley. But your case,
20 as far as making the case for why you are fiscally
21 responsible and the rest would close out, if you say
22 no, I don't have anything else.

23 MR. McNAMARA: Okay. I have one more
24 exhibit that I would like to have admitted. And it's
25 a simple letter from a potential investor for

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1 Bellingham Water Taxi.

2 JUDGE TOREM: Have you provided a copy
3 of that to other counsel?

4 MR. McNAMARA: No.

5 JUDGE TOREM: Do you have a couple
6 copies?

7 MR. McNAMARA: I have copies of it, yes.

8 JUDGE TOREM: Why don't you hand that
9 around, because they won't know what they are wanting
10 to object to or not object to until they look at it.
11 So why don't you stand up and hand that to me and to
12 the other counsel.

13 MR. McNAMARA: (Complies.)

14 MR. WILEY: Your Honor, as he's doing
15 that, if I can inquire, because I wasn't at the
16 prehearing conference, did you issue a ruling from the
17 Bench at the prehearing conference about the admission
18 of any other exhibits? Did you preclude them -- I
19 haven't looked at the prehearing conference order to
20 that regard, but I was wondering if you had addressed
21 that.

22 JUDGE TOREM: No. Had I done so, then I
23 wouldn't be able to take your next witness that you
24 proffered earlier this week, Mr. Wiley.

25 MR. WILEY: Well, that was witness

0219

1 versus exhibits is what I was talking about.

2 JUDGE TOREM: Understood. But I hadn't
3 excluded either.

4 MR. WILEY: Okay.

5 JUDGE TOREM: And given that this is an
6 administrative practice, if it's prejudicial, if this
7 turns out to be a trial by ambush, I'll exclude it.
8 If it's helpful to the record and something that I
9 think that counsel can recover from, let's read it
10 together and see what it looks like, all right?

11 (Pause in the proceedings.)

12 JUDGE TOREM: Mr. McNamara, as I'm
13 reading this letter, it's signed by a George
14 Underwood, III, from Dallas, Texas. There's not a
15 dollar sign -- other than the date and the addresses
16 and phone numbers, there's no financial figures in
17 this document. It appears to be a pledge of support
18 from a family member, perhaps from your wife's family?

19 MR. McNAMARA: Correct.

20 JUDGE TOREM: You want to offer this as
21 proof of what?

22 MR. McNAMARA: Of more financial
23 capability. Again, for me this is a start-up, and I'm
24 looking for investors, using some of my own money,
25 possibly some large business loans.

0221

1 as SCM-15 and entertain, aside from the points I've
2 already made as to where it may or may not be adequate
3 to prove of some financial support, any concerns,
4 Mr. Wiley?

5 MR. WILEY: Surprisingly -- not
6 surprisingly, your Honor, yes, I do have concerns on
7 this document. Not only is it very obvious hearsay,
8 but it raises more questions than it answers as to the
9 extent of the support, the limit of the support, the
10 basis of the support, whether it -- all of us have
11 family members who we would like to indicate can be
12 beneficent towards when the need arises, but I would
13 want to know what sort of limitations there would be.
14 It just doesn't establish anything, your Honor, and on
15 that basis, relevance, foundation, hearsay, I would
16 object.

17 JUDGE TOREM: Mr. Fassio?

18 MR. FASSIO: I guess I would echo on
19 Mr. Wiley's objections, and -- but if it is admitted
20 into evidence, I think it would have to go to weight.
21 And that I believe it doesn't add much into the record
22 in terms of the statutory requirements for financial
23 fitness.

24 JUDGE TOREM: Mr. Buzzard, I know you
25 haven't been a furnished a copy of this, given the

0222

1 nature of your appearance by telephone that we have
2 accommodated, but I think you might get the flavor of
3 what the letter is from what I've stated on the record
4 and the objections made by counsel. Do you have
5 anything else to add?

6 MR. BUZZARD: Nothing, your Honor.
7 Whatever your choice is, is fine with me.

8 JUDGE TOREM: Thank you for that.

9 Mr. McNamara, I think Mr. Fassio hit the nail
10 squarest on the head here. Hearsay is really simply a
11 statement made outside of this proceeding for the
12 truth of the matter here. And so your father-in-law
13 is making a statement outside of the state of
14 Washington as to his willingness to back you
15 financially. So it's hearsay, but hearsay is
16 admissible in these administrative proceedings if I
17 think it is otherwise reliable. And I don't cast any
18 doubt on your father-in-law's backing of you. As
19 Mr. Wiley said, if you have family that can back you,
20 great. But I still don't know what I can get from
21 this. So I can admit this, but it doesn't tell me
22 much, other than there's a George Underwood, III,
23 somewhere in Dallas, who may never have seen Puget
24 Sound and is willing to put some money into. It
25 doesn't tell me how much or give me a whole lot.

0223

1 I'm going to admit it, but I can say that it's
2 not going to get a whole lot of weight in showing me
3 that you are financially responsible. It gives me a
4 little bit more flavor. And simply for the seasoning
5 to the stew of evidence we've got so far, I'll let it
6 in. I don't want you to think by its admission today,
7 over the objections of counsel, that it solves any of
8 the issues that we were beating around this morning.
9 It helps a little bit, but only in a vague fashion,
10 because it's not specific in the ways that--

11 MR. McNAMARA: I should have put a
12 number on it.

13 JUDGE TOREM: It doesn't put a number on
14 it.

15 MR. McNAMARA: That's fine, I
16 understand.

17 JUDGE TOREM: I just want you to know
18 the limitations on which it is being admitted, and the
19 other counsel, for the record, will know as well, that
20 it's a background document to me and not a whole lot
21 more.

22 All right. Subject to any questions I may
23 have posed to the applicants at the end of the entire
24 hearing, because I think there may be some
25 synchronicity between the two once I've heard both

0224

1 sides that I need to come back to, Mr. McNamara, is
2 there any other testimony or evidence you want to
3 present at this time?

4 MR. McNAMARA: No, sir.

5 JUDGE TOREM: Mr. Wiley, we're going to
6 shift to your client's case.

7 MR. WILEY: Yes, your Honor. And
8 coincidentally, the witness that I would intend to
9 next call sort of straddles both cases in terms of the
10 background issues in the reference. So I would
11 propose that his testimony be admitted into both
12 records for consideration by the Commission.

13 JUDGE TOREM: It's consolidated. As
14 much as I can, I'm trying to keep them segregated.

15 We're talking about Mr. Bryan?

16 MR. WILEY: Yes, and I would beg your
17 indulgence to call him out of order before the
18 applicant witness, obviously. So we haven't had the
19 case in chief, I acknowledge, but he's been sitting
20 here from Seattle all day, and I would like to
21 accommodate his schedule if at all possible.

22 JUDGE TOREM: And I understand you and
23 Mr. Fassio had a colloquy about his relevance and the
24 admissibility.

25 MR. WILEY: Yes.

0225

1 JUDGE TOREM: But would you make a
2 proffer for me so that Mr. Fassio can, on the record,
3 respond?

4 MR. WILEY: I would like him to just
5 indicate if he has an objection. I've given him
6 generalized issues that I'll seek to address through
7 Mr. Bryan's very short testimony.

