

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

In re Application No. B-079240 of	)	DOCKET NO. TS-031996
	)	
PACIFIC CRUISES NORTHWEST,	)	ORDER NO. 04
INC., d/b/a VICTORIA SAN JUAN	)	
CRUISES	)	
	)	INITIAL ORDER GRANTING
For a Certificate of Public	)	APPLICATION FOR CERTIFICATE
Convenience and Necessity to	)	OF PUBLIC CONVENIENCE AND
Provide Commercial Ferry Service	)	NECESSITY WITH CONDITIONS
	)	
.....	)	

1 **Synopsis:** *This order proposes that the Commission grant the application of Pacific Cruises Northwest, Inc. for an extension of its existing certificate that would authorize PCNW to provide passenger-only commercial ferry express service between Bellingham and Friday Harbor. The extension of the certificate would be conditioned on Applicant's surrender of its authority between Blaine and Roche Harbor and Bellingham and Roche Harbor, which it has not exercised.*

**I. INTRODUCTION**

2 **Nature of Proceeding.** This is an application by Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises (PCNW or Applicant or Company) for an extension of its certificate of public convenience and necessity, BC-10, to provide passenger-only commercial ferry express service between Bellingham and Friday Harbor, San Juan Island, Washington.

3 **Procedural History.** On December 2, 2003, PCNW filed an application (No. B-079240) requesting that its existing certificate of public convenience and necessity be extended to provide passenger-only commercial ferry express service between Bellingham and Friday Harbor, Washington. Notice of the Application was

published in the Commission's weekly docket of March 1, 2004. On March 19, 2004, Island Mariner, the only other operating certificate holder on the proposed route, filed a letter notifying the Commission that it did not oppose PCNW's application.

- 4 On March 30, 2004, San Juan Island Shuttle Express, Inc. d/b/a San Juan Island Shuttle Express filed a timely protest to the docketed application. On August 23, 2004, San Juan Island Shuttle Express withdrew its protest. The Commission granted Applicant's request to present evidence of shipper need through written statements since its application was no longer protested. Although there are no protests to the Application, RCW 81.84.020 requires that the Commission grant or deny an application for a certificate after hearing.
- 5 The Commission conducted an evidentiary hearing in Seattle, Washington on November 4, 2004, before Administrative Law Judge Karen M. Caillé. The Commission heard PCNW's application through the testimony of Mr. Drew Schmidt, president and sole shareholder of PCNW. The Commission also received into the record fifteen exhibits sponsored by Mr. Schmidt, including letters of shipper need marked and admitted as Exhibit No. 9. The parties filed simultaneous post-hearing briefs on November 19, 2004.
- 6 **Initial Order.** The presiding Administrative Law Judge proposes that the Commission grant the application of Pacific Cruises Northwest, Inc. for an extension of its existing certificate that would authorize PCNW to provide passenger-only commercial ferry express service between Bellingham and Friday Harbor. The authority granted would be conditioned on Applicant's surrender of its authority that it has not exercised (1) between Blaine and Roche Harbor and (2) between Bellingham and the San Juan Islands, with regular stops at Roche Harbor and flag stops at Blakely, Orcas, and Lopez Islands.

7 **Appearances.** The parties were represented as follows:

Applicant PCNW	by David W. Wiley Williams, Kastner & Gibbs PLLC Two Union Square 601 Union Street Suite 4100 Seattle, WA 98101-2380
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Commission Staff	by Jonathan Thompson Assistant Attorney General 1400 S. Evergreen Park Dr. SW P.O. Box 40128 Olympia, WA 98504-0128
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## II. MEMORANDUM

### A. Governing Law

8 The Commission regulates commercial ferries under chapter 81.84 RCW. The Legislature has defined in RCW 81.84.010 the circumstances under which the Commission may grant a certificate of public convenience and necessity for operation of a commercial ferry, *i.e.*, whether the proposed service is required by the public convenience and necessity.<sup>1</sup> The Commission evaluates the public convenience and necessity of the application by considering whether there is a present and future need for the proposed service. The Commission determines public need for the proposed service through the testimony of people who will

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<sup>1</sup> RCW 81.84.010(1).

use the proposed service if it is made available, as well as the testimony of the Applicant's personnel.<sup>2</sup>

- 9 The standards the Commission must apply in deciding whether, or under what conditions, to issue a certificate are set out in RCW 81.84.020. Under RCW 81.84.020(2), the Commission must consider whether the Applicant is fit, willing, and able financially and operationally to provide the proposed service:

(2) Before issuing a certificate, the commission shall determine that the Applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the Applicant of a pro forma financial statement of operations. Issuance of a certificate shall be determined upon, but not limited to, the following factors: Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the Applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such filed by the Applicant. The documentation required of the Applicant under this section shall comply with the provisions of RCW 9A.72.085.

- 10 During the 2003 legislative session, the Legislature amended chapter 81.84 RCW and chapter 47.60 RCW, both of which concern ferry operations in Washington.<sup>3</sup> In Section 1 of Chapter 373, the Legislature stated its policy for advancing passenger-only ferry service by entities other than the state, by removing entry barriers:

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<sup>2</sup> *In re Dutchman Marine, LLC et al.*, Docket Nos. TS-001774 and 002055, First Supplemental Order, Initial Order Granting Applications at ¶ 33 (September 2001), adopted in Second Supplemental Order (October 2001).

<sup>3</sup> Chapter 373, Laws of 2003.

The Legislature finds that the Washington state department of transportation should focus on its core ferry mission of moving automobiles on Washington state's marine highways. The legislature finds that current statutes impose barriers to entities other than the state operating passenger-only ferries. The Legislature intends to lift those barriers to allow entities other than the state to provide passenger-only ferry service. The Legislature finds that the provision of this service and the improvement in the mobility of the citizens of Washington state is legally adequate consideration for the use of state facilities in conjunction with the provision of the service, and the legislature finds that allowing the operators of passenger-only ferries to use state facilities on the basis of legally adequate consideration does not evince donative intent on the part of the Legislature.

- 11 The Legislature removed barriers to entry to passenger-only ferries by providing an exemption from the so-called ten-mile rule.<sup>4</sup> The Legislature also added two sections to RCW 81.84.020, one of which adds a softer requirement that the Commission consider the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service:

(4) In granting a certificate for passenger-only ferries and determining what conditions to place on the certificate, the commission shall consider and give substantial weight to the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service.

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<sup>4</sup> RCW 47.60.120(5). This statute prohibits commercial ferry operations within ten miles of a route operated by the Washington State ferry system, absent a waiver from the Commission.

(5) Until March 1, 2005, the commission shall not consider an application for passenger-only ferry service serving any county in Puget Sound, unless the public transportation benefit area authority or ferry district serving that county, by resolution, agrees to the application.

12 The State Department of Transportation, including its subdivision, the Washington State Ferries (WSF), which operates the State ferry system, is a “public agency” as the term is used in RCW 81.84.020(4). Whatcom Transportation Authority is “the public transportation benefit authority,” as that term is used in RCW 81.84.020(5).

**B. Existing Authority to serve the Friday Harbor/Bellingham Termini**

13 **Pacific Cruises.** PCNW seeks an extension of its existing authority that would authorize commercial ferry service between Bellingham and Friday Harbor with no intervening stops. Applicant’s existing Certificate BC-10 authorizes

PASSENGER AND FREIGHT SERVICE

Between: Blaine and Roche Harbor, Washington

Restrictions: Freight limited to 200 pounds per package.

PASSENGER SIGHTSEEING CRUISES

Between: North Bellingham (Squalicum Harbor) and South Bellingham (Bellingham Cruise Terminal), point to point, with a flag stop at Boulevard Park Dock.

PASSENGER AND FREIGHT SERVICE

Between: Bellingham and the San Juan Islands, with regular stops at Roche Harbor, San Juan Island, and flag stops at Blakely Island; Rosario

and Deer Harbor on Orcas Island; and Lopez Island (excluding freight service between Rosario – Lopez Island and Deer Harbor – Lopez Island).  
Restrictions: Freight limited to 200 pounds per package.

Two other companies, San Juan Island Shuttle Express, Inc. (SJISE) and Island Mariner hold certificates for service between Friday Harbor and Bellingham. The authority granted in their respective certificates is described below.

14 **San Juan Island Shuttle Express.** SJISE holds Certificate BC-120, which grants authority to provide

**PASSENGER AND FREIGHT SERVICE**

Between: Friday Harbor and Bellingham, and Between Obstruction Pass and Bellingham, with the carrying vessel touching at Obstruction Pass on voyages to and from Friday Harbor. . . . In conjunction with the above authority, flagstops at Eliza Island, Sinclair Island, Blakely Island, and Lopez Island.

The endpoints of Applicant’s proposed route and the route described on the certificate of SJISE are the same, although SJISE’s authority includes a “touch” and four “flag stops” at various points between Bellingham and Friday Harbor while the Applicant’s proposed route does not include any intermediate stops.

15 SJISE filed a protest to this Application that it withdrew on August 23, 2004, prior to the hearing. The Commission’s records show that SJISE petitioned for and received three consecutive one-year orders allowing it to discontinue the service authorized under its certificate from April 2002 to May 2005. On September 21, 2004, approximately one month after withdrawing its protest in the present case, SJISE petitioned for authorization on less than statutory notice for resumption of service and approval of a revised time schedule.