8 JUDGE TOREM: Well, for our record, I
9 know I have a letter suggesting his testimony, and
10 it's dated received here on the 29th, two days ago.

11 MR. WILEY: Yes, and I would be
12 expanding his testimony to the extent that he is an
13 important background witness in general for the
14 industry in the Puget Sound commercial ferry field.
15 And I would also disclose that I have represented
16 Mr. Bryan's company, San Juan Express, which I don't
17 want there to be any question about.

18 JUDGE TOREM: Your letter indicated he
19 would be here from Clipper Navigation, Pier 69 in
20 Seattle, on the issue of public-private partnerships
21 and grant funding for commercial passenger vessels as
22 referenced in some of the filings in this matter.

23 MR. WILEY: Yes, your Honor.

24 JUDGE TOREM: Can you quickly tell me
25 where the public-private partnerships have come up --

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1 MR. WILEY: Yes.

2 JUDGE TOREM: -- as part of the
3 application?

4 MR. WILEY: They have come up in two
5 contexts, your Honor. One in SCM-13, there is a
6 reference to a business plan that considers private
7 investor grants and federal funding to provide the
8 best ferry possible from the beginning. It's also
9 heavily referenced --

10 JUDGE TOREM: Let me just stop you.

11 MR. WILEY: Excuse me.

12 JUDGE TOREM: SCM-13 was the --

13 MR. WILEY: Yes, was the McNamara
14 report, Page 2.

15 And then it's also referenced, your Honor, in
16 the Whatcom Council of Government exhibit, which
17 admittedly has not yet been admitted into the record,
18 but is part of the applicant Pacific Cruises
19 Northwest, Inc.'s submission in this record.

20 JUDGE TOREM: That was your Exhibit 16?

21 MR. WILEY: Yes.

22 And it was also discussed in Mr. Oplinger's
23 testimony this afternoon.

24 JUDGE TOREM: As it is related to the
25 Bellingham Water Taxi case, I'm looking at Exhibit

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1 SCM-13. Is that at the top of the second page, the
2 reference?

3 MR. WILEY: Yes, referencing his
4 business plan.

5 JUDGE TOREM: Okay. I've read the same
6 thing. I was just focusing on other words in the
7 sentence.

8 With that background, Mr. Fassio, do you have
9 objections to this witness, then?

10 MR. FASSIO: With the caveat, your
11 Honor, that with respect to the application of
12 Bellingham Water Taxi today, the reference in SCM-13
13 does relate to another docket, a previous docket, and
14 was filed in the context of that docket. I'm not sure
15 what the degree of testimony has been on the contents
16 of that. So we're not here to litigate the contents
17 of that particular docket. So I have some concerns
18 about that portion of the testimony, but otherwise, no
19 other objections to his testimony.

20 JUDGE TOREM: I have one question,
21 Mr. Wiley, so I'm clear on the purpose of Mr. Bryan's
22 testimony. Is your client, in the course of this
23 application, seeking approve -- Mr. Schmidt to prove
24 his fiscal abilities, responsibility to do this
25 through the use of a public-private partnership?

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1 MR. WILEY: No, he is not, your Honor.

2 JUDGE TOREM: And if Mr. McNamara is
3 not, then why is it relevant testimony?

4 MR. WILEY: It's relevant because there
5 has been -- and I don't believe Mr. McNamara isn't,
6 based on his own testimony. I heard him say that was
7 one of the options that very much remained viable to
8 him, your Honor.

9 Also, I don't agree with Mr. Fassio's
10 separation of the dockets to the extent that this
11 report was filed as an exhibit to show -- to explain
12 why the existing certificate, that the existing
13 service had not been provided by the applicant. So
14 it's part and parcel of that issue in terms of
15 operational fitness.

16 So the fact that there have been references to
17 available pools of money out there to finance
18 operations needs to be addressed.

19 This is also an expert in the field, your
20 Honor. I can qualify him as such in terms of his
21 experience and knowledge in the commercial ferry
22 industry in Washington.

23 JUDGE TOREM: I guess there's not a
24 question as to qualifications, it's simply a question
25 as to why in this docket, where we have two competing

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1 applicants that haven't -- you've said for your own
2 client, it's not an issue, he's not seeking this form
3 of funding. If I ask Mr. McNamara -- he hasn't put on
4 any testimony that's going to tell me he's getting
5 funding from such a grant. There's no application.
6 There's a mere mention in a cross-exam exhibit that
7 came in from Mr. Fassio.

8 MR. WILEY: Maybe we need to put my
9 applicant on first so you can see the relevance,
10 because I strongly believe the Commission would want
11 to hear the evidence from Mr. Bryan in terms of what's
12 going on in the commercial ferry industry on the Puget
13 Sound right now, in terms of viability, service
14 suspensions, disruptions. Financial viability issues
15 are very important and are at the complete backdrop of
16 this case.

17 JUDGE TOREM: That's a different topic
18 than what we have been talking about, public-private
19 partnerships.

20 MR. WILEY: Yeah.

21 JUDGE TOREM: If we are going to talk
22 about the current market to run a commercial ferry and
23 make it viable for any company, I think that's more on
24 target.

25 MR. WILEY: Yeah, and I was

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1 supplementing my letter by saying that, because of the
2 testimony today, I wanted him to address those.

3 JUDGE TOREM: Mr. Wiley, why didn't you
4 say so right away?

5 MR. WILEY: Sorry, your Honor.

6 JUDGE TOREM: Mr. Bryan, come on down.

7 MR. McNAMARA: Can I just say one thing
8 real quick? Just as some of my statements earlier
9 weren't considered necessary because they didn't name
10 Friday Harbor, my progress report here doesn't say
11 anything about Friday Harbor, either.

12 JUDGE TOREM: Again, Mr. McNamara,
13 that's what Mr. Fassio was trying to say. That
14 progress report was in your existing certificate --

15 MR. McNAMARA: Correct.

16 JUDGE TOREM: -- on which you have
17 another 12 months to start service. That's the other
18 docket we're talking about.

19 MR. McNAMARA: Right.

20 JUDGE TOREM: So I think Mr. Bryan's
21 testimony -- well, we will see what questions come in.
22 If we can steer the focus of the testimony to the
23 current commercial and financial environment that both
24 of these competing applications are having to be
25 judged in, that will be helpful to the tribunal and to

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1 the Commission, ultimately in knowing what we are
2 doing regulating commercial ferry service in the Puget
3 Sound and beyond.

4 If there's no public-private partnerships
5 proposed here, I don't know that Mr. Bryan wants to
6 spend a lot of time waiting for traffic to build up
7 while he tells me about that.