16 The Commission authorized the revised time schedule to go into effect on less than statutory notice by order entered on September 29, 2004. SJISE's revised time schedule states "(3) service to Friday Harbor, Orcas Island and all flag stops will be daily by 48 hour advance reservation only. (4) Schedule may vary due to weather and docking conditions." The new schedule was to become effective October 1, 2004.

17 There is no evidence in the record that SJISE is actually providing service. PCNW's owner, Mr. Schmidt, testified at the hearing that SJISE is not operating and is out of business.<sup>5</sup>

18 **Island Mariner.** Island Mariner holds Certificate B-95 which grants authority to provide

PASSENGER AND FREIGHT SERVICE (excluding motor vehicles)  
Between: Bellingham, Washington, and Friday Harbor (San Juan Island),  
via Elisa, Sinclair, Cypress, Blakely, Decatur, Crane, Jones, Spieden, Johns,  
Stuart, Waldron, Sucia and Martia Islands with an additional stop at  
Roche Harbor on San Juan Island, Rosario Resort, Olga and Doe Bay on  
Orcas Island, Lopez and Shaw Islands.

As with SJISE's authority, Island Mariner's authority is between the same districts or territories for which PCNW seeks authority—at least as to the fixed termini of Bellingham and Friday Harbor.

19 Unlike SJISE, there is record evidence that Island Mariner is serving its certificated route. Mr. Schmidt testified that Applicant and Island Mariner jointly own a vessel that they lease to Island Mariner for the purpose of serving

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<sup>5</sup> Tr. 93

the Bellingham to Friday Harbor route. Applicant currently handles ticketing for Island Mariner's "Island Commuter" service, which provides the service described in Certificate B-95.<sup>6</sup> Mr. Schmidt testified that PCNW operates an international route from Bellingham to Victoria, BC. He observed that PCNW serves a different market than Island Mariner. According to Mr. Schmidt, the bulk of PCNW's market is tourists to Victoria, while Island Mariner's market serves property owners and businesses on the San Juan islands.<sup>7</sup> .

20 Island Mariner's owner and president, Mr. Terry Buzzard, notified the Commission by letter dated March 19, 2004, that he does not oppose this application.

21 Under RCW 81.84.020, the Commission may "grant a certificate to operate between districts and/or into any territory. . . already served by an existing certificate holder," if "such existing certificate holder has failed or refused to furnish reasonable and adequate service." Insofar as the particular service of SJISE is concerned, it is not providing reasonable and adequate service. The fact that SJISE withdrew its protest of the application and failed to present evidence results in the lack of a record as to its actual service, if any, under its certificate. The testimony presented on behalf of the Applicant is that SJISE is not providing any service to the points this Applicant seeks authority to serve. Under similar circumstances, the Commission found the ultimate facts against the existing certificate holder on the issue of whether it is providing reasonable and adequate service.<sup>8</sup> A similar finding is warranted with respect to SJISE here.

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<sup>6</sup> Tr. 68-69.

<sup>7</sup> Tr. 96-97.

<sup>8</sup> *In re Application of Pacific Cruises Northwest, Inc., Order S.B.C. No. 526, Hearing No. B-78450, Commission Decision and Order Affirming Initial Order with Modification; Granting Amended Application, page 2, (July 10, 1996).*

22 With respect to Island Mariner, both Applicant and Staff suggest an analysis similar to that employed by the Commission under the auto transportation certification statute, which is similar to the commercial ferry statute in terms of favoring exclusive territories.<sup>9</sup> Under the auto transportation certification statute, the Commission has recognized that a territory may not be “already served” because the existing certificate holder is not serving it with respect to a particular type of service.

When the existing certificate holder directs its service at certain market niches within its territory which differ substantially from the markets the applicant proposes, the Commission has held that the statutory restriction will not be read to prevent entrepreneurs from developing and serving new markets within a territory.<sup>10</sup>

23 Applying the analysis set forth in *In the Matter of the Application of San Juan Airlines, Inc., d/b/a Shuttle Express, Order M.V.C. No. 1809, Hearing No. D-2566, Commission Decision and Order Granting Application as Amended in Part, Page 17 (April 21, 1989)*:

The Commission must consider whether the territory at issue is “territory already served” within the meaning of the statute. . . . One factor to be considered is the extent of the authority of the intervenors. Another is whether or not they are serving to the extent of that authority. A third is whether the type of service provided reasonably serves the market.

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<sup>9</sup> RCW 81.68.040 states “The commission shall have power, after hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission.”

<sup>10</sup> *In re Application B-78450 of Pacific Cruises Northwest, Inc., Order S.B.C. No. 524, Hearing No. B-78450, at p. 8 (May 23, 1996) (citing a number of bus and airporter cases).*

- 24 These factors favor granting the authority applied for by PCNW. The extent of Island Mariner’s authority is different than that proposed by the Applicant. Island Mariner’s service between Bellingham and Friday Harbor requires flag stops at various points. Mr. Schmidt testified that Island Mariner does, in fact, make flag stops every day.<sup>11</sup> Island Mariner does not offer a direct service between Bellingham and Friday Harbor.
- 25 Additionally, there is evidence that there is unmet demand for direct service between Bellingham and Friday Harbor. In supporting PCNW’s application, Terry Buzzard, owner of Island Mariner, wrote that PCNW “is capable of offering additional capacity on this route without adversely impacting our operation.” Mr. Schmidt testified that there is additional need for a direct service from Bellingham to Friday Harbor. Passenger support letters in the record identify a need for direct service, as well.
- 26 Mr. Schmidt testified that Island Mariner’s service is more of a commuter service while PCNW’s service would primarily cater to tourists.<sup>12</sup> A comparison of the time schedules of Island Mariner and PCNW shows that the two companies would in fact offer travelers different sailing times and that PCNW would offer shorter transit time to Friday Harbor. This evidence shows that Island Mariner is not, by itself, reasonably serving the market for transportation between Bellingham and Friday Harbor. Accordingly, the Commission may issue a certificate to PCNW for commercial ferry service between Bellingham and Friday Harbor despite the fact that similar authority is held under existing certificates by two other companies.<sup>13</sup>

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<sup>11</sup>Tr. 96.

<sup>12</sup>Tr. 96-97.

<sup>13</sup> See also *In re Application No. D-079257 of Muhlbaier, Barry & Amy, d/b/a A & B Specialized Transport, Order No. 02, Final Order Granting Application for a Certificate of Public Convenience and Necessity (October 27, 2004)*; *In re Application No. D-079145 of SeaTac Shuttle, LLC, d/b/a SeaTac Shuttle, Order No. 03, Final Order on Administrative Review (November 25, 2003)*.

**C. PCNW's Application and Supporting Evidence**

27 Pacific Cruises Northwest, Inc. d/b/a Victoria San Juan Cruises, a corporation wholly owned by Mr. Drew Schmidt, filed its application for extension of its existing authority to include commercial passenger-only ferry express service between Bellingham and Friday Harbor, Washington, on December 2, 2003. The Company's application identifies the vessels to be used, the proposed route, tariff, time schedule, proforma financial statement, and ridership and revenue forecasts.<sup>14</sup> The application also includes a Certificates of Inspection from the United States Coast Guard and Department of Homeland Security, and a Certificate of Marine Insurance.<sup>15</sup> In addition, Applicant submitted Resolution No. 208-04 of the Whatcom Transportation Authority agreeing to PCNW's UTC Application for passenger-only ferry service to operate in the public transit benefit area between Bellingham and Friday Harbor.

28 At the hearing on November 4, 2004, the Company's president and sole shareholder, Mr. Drew Schmidt, testified and sponsored exhibits in support of PCNW's operation and financial fitness. No other witnesses testified or presented evidence concerning the application. The Commission accepted into the record evidence of community support in the form of letters expressing a need for the proposed service and to demonstrate that there are customers willing to use the proposed service.<sup>16</sup>

**1. Need for the Proposed Service**

29 Mr. Schmidt testified that at present no company is authorized to provide nonstop passenger-only ferry service between Bellingham and Friday Harbor.<sup>17</sup>

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<sup>14</sup> Application, Exs. 10, 11, 13, and 14.

<sup>15</sup> Application, Exs. 3, 4, and 5.

<sup>16</sup>Ex. 9.

<sup>17</sup>Tr. 93.

He acknowledged that Island Mariner operates a flag stop service between the two termini. He also acknowledged that San Juan Island Shuttle Express is authorized to provide service between Bellingham and Friday Harbor with four flag stops and one touch stop. According to Mr. Schmidt, San Juan Island Shuttle Express has not operated in three or four years.<sup>18</sup>

30 Mr. Schmidt testified that he has talked with several construction companies about the building boom in the San Juan Islands, and the need to get their workers back and forth. Mr. Schmidt opined that his nonstop service would benefit employers because the faster workers can get back and forth, the less the employer pays for travel time, and more work can be accomplished by employees.<sup>19</sup>

31 Mr. Schmidt also noted that he spoke with a young lady who attends school at Western Washington University, but is taking classes at the University of Washington's Friday Harbor campus. According to Mr. Schmidt, she expressed a need for a faster way to get back and forth between Bellingham and Friday Harbor.<sup>20</sup>

32 Letters from Bellingham Whatcom County Convention & Visitors Bureau, Bellingham/Whatcom Chamber of Commerce & Industry, Port of Friday Harbor, Charters Northwest, Inc, Representative Doug Ericksen (42<sup>nd</sup> Dist.), express support for nonstop passenger ferry service between Bellingham and Friday Harbor.<sup>21</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> Tr. 105-106.