8 MR. BRYAN: Too late.

9 JUDGE TOREM: All right. So let me
10 swear you in, Mr. Bryan, now that you've gotten
11 comfortable.

12

13 DARRELL E. BRYAN, witness herein, having been
14 first duly sworn on oath,
15 was examined and testified
16 as follows:

17

18 JUDGE TOREM: Thank you.

19 Can state your first and last name and spell
20 them both for the record?

21 THE WITNESS: Yes. First name is
22 Darrell, D-A-R-R-E-L-L, middle initial E, for Ernst,
23 Bryan, B-R-Y-A-N.

24 JUDGE TOREM: All right.

25 Mr. Wiley?

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

2 BY MR. WILEY:

3 Q Good afternoon, Mr. Bryant. Thank you for
4 your patience and perseverance throughout this process
5 today.

6 Could you please provide your business address
7 and employer for the record?

8 A Yes, sir. Clipper Navigation, Inc. is the
9 corporate name. It's at 2701 Alaskan Way, Seattle,
10 98121. Clipper Navigation has the certificate
11 San Juan Express, Inc. I believe that's B 117. Also,
12 our other entity is a d/b/a, Victoria Clipper, Clipper
13 Vacations, that operates service between Seattle and
14 Victoria.

15 Q How long have you been associated with Clipper
16 Navigation and San Juan Express?

17 A With the Clipper Navigation, nearly 27 years,
18 and with San Juan Express since 1991.

19 Q Mr. Bryan, could you please explain what
20 San Juan Express does with respect to Commission
21 jurisdiction?

22 A Yes. It operates Seattle to Friday Harbor
23 seasonally. Generally, it is about the third week of
24 May until about the second week of September. And I
25 might add, we established, as a separate entity,

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1 San Juan Express for one of the reasons that
2 Mr. McNamara mentioned a little earlier, because of --
3 when we had it under Clipper Navigation, all of our
4 financial information was available for anyone. And
5 so we thought we would keep the two entities distinct
6 and separate and provide that service.

7 Q So you started San Juan Express to provide, in
8 its separate capacity, a regulated service in the
9 state of Washington?

10 A That's correct.

11 Q And is it true that you have been operating
12 for the most part since 1991 to the present?

13 A Yes, and there was one year, the last time I
14 was down here, when we did not operate one summer and
15 asked for a suspension because the Navy needed our
16 vessel for that summer.

17 Q Other than that one year where you
18 discontinued service, have you offered commercial
19 ferry service between Seattle and Friday Harbor over
20 that period?

21 A Yes, sir, and we also -- in conjunction with
22 the transportation between Seattle and Friday Harbor,
23 we also do whale watching out of Friday Harbor. We
24 found that there were not a lot of people who were
25 necessarily destined for Friday Harbor just to see

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1 Friday Harbor. They wanted to go out there and go out
2 whale watching.

3 And during our history, we've had a lot of
4 iterations. We had part of a certificate, service
5 between Friday Harbor and Orcas, Rosario Resorts, to
6 be specific. We had a number of things. At one
7 point, we kept a separate boat up there to do the
8 whale watching. So as we went through these
9 iterations in an attempt to become more efficient and
10 maintain profitability, we made changes.

11 And without going on too far here, I think one
12 of the important things is for our San Juan Express
13 entity, we could not operate that service on the basis
14 of high capital cost, high operating cost. That
15 vessel burns about 150 gallons an hour, two engines on
16 a catamaran, and people don't want to pay a whole lot
17 of money. I think there's a sense of entitlement in
18 this state. And so we sell hotels, tours, et cetera,
19 and to a larger extent, our whole business, 51 percent
20 is nonmarine transportation. The only reason, whether
21 it's our regulated or unregulated service, that we can
22 survive, is because of the ancillary business that we
23 do. We sell 55,000 hotel rooms a year in Victoria,
24 and that helps offset, and the Victoria runs. Again,
25 that's nonregulated. We are only profitable from

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1 mid-May to mid-September, and what we do there is
2 subsidize the year-round service.

3 And the same thing, as I've testified before
4 the Commission before, the only reason we've been able
5 to maintain the San Juan Express are the other sales
6 that we do to subsidize the service.

7 Q With respect to your experience from a
8 financial perspective in providing regulated
9 commercial service between Seattle and the San Juan
10 Islands, could you comment on that in terms of
11 San Juan Express's fiscal history in providing the
12 route?

13 A Well, you know, it's a challenge. I mean, my
14 business partner and her financial advisor are always
15 asking me, Why are you still doing it? Because we
16 carry -- that vessel is licensed for 237. We
17 carry 200 people on it to make it comfortable.

18 The challenge, we've tried to extend it to
19 year-round service. And we were doing it on the basis
20 of weekends. And we were subsidizing, intentionally
21 subsidizing it, getting the hotels up there, and there
22 are only a few, to give us really good deals on the
23 rooms so we could attract people on the weekends and
24 extended holidays. And after two years of that, we
25 stopped, because there wasn't the demand to go to

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1 Friday Harbor in the wintertime from Seattle, no
2 matter what we tried to add to those packages.

3 Q You were also involved with the company that I
4 was previously associated with as well, Aqua Express,
5 were you not?

6 A Yes, sir.

7 Q And Aqua Express was a regulated commercial
8 ferry service from -- by this Commission, was it not?

9 A Yes, we were in partnership with Four Seasons
10 Marine out of Poulsbo, Tom Tougas, Argosy, which is
11 down in Seattle, and also Nichols Brothers Boatyard,
12 Whidbey Island. We operated that service for nine
13 months between Kingston and Seattle.

14 Q That was after a fairly protracted hearing
15 process, was it?

16 A It's hard to forget.

17 Q And after that hearing process, the Commission
18 issued you a certificate, meaning Aqua Express, and
19 you ran for nine months. What happened after that,
20 please?

21 A Well, the timing, as you may recall, fuel
22 prices went through the roof. And our partners -- and
23 there was also an election, a new governor, Governor
24 Gregoire came in, there was a question whether or
25 not state ferries would retain the passenger-only

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1 ferry business. We, as a private group, needed to
2 raise our fares to offset the fuel costs. We were
3 running in competition, if you will, with Washington
4 State ferries. They were going from Kingston to
5 Edmonds. Sounder Rail was not in existence at that
6 time. They wouldn't raise their prices, and
7 Washington State Ferries only charges in one
8 direction. So it was really anti-competitive for us.

9 And we decided, although we could have
10 continued to subsidize it, the partners, that the
11 governor -- and to give her credit, she was new to the
12 job and she didn't have sufficient time to decide
13 whether to continue passenger-only ferry service or
14 give it up, so that's when we pulled the pin.

15 Q And by "pulling the pin," what happened to
16 Aqua Express's certificate?

17 A The certificate went back to the Commission.

18 Q You relinquished it?

19 A Yes, thank you.

20 Q Thank you. Had you, San Juan Express,
21 relinquished any other portions of your certificate
22 over the years?

23 A Yes, sir, at least two. I know one was from
24 Port Townsend to Edmonds. We relinquished the portion
25 from Friday Harbor to Orcas. We -- there's another

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1 one that doesn't really come to mind.