<sup>20</sup> Tr. at 105.

<sup>21</sup> See Ex. 9.

- 33 Mr. John Cooper, President of Bellingham Whatcom County Convention & Visitors Bureau writes that “as the tourism marketing agency for the region, we know that viable transportation options for the public and residents are critical.” “I support the application of Pacific Cruises Northwest, Inc. because we believe that its provision of additional passenger-only ferry service will be of particular benefit and convenience to the economies of the region.”
- 34 Mr. Kenneth Oplinger, President/CEO of Bellingham/Whatcom Chamber of Commerce and Industry writes “We further believe the institution of such additional service will promote economic development and foster additional opportunities for businesses by providing more expeditious and comprehensive access between the San Juan Islands and Whatcom County.” “We thus strongly endorse Pacific Cruises’ application and ask that the Commission consider it favorably for its beneficial impact on businesses and commuters in Northwestern Washington.”
- 35 Greg Hertel, President of Friday Harbor Port Commission writes, “We believe that the service will be used for commuter-type transportation, i.e. to move between Bellingham and Friday Harbor for shopping, medical appointments and/or to promote tourism between Bellingham/Whatcom County and the San Juan Islands. This service will also provide a link to Victoria and other state and international destinations by way of other providers.”
- 36 Deanna Jenkins, General Manager of Charters Northwest, Inc. located in Friday, Harbor writes “Service between Bellingham and Friday Harbor would be beneficial to our customers seeking direct service from Bellingham to Friday Harbor and our offices. It would give our customers alternative transportation options to the Washington State Ferry System. This would have a positive effect on our business.”

37 Representative Doug Ericksen, 42<sup>nd</sup> District, writes “Private ferry alternatives such as this proposal can work in tandem with the WSF by providing additional Bellingham-originating passengers linked to WSF routes thereby creating a private-public transportation synergy.” “The institution of this service is consistent with the 2003 Legislature’s revisions to Title 81.84 through EHB 1388 to remove barriers and promote private passenger-only ferry service. Demand for waterborne links between the San Juans and the northwest Washington mainland is increasing in this era of escalating fuel prices and continuing environmental concerns.” “Addition of such water-based transportation links is clearly consistent with present and future transportation infrastructure planning for the entire Puget Sound region and will incrementally boost the economic circumstances of all potentially affected by the new service.” Representative Erickson stated he anticipated using the service for commuter-type transportation to travel between Bellingham and Friday Harbor for meetings.

38 Additionally, Jennifer Peterson and Elicia Youngquist of Bellingham, and Erich Trita of Deming each write that PCNW’s proposed direct service would be a great convenience to them in their travels between Bellingham and Friday Harbor, and that they would use the service.<sup>22</sup>

39 The letters submitted by community members as well as members of the public in support of the application demonstrate a substantial present and future unmet need and a strong desire for passenger-only nonstop service between Bellingham and Friday Harbor. The proposed service would provide an alternative to current transportation routes between Bellingham and Friday Harbor, save time for those people commuting between the two termini, and support economic development in the area.

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<sup>22</sup> *Id.*

## 2. Financial Fitness

40 PCNW submitted a preliminary financial statement in its application and an updated financial statement during the hearing.<sup>23</sup> The updated financial statement lists two vessels owned by PCNW, the Victoria Star<sup>2</sup> and the Fairhaven.<sup>24</sup> Mr. Schmidt testified that the operations of PCNW are currently profitable.<sup>25</sup> He further testified he and the Company have access to additional lines of credit if the Company needs to expand or otherwise infuse capital in the operations.<sup>26</sup>

41 On July 1, 2004, Applicant filed a proforma ridership income and expense analysis for 2005.<sup>27</sup> Mr. Schmidt explained that he used 2003 actual numbers from his international operations between Bellingham and Victoria and then added the projected income and expenses for Friday Harbor.<sup>28</sup> Mr. Schmidt testified that his assumption of ridership is based on the number of people “left on the dock” by Island Mariner.<sup>29</sup> According to Mr. Schmidt’s numbers, Island Mariner sold out 41 of 118 days in 2003. *Id.* He anticipates even more capacity from express passengers.<sup>30</sup>

42 Mr. Schmidt testified that he anticipated filing a revised proforma ridership income and expense analysis to adjust rates to cover the fuel line item since the amount spent on fuel through September 2004 was over \$105,000, as opposed to the 2003 amount of \$75,000.<sup>31</sup> Mr. Schmidt verified that he would work with

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<sup>23</sup> Application, Ex. 13.

<sup>24</sup> *Id.*, Tr. 89.

<sup>25</sup> Tr. 90.

<sup>26</sup> *Id.*

<sup>27</sup> Ex. 11.

<sup>28</sup> Tr. 80.

<sup>29</sup> Tr. 81.

<sup>30</sup> Tr. 81-82.

<sup>31</sup> Tr. 82-83.

Commission Staff on the fare adjustment to address the increase in the fuel line item.<sup>32</sup>

43 Applicant's current operations, the assets of the Applicant on hand, together with the prospects of loans to the Company or Mr. Schmidt, if needed, demonstrate that the Applicant has sufficient resources to operate the proposed service for at least twelve months.

### **3. Operational Fitness**

44 Mr. Schmidt testified that he has been President and sole shareholder of Pacific Cruises Northwest, Inc. since 1993.<sup>33</sup> Mr. Schmidt has extensive experience operating passenger vessels in the Puget Sound. He related that he has been in the maritime industry for 27 years, and has held a master mariner license for 25 years.<sup>34</sup> PCNW owns two vessels that it plans to operate between Bellingham and Friday Harbor, the Victoria Star2, which may carry up to 149 passengers, and the Fairhaven, which may carry 49 passengers.<sup>35</sup>

45 PCNW developed a proposed tariff and time schedule, and submitted Certificates of Inspection from the Coast Guard indicating it is safe to operate Victoria Star2 in Puget Sound, as well as other coastal and intracoastal waters, and to operate Fairhaven in Puget Sound and the connecting and tributary waters.<sup>36</sup> Mr. Schmidt testified that the Company has current insurance on file. Mr. Schmidt noted that the Company carries \$9 million more in insurance than the \$1 million shown on Exhibit 5.<sup>37</sup>

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<sup>32</sup> Tr. 83.

<sup>33</sup> Tr. 58.

<sup>34</sup> Tr. 59; Ex. 1.

<sup>35</sup> Tr. 61-64, Ex. 13.

<sup>36</sup> Exs. 3, 4.

<sup>37</sup> Tr. 64-65.

- 46 Mr. Schmidt explained that PCNW's express service between Bellingham and Friday Harbor would be part of its existing international service to Victoria. He acknowledged that if there is sufficient demand for the service, he would be willing to put another vessel on the route that is not tied to Victoria.<sup>38</sup>
- 47 Mr. Schmidt stated that PCNW currently markets its services through the distribution of hundreds of thousands of brochures, and through advertising in publications all over the country. He estimated that the Company spends almost \$75,000 for advertisements in the Seattle Times.<sup>39</sup>
- 48 Mr. Schmidt testified that PCNW has five to six licensed captains in its employ. He recalled that during peak season, PCNW employs about 30 people, and during the winter season, it employs about four.<sup>40</sup> Mr. Schmidt testified that the Company has a long-term lease with the Port of Bellingham at the Bellingham Cruise Terminal for its docking facilities in Bellingham, as well as long-term leases in Friday Harbor and Victoria.<sup>41</sup>
- 49 Mr. Schmidt acknowledged that PCNW is currently authorized to provide service between Blaine and Roche Harbor and Bellingham and Roche Harbor. He explained that PCNW operated to Roche Harbor for a few years and then discontinued service. He referred to post September 11, 2001, changes in security that resulted in Friday Harbor as the only location in the San Juan Islands for a commercial vessel to clear internationally through Customs and Immigration.<sup>42</sup> Mr. Schmidt stated that since it is not possible to get customs clearance at Roche Harbor, it would not be practical for the Company to resume service to that destination. He agreed that if, as a condition to receiving the Bellingham to Friday Harbor authority, the Commission asked PCNW to relinquish the Roche

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<sup>38</sup> Tr. 67-68.

<sup>39</sup> Tr.84-85.

<sup>40</sup> Tr. 67.

<sup>41</sup> Tr. 75.

<sup>42</sup> Tr. 78-79.

Harbor service from Blaine and from Bellingham, he would be willing to do so.<sup>43</sup> Mr. Schmidt acknowledged that PCNW will comply with all relevant statutes and rules governing commercial ferries. He testified that PCNW has never been cited by the Commission for violation of laws or rules.<sup>44</sup>

50 The record shows that PCNW is operationally ready, willing, and able to provide the proposed service, and plans to comply with all applicable laws and rules.

#### **4. Approval of Affected PTBA**

51 The Commission may not “consider an application for passenger-only ferry service serving any county in Puget Sound, unless the public transportation benefit area authority or ferry district serving that county, by resolution, agrees to the application.”<sup>45</sup>

52 Whatcom Transportation Authority is a municipal corporation and public transportation benefit area authority, formed pursuant to chapter 36.57A RCW. On January 21, 2004, the Board of Directors of Whatcom Transportation Authority adopted Resolution 208-04 agreeing to PCNW’s application for passenger-only ferry service between Bellingham and Friday Harbor.

53 Given Whatcom Transportation Authority’s agreement to the proposed service, the requirements of RCW 81.84.020(5) have been met.