2 We were involved, as you will recall, in the
3 legislation in 1995, when there was a contested
4 situation with Bob Yearsdorf [phonetic], operating
5 without a certificate, in our mind illegally, and the
6 Commission took a position that was contrary to our
7 understanding. And so one of the things that came out
8 of that was the whole thing about how long do you have
9 a certificate and not utilize it. And we were big
10 supporters of that, and I'm glad to see that that's
11 being enforced these days.

12 Q And to your knowledge, have other operators in
13 Puget Sound, such the Mosquito Fleet or Martin Behr's
14 operation, also relinquished certificates?

15 A Well, in fact, you reminded me of another part
16 of our history. We acquired Mosquito Fleet from Mike
17 Bennett and Greg Dronkert. I believe their company
18 was Pacific Navigation. We operated that service from
19 Everett to Friday Harbor. And they had never made
20 money under Marty, when Marty Behr and company had
21 that service. We thought that with our overhead or
22 our ability to have central reservations, accounting,
23 et cetera, we could reduce the operating cost and make
24 it profitable. That did not work, and after three
25 years, we relinquished that certificate.

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1 Q To your knowledge, has any commercial ferry
2 service in Puget Sound regulated by the Commission
3 been able to sustain its service solely on regulated
4 service revenues?

5 A No, sir. And actually, it goes beyond this
6 area even. You know, the Kingston Flyer, when the
7 Port of Kingston put together that operation, they
8 lost -- they bled money badly. Greg Dronkert, who
9 operated between Bremerton and Seattle, lost lots of
10 money, nearly went bankrupt on this.

11 And even north of the border, British
12 Columbia, in terms of their service, they have lost
13 about a half dozen companies. Because as I mentioned,
14 there's high operating cost, high capital cost, and
15 low fares. And most of these companies, I speak to
16 this internationally and domestically at conferences,
17 about the need for ancillary revenue to offset those
18 high operating costs. Most ferry companies cannot
19 operate on the basis of their fares covering the costs
20 of operation.

21 Q With respect to feasibility of service issues,
22 I meant to ask you, and the letter that talked about
23 your presentation today, talked about a number of
24 associations and task forces you have been involved
25 in. Could you just briefly list those for the record

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1 so we understand the basis for some of the your
2 opinions and conclusions here?

3 A I'm past president of the Passenger Vessel
4 Association, trade organization based in Alexandria,
5 Virginia. I've been on the board for ten years, and
6 I'm currently the chair of the insurance committee.
7 Past president of Interferry, and that represents
8 ferry operators worldwide. PMO Line, Sea
9 Containers -- well, they're gone now -- Stena, Staten
10 Island, Washington Ferries, but worldwide, and I'm
11 still on the board of that organization.

12 I served on the Marine Transportation System
13 Advisory Committee, and that was established by
14 Secretary Mineta. I served for two years on that
15 committee. And I also served on the 2000 legislative
16 task force regarding Washington State ferries. And I
17 represent the International Ferry Operators, which
18 Drew used to be part of this. With the United States
19 Customs and Border Protection Airport and Seaport
20 Advisory Committee in Washington, D.C.

21 And last, I chaired the governor's, through
22 Passenger Vessel Association, expert review panel for
23 Washington State Ferries in 2010, where we made 36
24 recommendations to the governor on things that they
25 could do to improve the efficiency and help them with

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1 their operations.

2 Q With respect to the Washington State Ferries
3 and your participation in that task force, and also
4 your ownership of commercial passenger ferries in
5 Puget Sound, could you comment on the role of the
6 Washington State Ferries being sort of the elephant in
7 the room that all commercial ferry operators have to
8 address in their service proposals and pricing?

9 A First of all, I'm an unequivocal supporter of
10 Washington State Ferries. Unlike a lot of people, I
11 don't blame their management, I think they've got very
12 good management. Their problem is governance. And
13 the one thing that affects all ferry operators, they
14 used to have the ten mile rule, it's really
15 irrelevant, because with the manner in which they
16 operate, with their low fares and only collection in
17 one direction, makes it very difficult for a private
18 operator that has to recover their operating costs.

19 They will tell you that that one-way fare is
20 based upon going both ways and they can get some
21 efficiency by not having people staff the location.
22 Our expert review panel took great exception to that,
23 and thought that they should incorporate some
24 practices that are worldwide, charge for each
25 direction, you've got more accountability. But also

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1 the secondary benefit, help private operators that
2 might want get into passenger-only service.

3 Q And would it be fair to state that that's been
4 somewhat of a struggle over the years because of the
5 ferry system and the competition that's just natural
6 between them?

7 A Yes. The former president of the Port of
8 Kingston Commission was -- had been our senior
9 captain, and he attributes one of the reasons for
10 their failure is no charge one direction, and then
11 getting onto the sounder, which is heavily subsidized.
12 Greg Dronkert, who had the Bremerton service,
13 indicated the same thing. They would have people go
14 one way free on Washington State Ferries and then pay
15 one way on their ferry. It's hard to overcome that.

16 Q Finally, Mr. Bryan, based on your experience
17 in the industry, can you comment about the current
18 situation for funding, public funding for private
19 commercial ferry operations?

20 A And that's a very topical item, especially
21 with the alleged moves towards reducing the budget,
22 et cetera. I serve on the legislative committee, too,
23 for the Passenger Vessel Association. There are
24 not -- there are no dollars for the private sector.
25 And in fact, historically, the priority has been for

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1 public ferry systems, earmarking money for Washington
2 State Ferries, Staten Island, Golden Gate Ferry System
3 down in Northern California. But there has been a lot
4 of dialogue about getting money, bonding.

5 But right now it's really pretty much
6 irrelevant. No one is talking about getting any
7 grants. The grants that were available were post 9/11
8 for security items, not for operation costs. That's
9 one of things, as you know, the boat that was built
10 for Bremerton/Kitsap Transit, used \$2 million of
11 federal money. And they -- once they ran out of the
12 operating capital they had, they shut the ferry
13 service down. And in fact, that boat, two days ago,
14 ran up on the beach at 35 knots, and it will be out of
15 commission for a while. But they were taking it up to
16 Port Townsend to take it out of the water, because
17 they can't afford to operate it.

18 Q By the way, Puget Sound Express has what
19 vessel and how much is that vessel worth, or how much
20 do you pay for it?

21 A Puget Sound Express is Pete Hankey's operation
22 for Port --

23 Q Excuse me, San Juan Express?

24 A Excuse me, yeah. The vessel we have on that
25 is a catamaran, and it is 112 feet overall length, and

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1 as I say, it is certificated for 237 passengers, we
2 carry 200. And that vessel at the time we got it was
3 3.5 million and replacement value of that vessel is
4 almost \$7 million.

5 Q How much does fuel cost, if you are familiar
6 with that, annually for that vessel?

7 A Well, we spend annually about two and a half
8 million dollars for fuel, yesterday's fuel price, and
9 we get a preferred rate because of our consumption,
10 not because my son is their sales manager, but -- and
11 yesterday's price was 3.25 a gallon. It's -- and
12 we're at a low point.