#### **5. Effect of Proposed Service on Public Agencies**

54 RCW 81.84.020(4) requires the Commission to “consider and give substantial weight to the effect of its decision on public agencies operating, or eligible to

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<sup>43</sup> Tr. 79-80, 87-88, 94-95, 107-108.

<sup>44</sup> Tr. 91-92.

<sup>45</sup> RCW 81.84.020 (5).

operate, passenger-only ferry service.” As discussed above, Whatcom Transportation Authority supports the application and the proposed passenger-only service.

55 The only other potentially affected public agency is the Washington State Ferries Division of the State Department of Transportation (WSF). If the WSF had significant concerns about the effect of the proposed service on its own car and passenger-only ferry service, including the financial impact, the WSF would have expressed those concerns in connection with the extension application, of which WSF is on notice.

#### **6. Staff’s Proposed Condition on the Issuance of the Certificate**

56 Staff recommends that the Commission condition the issuance of the certificate on PCNW’s surrendering its authority (1) between Blaine and Roche Harbor and (2) between Bellingham and the San Juan Islands, with regular stops at Roche Harbor and flag stops at Blakely, Orcas, and Lopez Islands.<sup>46</sup>

57 Staff argues that it is apparent from Mr. Schmidt’s testimony that PCNW is not presently operating on either the Blaine to Roche Harbor route or the Bellingham to Roche Harbor route described on its certificate, nor does the Company have any intention of doing so in the near future.<sup>47</sup> According to Staff, Commission records indicate that the Company has not operated either of these routes for many years since it has not reported any regulated intrastate revenues in its annual reports since 1997.

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<sup>46</sup> RCW 81.84.020 states that “The commission shall have power after hearing, to issue the certificate as prayed for, or to refuse to issue it, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require.”

<sup>47</sup> Tr. 78-80.

58 Staff acknowledges that Mr. Schmidt stated during the hearing, a desire to retain, if possible, the flag stops listed along the Bellingham to Roche Harbor route.<sup>48</sup> According to Staff, there are two reasons why PCNW should not be permitted to retain those flag stops: (1) the Company has, in this case, applied only for authority between Bellingham and Friday Harbor without any intermediate stops in conjunction with that service, and (2) flag stop authority cannot exist independent of the fixed termini, regular route service with which it is associated.<sup>49</sup> Staff notes that Mr. Schmidt indicated that PCNW does not, and has no intention of serving Roche Harbor—one of the fixed termini of the route with which those flag stops are associated.<sup>50</sup>

59 Although certificates may only be revoked or suspended after a hearing under WAC 480-51-150, Staff observes that it is not unreasonable for the Commission to condition the issuance of new authority on this Applicant accepting amendment of its certificate to eliminate authority that it has not exercised. Staff's proposal would eliminate the following language from certificate No. BC-10:

**PASSENGER AND FREIGHT SERVICE**

Between: Blaine and Roche Harbor, Washington

Restrictions: Freight limited to 200 pounds per package.

\* \* \*

**PASSENGER AND FREIGHT SERVICE**

Between: Bellingham and the San Juan Islands, with regular stops at Roche Harbor, San Juan Island, and flag stops at Blakely Island; Rosario and Deer Harbor on Orcas Island; and Lopez Island (excluding freight service between Rosario – Lopez Island and Deer Harbor – Lopez Island).

Restrictions: Freight limited to 200 pounds per package.

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<sup>48</sup> Tr. 94-95.

<sup>49</sup> See *In re Application B-78433 of San Juan Island Shuttle Express, Inc., Order S.B.C. No. 527, Hearing No. B-78433, Initial Order Modifying Initial Order S.B.C. No. 523, pp.3-4 (July 12, 1996)*.

<sup>50</sup> Tr. 78-79.

## 7. Conclusion

60 Pacific Cruises Northwest, Inc. has shown by substantial competent evidence that the public convenience and necessity require the proposed service. In addition, the record shows that the two other companies that hold similar authority under existing certificates do not provide reasonable and adequate service in that they are not meeting the needs of the public for direct nonstop service between Bellingham and Friday Harbor.

61 The record shows that there is a substantial need for the proposed passenger-only express ferry service between Bellingham and Friday Harbor, and a strong desire by the public for such a service. It appears that PCNW has the financial resources to operate the proposed service for at least twelve months. As required by RCW 81.84.020(2), PCNW has provided ample information as to the cost of the proposed service and a statement of its total assets on hand. PCNW has demonstrated that it has substantial experience in operating similar passenger-only ferry service between Bellingham and Victoria, BC, and in Puget Sound, and is fit, willing, and able to provide the service.

62 This order considers and gives substantial weight to the effect of the proposed service on public agencies operating or eligible to operate passenger-only ferry service, namely the Department of Transportation, WSF Division, and Whatcom Transportation Authority. The WSF does not object to the service proposed in the application, and Whatcom Transportation Authority actively supports the application. The proposed service will provide an opportunity to augment passenger-only commercial ferry service by providing additional service levels and options consistent with the public interest.