13 Q Of pricing, right?

14 A On pricing, right.

15 Q And this summer, that can be over \$4 a gallon,
16 can't it?

17 A Unfortunately, yes.

18 MR. WILEY: Thank you. I don't believe
19 I have any further questions of this witness.

20 Again, I thank you for your time today.

21 I tender the witness.

22 JUDGE TOREM: Mr. McNamara, any
23 questions for Mr. Bryan?

24

25

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

2 BY MR. McNAMARA:

3 Q Well, you are pretty thorough. Its sounds
4 like you have been involved in it for a long time.
5 It's neat to hear all your experience for sure.

6 I heard you -- you went to -- you did run a
7 wintertime service at one point. Did you have
8 passengers coming from Friday Harbor, too, or was it
9 Victoria you were going to?

10 A I'm sorry, if I -- that's a good question,
11 Mr. McNamara. When we first got our certificate, we
12 could not compete with Washington State Ferries. So
13 our schedules at that time were predicated where we
14 were northbound, so it didn't look like we were
15 getting into commute service that would conflict or
16 compete with their service. We continued that. And
17 our schedule was not conducive to residents of Friday
18 Harbor unless they want to come down and spend a night
19 or nights in Seattle.

20 We'd go up in the morning, that was the big
21 demand. And then a lot of those people point to
22 point, then, would come back that night, or the next
23 night, stay overnight. But for Friday Harbor folks,
24 what we tried to do, much like we have with Victoria
25 with Kenmore Air, we have a program called Sea to Sky,

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1 go one way with one carrier and one way with the
2 other. But Friday Harbor was not a big business for
3 us for those people originating there.

4 But during the summer, we're sold out almost
5 every day going to Friday Harbor. It's people going
6 up to the whale museum, whale watching, et cetera.
7 But Friday Harbor, unfortunately, has not been a big
8 ticket for us, for the return.

9 MR. McNAMARA: That's all I need to ask
10 you. Thank you.

11 JUDGE TOREM: Mr. Fassio?

12 MR. FASSIO: No questions, your Honor.

13 THE WITNESS: Thank you.

14 JUDGE TOREM: And Mr. Buzzard?

15 MR. BUZZARD: Yeah.

16

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

18 BY MR. BUZZARD:

19 Q Hi, Darrell.

20 A Hi, Terry, how are you?

21 Q I'm doing all right.

22 Question: Are you or any of your companies
23 looking at investing or purchasing Victoria San Juan
24 Cruises?

25 A No, actually, I was going to ask you if you

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1 wanted to look for a small boat company, if you want
2 to make a small fortune, we'll be glad to help you,
3 you've just got to start with a large one.

4 Q Oh. I was hoping you had small boat and a
5 small fortune cemented together.

6 A Sorry.

7 JUDGE TOREM: All right. Mr. Bryan, I
8 actually have a couple questions.

9

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

11 BY JUDGE TOREM:

12 Q I want to see the dismal picture you paint for
13 operating generally in the Puget Sound. You have
14 competition, it sounds like in the Seattle, Everett
15 commute area, where there's a lot of alternate
16 transportation to go one way, then the other, between
17 the ferry and now the more recent innovations and
18 extensions of Amtrak.

19 A Yes.

20 Q Does Bellingham have those rail connections
21 that would offer a trip in a different direction?

22 A I should have brought a brochure with us. We
23 are Amtrak's largest customer between Seattle and
24 Vancouver. We sell a lot of hotels up in Vancouver.
25 We sell to people going to, for instance, originating

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1 in Seattle, taking Amtrak to Vancouver. They take
2 Pacific Coach Lines, on B.C. Ferries to Victoria, and
3 then return on our vessel. Or they could start in any
4 other -- one of those three cities.

5 There is a lot of competition. We'd just like
6 to see more land side service options between Seattle
7 and Vancouver.

8 And, you know, the Everett service that we
9 had, I mean, everything -- there was -- we had a great
10 facility there, lots of parking, but we just could not
11 get the number -- and frankly, we had a small boat.
12 We leased a boat from a man by the name of Tom Tougas,
13 who owns Four Seasons Marine, he owns 13 boats. He
14 found -- he got smart. He found it's better to lease
15 boats, own them and lease them than to operate them.
16 And so the boat that we had was frankly too slow, it
17 was about 16 knots, and it made for a very long day.
18 And it was not a comfortable boat. So that was one of
19 the challenges.

20 I suspect that, down the road a bit, there
21 might be something that could be reopened. But again,
22 it will never survive just simply on the
23 transportation fare. And here I'm telling the
24 Commission Staff this, but they've heard it before.

25 Q So the service you are just describing,

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1 though, these are back and forth from Seattle to
2 Victoria or to Friday Harbor?

3 A Well, I make the distinction, the two.
4 Victoria is profitable for us. It's profitable
5 because of a couple things, the 55,000 hotel rooms and
6 our average margin is about 25 percent on those. We
7 are the second largest customer for Butchart Gardens.
8 We take a lot of people on tours out there. There are
9 lots of other activities up there, the museum and so
10 on. So that really gives us a little cushion.

11 And then also, not being regulated, we can
12 establish a moving fuel surcharge to cover the
13 increased fuel cost. Friday Harbor, I'm not saying
14 that the Commission won't approve these things, but we
15 don't have other sources of ancillary revenue to help
16 offset that. We have, as a separate business
17 operation, the whale watching. If we didn't have the
18 whale watching, actually we would be out of the
19 business. As it is, our -- we are marginally
20 profitable on that route. And because we pool, in
21 terms of our own financials, things together to look
22 at just how we are doing.

23 And what I see here with regard -- it's not
24 unique to the interstate regulated service here in
25 Washington state. You go around the world, and in my

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1 capacity, and I'm glad to be on this, because I never
2 would have been to Istanbul and to Bangkok or Hong
3 Kong or whatever, but they are all faced with the same
4 problems.

5 In Turkey, for instance, they have a company
6 called IDO. It carries a hundred million people a
7 year. They have 100 vessels. They are subsidized by
8 the city. Hong Kong, they have the same situation.

9 So it's really -- and that's where I make the
10 point of selling to people, that you've got to look
11 outside the boat. What other things can you do, if
12 you touch a lot of people, to generate other revenue.
13 And I just -- my own personal opinion, I have no stake
14 in this, but it's a challenge. And I think just
15 people have to walk in with eyes wide open, because
16 there have been so many failures in the past that
17 people can't generate that kind of revenue to.

18 Fuel is one thing. I think in terms of
19 insurance costs, because as I say, I chair the PVA
20 insurance program, we have an Aon-endorsed program.
21 The costs are high. You've got hull and machinery,
22 you've got P & I, you've got longshore harbor workers'
23 insurance. All these broad range, and I can tell you,
24 we're paying over \$400,000 a year for our insurance.
25 And even the small boat operators, the market has

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1 begun to harden so those rates are coming up. And
2 that's one of the challenges our members have.
3 Nothing is getting cheaper these days.

4 Q Let me ask you to focus just on the Friday
5 Harbor and associated San Juan Islands ports and
6 Bellingham. Does the state ferry operate in and out
7 of Bellingham?

8 A No, Anacortes.

9 Q That's several miles south?

10 A And it's not convenient.

11 Q I think that's been established by testimony.
12 Do you know what the mileage is?

13 MR. BUZZARD: 17.

14 THE WITNESS: Thank you, Terry.

15 JUDGE TOREM: How many is it?

16 MR. BUZZARD: 17.

17 JUDGE TOREM: 17, okay.

18 MR. BUZZARD: To the ferry landing, more
19 like 18 and a half.

20 JUDGE TOREM: Okay. So that gives me an
21 idea that it's at least a 20-minute drive between the
22 two, if traffic is minimal or nonexistent.

23 MR. BUZZARD: Between downtown Anacortes
24 and the ferry dock?

25 JUDGE TOREM: Just in Bellingham, in the

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1 general vicinity.

2 MR. BUZZARD: Bellingham to the state
3 ferry dock?

4 JUDGE TOREM: Yes.

5 MR. BUZZARD: Oh, a 45-minute drive. I
6 thought you meant -- it's 17 miles by water.

7 JUDGE TOREM: 17 by water. Okay. So
8 the drive is much closer to an hour.

9 MR. BUZZARD: The drive is about an
10 hour. It's more like 45 minutes to an hour. Depends
11 on traffic.

12 JUDGE TOREM: It's interesting to hear
13 it from the voice from above here. All right.
14 Thanks, Mr. Buzzard for that clarification.

15 Q So my question, then, what other opportunities
16 are there to get in a state-subsidized transportation
17 from Bellingham to the San Juan Islands that you are
18 aware of, Mr. Bryan?

19 A In terms of -- I see none. I know David
20 Moseley quite well, I had dinner with him last night.

21 Q Is he the director of the state ferries?

22 A He's the director of the state ferries. A
23 thankless job. And they are very protective, very
24 territorial about any federal or state dollars. And
25 so one, even if there were some, they would be

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1 challenging that.

2 Now, I will tell you that I was asked for some
3 consulting advice a number of years ago when there was
4 a move by British Columbians to negotiate with
5 Washington State Ferries to discontinue Washington
6 State Ferry service at Friday Harbor. And they wanted
7 to provide service from Bellingham to Sidney on
8 Vancouver Island, because they thought the convenience
9 factor of Fairhaven, they would be able to generate
10 sufficient traffic. They couldn't negotiate, and that
11 was partly because the former chair of the senate
12 transportation committee, Mary Margaret Haugen, felt
13 that that was part of the state highway system.

14 But those dollars -- because we had a lot of
15 discussion on dollars. I had been an advocate of
16 taking some of the \$800 million the state and federal
17 government are giving to Amtrak and the rail program,
18 and give it to the system that carries 22 million
19 people.

20 I know that's an editorial comment, and I
21 apologize.

22 Q Well, we used to be the rail commission,
23 that's fine. I may be sitting on cases that involve
24 not those funds, but those routes.

25 I guess what I'm asking you is the comparisons

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1 you made when talking about some of the competition
2 your company, San Juan Express, or others similarly
3 situated had with the ferry's operations, for where
4 the ferry exists and opportunities such as Amtrak,
5 people can take advantage of the holes in the system.
6 Bellingham doesn't seem to fit that model.

7 A No. Although, you know, it all comes down to
8 price, what I've found with commuters.

9 Q Oh, certainly. I think that's where the
10 market analysis comes down, and that's the purpose of
11 this Commission. What we're trying to determine, as
12 Mr. Wiley was asking earlier today, not only fair,
13 just and reasonable, but what's a sufficient fare that
14 can be charged on a scheduled service for any company,
15 whether it's Mr. Schmidt's or Mr. McNamara's or
16 anybody else's, to run this service. We are setting
17 the price because the market can't. We are excluding
18 the other competition.

19 But what you are telling me is in Bellingham,
20 there's really not a lot of other options and right
21 now the service has come and gone, and come and gone
22 because price either has been too high and it's
23 failed, or there's been some other reason people
24 haven't been willing to push the price up to see what
25 would be a sufficient rate. We haven't, through the

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1 evidence I've heard yet today, seen a sustainable
2 sufficient service in this market.

3 A Your Honor, I think it's kind of comparable to
4 our San Juan Express. And that is, you can have a
5 sustainable seasonal operation but not year round.
6 Perhaps down the road, you know, that you can build
7 upon success not in the near term, but some out in the
8 distance. Even with that, I believe there has to be
9 some level of subsidy if you want to extend the season
10 beyond your summer period. And -- but I think the
11 important thing is, when you get an operation going,
12 is one, get that established, get the reliability,
13 that confidence. Because a point was made in earlier
14 testimony by one of the call-ins about the thought
15 that it would start up and stop and what have you.

16 And that's -- you know, I had a battle with my
17 partners our second year of operation, wanted me to
18 reduce the number of days a week we operated. I
19 thought that was a short-sighted point of view, that
20 you have to have that reliability, you have to have
21 that confidence.

22 I think the same thing goes for the Friday
23 Harbor service. And I think, you know, that's where
24 the greatest demand is. And I think take care of the
25 overwhelming majority of the people. Kenmore Air from

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1 Friday Harbor has wheel service and float service.
2 Very, very good company we work with. They are not
3 inexpensive, but that's an option. Washington State
4 Ferries, I think that -- you know, right now, again --
5 and that's one of the things when you look at what
6 fare box recovery is, how much they are subsidizing, I
7 think they've done a pretty good job. They get 62
8 cents out of the fare box, and that kind of gives you
9 an idea in terms of, they've got prices suppressed,
10 whether Mr. McNamara gets a certificate or
11 Mr. Schmidt.

12 That's a challenge, because there are
13 people -- I was in the rail business before I got into
14 this business, and I worked in Penn Station with Long
15 Island Railroad and all this. People go the lowest,
16 and they will put up with some inconvenience to keep
17 the prices down.

18 As a Mercer Islander, I'm ready for this
19 battle on the toll. I'm sorry if I'm longwinded.

20 Q No, I appreciate the breadth of it. I'm just
21 trying to, while you are here and your expertise is
22 around, distinguish what the Bellingham market --
23 where it's unique and how that might focus or --
24 what's the right word, filter my approach to the
25 statutory requirements for either of these companies

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1 to prove that they could operate and have those
2 financial resources to go for at least 12 months. And
3 what that would mean in this market versus one where
4 they're going to have one-way passengers and not a
5 round trip. It seems to me to get to Friday Harbor
6 from Bellingham, you're going to be on a boat both
7 ways. Amtrak is now running -- they're underwater in
8 different ways.