63 This order recommends adoption of Staff's proposal to condition the approval of the Application on PCNW surrendering its authority (1) between Blaine and Roche Harbor, and (2) between Bellingham and the San Juan Islands, with regular stops at Roche Harbor and flag stops at Blakely, Orcas, and Lopez Islands. The record shows that PCNW has not operated either of these routes for many years, and Mr. Schmidt testified that the Company has no intention to do so in the near future.

64 Based on the above findings, the Application is granted in accordance with RCW 81.84.020, as conditioned herein.

### **III. FINDINGS OF FACT**

65 Having discussed above all matters material to this decision, and having stated general findings and conclusions, the summary findings of fact are set forth below. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions in this order are incorporated by this reference.

66 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including commercial ferry companies.

67 (2) On December 2, 2003, Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises, filed an application (No. B-079240) for an extension of its certificate of public convenience and necessity (BC-10) to provide commercial passenger-only ferry express service between Bellingham and Friday Harbor.

- 68 (3) There is an unmet need for the proposed nonstop service between Bellingham and Friday Harbor.
- 69 (4) Pacific Cruises Northwest, Inc. has demonstrated sufficient financial resources to operate the proposed service for at least twelve months, and has submitted the required information concerning revenue and ridership forecasts, cost of operations and assets, and assets on hand.
- 70 (5) Pacific Cruises Northwest, Inc. is operationally and financially fit to provide the proposed service.
- 71 (6) Whatcom Transportation Authority, the public transportation benefit area authority in Whatcom County, has agreed, through Resolution No. 208-04, to the application filed by Pacific Cruises Northwest, Inc.
- 72 (7) The Washington State Ferries Division of the State Department of Transportation did not object to the application of Pacific Cruises Northwest, Inc.
- 73 (8) The public convenience and necessity require the proposed service and the requested certificate is otherwise consistent with the public interest.
- 74 (9) The two existing certificate holders of authority for service between Friday Harbor and Bellingham do not provide reasonable and adequate service because they do not provide nonstop, direct service between Bellingham and Friday Harbor.
- 75 (10) Pacific Cruises Northwest, Inc. has not operated its routes between Blaine and Roche Harbor and between Bellingham and Roche Harbor for several years, and does not intend to operate them in the near future.

#### IV. CONCLUSIONS OF LAW

76 Having discussed above in detail all matters material to this decision, and having  
stated general findings and conclusions, the summary conclusions of law are set  
forth below. Those portions of the preceding detailed discussion that state  
conclusions pertaining to the ultimate decisions in this order are incorporated by  
this reference.

77 (1) The Washington Utilities and Transportation Commission has jurisdiction  
over the subject matter of, and parties to, these proceedings. *Title 81 RCW.*

78 (2) The proposed service will be complementary, not detrimental, to the  
Washington State Ferries and Whatcom Transportation Authority, public  
agencies operating, or eligible to operate, passenger-only ferry service.  
*RCW 81.84.020(4).*

79 (3) The Applicant, Pacific Cruises Northwest, Inc., has met all statutory  
requirements for issuing a certificate of public convenience and necessity,  
including the requirement that the public convenience and necessity  
require the service proposed in Application B-079273. *RCW 81.84.010(1);  
RCW 81.84.020.*

80 (4) The two existing certificate holders with authority to provide service  
between Bellingham and Friday Harbor do not provide reasonable and  
adequate service. *RCW 81.84.020(1).*

81 (5) As a condition to the Commission's approval of Pacific Cruises  
Northwest, Inc.'s application to provide passenger-only commercial ferry  
express service between Bellingham and Friday Harbor, the Company

should surrender its routes between Blaine and Roche Harbor and Bellingham and Roche Harbor.

- 82 (6) The Commission should retain jurisdiction to effectuate the terms of this Order. *Title 81 RCW.*

**V. ORDER**

- 83 (1) The Application No. B-079240 of Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises for a certificate of public convenience and necessity to operate commercial passenger-only ferry express service between Bellingham and Friday Harbor, Washington is GRANTED.

- 84 (2) The issuance of this certificate is conditioned on Pacific Cruises Northwest, Inc.'s surrender of its routes between Blaine and Roche Harbor and Bellingham and Roche Harbor as described herein.

- 85 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective this 11th day of February, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KAREN M. CAILLÉ  
Administrative Law Judge

## NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not effective until entry of a final order by the Utilities and Transportation Commission. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a *Petition to Reopen* a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

One copy of any Petition or Answer filed must be served on each party of record, with proof of service as required by WAC 480-07-150(8) and (9). An Original and **seven** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia Washington 98504-7250.