9 A That's right. Well, you know, and it's like
10 this: I don't -- I have a friend that operates
11 Catalina Express between Long Beach and Catalina.
12 They carry over a million people a year --

13 Q Yes, it's quite sad that I know most of these
14 boats, whether in Hong Kong or Catalina. I've been on
15 them all.

16 A Well, you know, that Catalina, their market
17 share is about 95 percent. And their point has been,
18 and this is a point I have, you have people come in
19 and compete with you, especially on these regulated
20 routes, the fares go down, you've got this service,
21 but what happens is both companies go out of
22 existence. And so that's where they work hard down
23 there to protect their investment. They've put a lot
24 of boats in and what have you.

25 I think one of the things, from my perspective

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1 as an operator and someone who's ridden these boats
2 around the world, is that there's a disservice in the
3 attempt to do the right thing by having more than one
4 operator, because it's already challenging enough,
5 even if it's limited to the summertime, you know,
6 trying to generate sufficient revenue. Because I know
7 Drew doesn't have hotel stuff over in -- or didn't in
8 Friday Harbor, he did in Victoria, but they don't have
9 the ability to recoup as we can do.

10 Q Well, it helps me to understand the
11 perspective you are putting out for how this
12 particular regulated business model is limited, as
13 opposed to your Victoria operations.

14 A Yes, sir.

15 JUDGE TOREM: Let me just look over the
16 notes of the testimony you gave and see if I have
17 anything else while you are here today.

18 (Pause in the proceedings.)

19 JUDGE TOREM: I don't think I have
20 anything else. Let me see if Mr. Wiley has any
21 follow-up, or any of the other counsel here, on any of
22 the questions I have already asked.

23 MR. WILEY: We don't, your Honor, not
24 from the applicant.

25 MR. FASSIO: No, your Honor.

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1 MR. McNAMARA: No, your Honor.

2 JUDGE TOREM: Thank you very much.

3 THE WITNESS: Thank you.

4 MR. BUZZARD: Your Honor?

5 JUDGE TOREM: Yes, do you have
6 something, Mr. Buzzard?

7 MR. BUZZARD: Yeah, I'd be curious to
8 ask Darrell.

9

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

11 BY MR. BUZZARD:

12 Q Darrell, for the benefit of the people at the
13 San Juan Islands, because I guess that's what we're
14 talking about, what -- if possible, what do you feel
15 would be the best for the people of the Islands and
16 the people of Bellingham wanting to go the Islands, a
17 vessel that goes to Friday Harbor only or a vessel
18 that makes an attempt to service all the islands that
19 are serviceable?

20 A You know, I know my personal preference, in
21 running trains in Chicago, commuter trains, I always
22 like the express. But in terms of the incremental
23 revenue you might derive, I don't think you want to
24 have a milk run, you stop at all of them. But as
25 Mr. McNamara has talked about -- because we had flag

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1 stops on our first certificate, but we had a deal,
2 since we take reservations for our seats, we knew
3 ahead of time who needed to be picked up and we could
4 designate the time.

5 You know, just -- this is just a personal
6 preference, I like the express. But if you had just a
7 couple intermediate stops where you can pick up
8 passengers without a lot of time.

9 Now, a lot of those people that we're taking,
10 I'd say the percentage of them that are just simply
11 going up to visit, to see Friday Harbor, whale
12 watching and the whale museum, et cetera, probably
13 95 percent of our people. And stopping at a couple
14 spots isn't going to ruin their day. It's going to
15 make it a little more interesting for them. But it
16 depends on what the clientele base is. And if you are
17 dealing with a lot of locals, I suspect the express is
18 going to --

19 JUDGE TOREM: I guess it depends on
20 which island they live on.

21 A Yes. Eliza, I've heard a lot of Eliza today.

22 JUDGE TOREM: Mr. Buzzard, anything
23 else?

24 MR. BUZZARD: Well, no, I guess that
25 suffices.

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1 JUDGE TOREM: All right. Thanks,
2 Mr. Bryan. Appreciate it.

3 Counsel, we are at a little after 4:20.
4 Clearly, we are going to be back tomorrow. So,
5 Mr. Wiley, do you want to start any other witnesses
6 today?

7 MR. WILEY: If I could have two minutes
8 to --

9 JUDGE TOREM: Let's go off the record
10 for a couple minutes. We're off the record.

11 (A brief recess.)

12 JUDGE TOREM: Back on the record, it's
13 almost 4:30. We will be back tomorrow morning. We
14 will take Mr. Schmidt's sworn testimony at that time.
15 And in reviewing the witness list for Mr. Schmidt, we
16 have three other shipper supports, Randi Axelsson,
17 Christine Smith and Jeff Ehlers -- or Ehlers, I guess
18 we'll find out tomorrow exactly on the pronunciation
19 there. They will be ready to testify by telephone at
20 some point. And if they are like any of the other
21 shipper statements we've had, they will probably be 15
22 minutes each, so that could make for a very short
23 afternoon, depending on what time we get done.

24 What I proposed to Mr. Wiley is that if
25 everyone has a hearty breakfast, we might be able to

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1 press through and get you out of here without taking a
2 lunch break tomorrow. And so I stated that on the
3 record so the court reporter might be prepared as
4 well. But we might take a break, grab a piece of
5 fruit sort of thing, and get through the rest of the
6 shipper's support.

7 And I'd like to hear whether folks want to
8 make a closing statement tomorrow argument or have a
9 time to submit briefs. Think about that today. Maybe
10 tell me tomorrow how long you think it would take to
11 submit your briefs as to how this testimony is going
12 to be viewed through the lens of the statute and other
13 applicable regulations that the Commission has issued
14 and adopted.

15 Mr. Wiley?

16 MR. WILEY: Yes, one thing that does
17 occur to me that we could do with just the parties and
18 counsel here today is talk about the exhibits for
19 Mr. Schmidt. They've already been marked and
20 identified. If your Honor --

21 JUDGE TOREM: We can certainly indulge
22 and do that. Let's confirm the schedule. We are
23 going to start at 9:30 tomorrow. Does that work for
24 all the parties?

25 MR. WILEY: Yes.

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1 MR. FASSIO: Yes.

2 MR. McNAMARA: Yes.

3 MR. BUZZARD: Yes.

4 JUDGE TOREM: And, Mr. Buzzard, you'll

5 be calling back in on this line tomorrow at 9:30.

6 We've got this room all day tomorrow. We will hope

7 not to use it all day tomorrow.

8 Okay, so 9:30 start time. We will have

9 Mr. Schmidt ready to testify and go from there with

10 cross-exam questions. And then the shipper support,

11 if you would sort out, perhaps maybe it would take an

12 hour and a half, two hours to get through direct and

13 cross-exam with Mr. Schmidt, have the first one ready

14 at or about 11:30. Maybe you can text them or

15 otherwise call them at breaks and give them a time to

16 call in, we can be that much more efficient tomorrow.

17 If we can get done before 12:30, one o'clock, we can

18 all take a late lunch sort of thing, and that will

19 save you the Friday pain of traffic heading north.

20 Turning to the exhibits per your request. So

21 far, there are 16 of them. They are fairly well

22 described on the exhibit list, and we have only

23 referred to I think 16, that Whatcom Counsel of

24 Government's passenger-only ferry study in which you

25 made some questions on cross-exam with Mr. McNamara.

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1 Are you asking to see if any of these might be
2 admitted at this time.

3 MR. WILEY: Yes, your Honor, and if we
4 have objections to any of them, maybe we can address
5 those tomorrow. But at least I can find out if there
6 are objections to others.

7 JUDGE TOREM: Well, I anticipate, as far
8 as Exhibits 12 and 13, the Staff opinions that you
9 have already had some conversation with Mr. Fassio
10 about the relevance of Staff opinions and policies
11 about one boat for two missions.

12 Mr. Fassio, am I stealing your thunder by
13 suggesting that those might be objectionable by Staff?

14 Are there other ones that other folks
15 anticipate objections to?

16 Mr. McNamara, have you had a chance to look
17 down Mr. Schmidt's proposed Exhibits 1 through 16?

18 MR. McNAMARA: I have.

19 JUDGE TOREM: And did you have concern
20 over the authenticity or the relevance or any other
21 objections for any of these?

22 Again, remember, I want you to understand if
23 you say, I don't object, it doesn't forfeit your right
24 to cross-exam on the details. It simply means the
25 documents could come in and I would consider them,

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1 along with the testimony supporting them, and any
2 other questions that poke holes in them or otherwise
3 bolster them. So admitting them is not saying they
4 are true, it just means I can consider them.

5 MR. McNAMARA: I don't object.

6 JUDGE TOREM: Okay, so there's no
7 objections by Mr. McNamara.

8 Mr. Fassio, aside from 12 and 13?

9 MR. FASSIO: Your Honor, looking at the
10 exhibits, Staff does intend to have I suppose an
11 objection based on relevance at this point to Exhibits
12 14 and 15. On Exhibit 14, and counsel can speak to
13 this exhibit, but it appears from looking at it, it's
14 a tariff and time schedule of a company that isn't
15 present before the Commission. So the relevance of
16 this is unclear, at best to Staff. And I believe,
17 although I can check, that this doesn't appear to be a
18 current tariff and time schedule before the
19 Commission.

20 And so just in that sense, it's unclear to
21 Staff what the relevance of this to the current
22 proceeding is. And so I would raise that objection on
23 that basis.

24 And with respect to 15, it also appears to
25 address an item by a company called Puget Sound

1 Express, which again, is not before the Commission
2 today. And so that company cannot independently speak
3 to these two exhibits, as they are not parties.

4 JUDGE TOREM: I think it is stipulated
5 on the page written at the top that all fares on the
6 front page of Exhibit 14 have increased, so it looks
7 like they are even charging more for animals these
8 days.

9 Mr. Wiley, can you tell me what those two
10 might be?

11 MR. WILEY: Yes. I was not involved in
12 the creation of Exhibit 14, but I can tell you that I
13 understand Mr. Fassio's concerns about 14. I would
14 withdraw 14.

15 15, if we get a stipulation or some agreed
16 upon testimony tomorrow, I may be able to withdraw it.
17 What it's being offered to show solely is that
18 regulated carriers provide unregulated services in the
19 same vessel. That was what the intention behind the
20 exhibit was. That may be a moot issue tomorrow --

21 JUDGE TOREM: We will hold --

22 MR. WILEY: -- so I reserve --

23 JUDGE TOREM: So it's going to be
24 related to what happens with Exhibits 12 and 13.

25 MR. WILEY: Correct.

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1 JUDGE TOREM: Well, that's hopefully a
2 separate can of worms from some of the application
3 material before me, and depending on how Mr. Schmidt's
4 testimony goes tomorrow, we will see if it becomes
5 relevant going forward into his application.

6 MR. WILEY: So we are reserving on 12,
7 13 and 15; is that correct, your Honor?

8 JUDGE TOREM: Yes, and 14 is withdrawn.

9 Mr. Buzzard, have you had a chance to look at
10 these exhibits as well?

11 MR. BUZZARD: No, sir.

12 JUDGE TOREM: Was that a yes?

13 MR. BUZZARD: No, sir, I have not.

14 JUDGE TOREM: Okay. I think they were
15 sent to you. You should have received them
16 electronically back in the middle of the month while I
17 was in Japan. Do you remember receiving that e-mail?

18 MR. BUZZARD: No, I don't, but it's all
19 right, your Honor.

20 JUDGE TOREM: Do you have any
21 objections, just without seeing them? It's a hard
22 question, but were you intending to otherwise present
23 your case some separate way? Because I know we don't
24 have any exhibits from you, just your testimony, which
25 we are going to need to schedule for tomorrow as well.

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1 MR. BUZZARD: That's okay with me.

2 JUDGE TOREM: So I'm going to --

3 MR. BUZZARD: I would like, your Honor,
4 to ask Mr. Oplinger one more question, if I may.

5 JUDGE TOREM: He's gone.

6 MR. BUZZARD: Oh.

7 JUDGE TOREM: When I asked if you had
8 any questions earlier, that was your opportunity.

9 MR. BUZZARD: I missed it. Don't worry.

10 JUDGE TOREM: Okay, I won't.

11 So what I'm going to do now, unless there is
12 any objections, is admit Exhibits 1 through 11, and
13 Exhibit 16 as submitted by Pacific Cruises Northwest.

14 Hearing no objections, those 12 exhibits are
15 admitted. Again, it's 1 through 11 and Exhibit 16 for
16 those keeping score at home.

17 Tomorrow, then, Mr. Buzzard, you have a
18 protest on both of these applications, so I don't want
19 to forget somehow that we need time for your testimony
20 as well.

21 Do you have an idea how long you would like to
22 present your protests on both applications?

23 MR. BUZZARD: Five minutes.

24 JUDGE TOREM: That will be easy to tack
25 onto the end. We will do it under oath, as you have

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1 heard me establish through the magic of long-distance
2 communications to anywhere in the state. I guess
3 that's as far as my powers go. We will take you,
4 then, at the end of the shipper witnesses for
5 Mr. Schmidt, subject to any cross-examination that
6 Mr. Wiley and the other counsel may have for you.

7 MR. BUZZARD: All right.

8 JUDGE TOREM: All right. Is there any
9 other business that we need to take up on the record
10 today?

11 None from the Commission Staff, none from
12 Mr. McNamara, Mr. Wiley.

13 Anything else, Mr. Buzzard?

14 MR. BUZZARD: Not on my end, no, sir.

15 JUDGE TOREM: Okay. We will be back on
16 at 9:30 tomorrow. Thank you all. We are at recess
17 for the evening.

18 MR. BUZZARD: Have a good evening.

19 Thank you.

20 JUDGE TOREM: Thank you.

21 (Hearing adjourned 4:38 p.m.)

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do hereby certify that the foregoing transcript is

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