

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of	)	DOCKET TS-121253 (<i>Consolidated</i>)
)	
MCNAMARA, SEAN d/b/a	)	ORDER 03
BELLINGHAM WATER TAXI)	
	)	INITIAL ORDER GRANTING
For Extension of Authority Under	)	APPLICATION OF BELLINGHAM
Certificate BC-64619	)	WATER TAXI WITH CONDITIONS
.....)	
In the Matter of the Application of	)	DOCKET TS-121395 (<i>Consolidated</i>)
)	
PACIFIC CRUISES NORTHWEST,	)	ORDER 03
INC. d/b/a SAN JUAN CRUISES)	
	)	INITIAL ORDER GRANTING
For a Certificate of Public Convenience	)	APPLICATION OF SAN JUAN
and Necessity to Operate Vessels in	)	CRUISES WITH CONDITIONS
Furnishing Passenger Ferry Service)	
.....)	

BACKGROUND

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

- 2 *Application of Bellingham Water Taxi.* On May 31, 2012, the Commission approved Bellingham Water Taxi’s application to obtain by transfer from San Juan Cruises the authority to provide commercial ferry service between Bellingham and Obstruction Pass, including flag stops on Orcas Island (at Orcas Landing and Brandt’s Landing), Eliza Island, Sinclair Island, Blakely Island and Lopez Island.¹ Bellingham Water

¹ Exhibit SCM-12, pg. 6; *see also* In the Matter of the Joint Application to Transfer a Portion of Rights in Certificate BC-10 from Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises to Sean McNamara d/b/a Bellingham Water Taxi, Docket TS-120446, Order 01 (May 31, 2012).

Taxi has not yet initiated this service.² On July 30, 2012, Bellingham Water Taxi requested an extension of this authority, held under Certificate BC-64619, to include passenger and freight service between Bellingham and Friday Harbor, with flag stops at Vendovi Island and Cypress Island.

3 *Application of San Juan Cruises.* San Juan Cruises previously held authority to provide passenger-only ferry service between Bellingham and Friday Harbor.³ On July 13, 2012, at the company's request, the Commission canceled San Juan Cruises' Certificate BC-10.⁴ On August 24, 2012, San Juan Cruises applied for a new certificate of public convenience and necessity to operate vessels in furnishing direct passenger-only ferry service between Bellingham and Friday Harbor.

4 *Protest.* Island Mariner Cruises protested both applications and objects to the Commission issuing any additional certificates authorizing commercial ferry service between Bellingham and Friday Harbor.

5 The Commission conducted evidentiary hearings on January 31 and February 1, 2013. The parties simultaneously filed written closing arguments on February 25, 2013.

6 *Representatives.* Sean McNamara, *pro se*, Bellingham, WA, represents Bellingham Water Taxi. David Wiley, Williams Kastner, Seattle, WA, represents San Juan Cruises. Terry Buzzard, *pro se*, Bellingham, WA, represents Island Mariner Cruises. Michael Fassio, Assistant Attorney General, Olympia, WA, represents the Commission's regulatory staff (Staff).⁵

² Bellingham Water Taxi must initiate service no later than January 31, 2014. In the meantime, it has filed its first required six-month progress report with the Commission. *See* Exh. SCM-13.

³ Exh. DMS-9.

⁴ Exh. SCM-1 and Exh. DMS-17; *see also* In re Cancellation of Certificate BC-10 held by Pacific Cruises Northwest, Inc., d/b/a San Juan Cruises, Docket TS-121174, Order 01 (July 13, 2012). The Commission declines to re-open the matter of this cancellation as part of these dockets.

⁵ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the presiding administrative law judge (ALJ) or the Commissioners make the decision. To assure fairness, the Commissioners, the presiding ALJ, and the Commissioners' advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

DISCUSSION AND DECISION

I. Applicable Statutes.

- 7 RCW 81.84.010(1) prohibits commercial ferry operations upon Washington waters “without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation.” RCW 81.84.020 sets out two applicable standards the Commission must rely on to decide whether, or under what conditions, it will issue a certificate. First, the Commission may not grant a certificate in any territory already served “unless the existing certificate holder has failed or refused to furnish reasonable and adequate service, has failed to provide the service described in its certificate or tariffs after the time allowed to initiate service has elapsed, or has not objected to the issuance of the certificate as prayed for.” Second, the Commission must determine that an applicant has the financial resources to operate as proposed for at least twelve months, based upon the applicant’s pro forma financial statement of operations. The Commission’s ultimate decision is based on factors including ridership and revenue forecasts, cost of service, cost of required assets, the applicant’s total assets on hand, and prior experience.
- 8 If the Commission awards a certificate, RCW 81.84.010(4) requires regular progress reports at least every six months concerning efforts to initiate service. For ferry service on Puget Sound, the certificate holder has only twenty months to actually initiate service.

II. Analysis of Statutory Factors

- 9 The applications of Bellingham Water Taxi and San Juan Cruises present the Commission with three key issues:
- 1) Do the applicants seek to operate in “territory already served”?
 - 2) If so, can the Commission grant some or all of the requested authority?
 - 3) If so, are the applicants qualified to receive those grants of authority?
- 10 *Current Situation.* Island Mariner Cruises is the only company presently holding a certificate of public convenience and necessity for provision of passenger ferry service between Bellingham and Friday Harbor.⁶ Island Mariner Cruises holds

⁶ For a period of years, Island Mariner Cruises and San Juan Cruises merged portions of their individual certificates and jointly operated Island Commuter Service as a seasonal passenger ferry

certificate BC-95 with authority to provide commercial ferry service between Bellingham and Friday Harbor via a series of stops at smaller islands and harbors in the San Juan Islands.⁷ On April 26, 2012, the Commission authorized Island Mariner Cruises to discontinue its service for a period of up to twelve months, ending on April 30, 2013.⁸ The Commission's order requires Island Mariner Cruises to be prepared to resume service to meet the needs of the traveling public if an immediate need for its service should arise during the period of discontinuance.

11 As noted above, Bellingham Water Taxi also holds a certificate (BC-64619) with authority to provide commercial ferry service between Bellingham and Obstruction

between Bellingham and Friday Harbor, with scheduled service and flag stops at a number of other islands. *See* In re Joint Application for Authority to lease all rights under Certificate of Public Convenience and Necessity No. BC-95 from Island Mariner Cruises, Inc. to Island Commuter Service, LLC, d/b/a Island Commuter Service, Docket TS-070019, Order Approving Lease and Amending Certificate BC-95 (May 31, 2007) and In re Joint Application for Authority to lease a portion of rights under Certificate of Public Convenience and Necessity BC-10 from Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises to Island Commuter Service, LLC, d/b/a Island Commuter Service, Docket TS-070020, Order Approving Lease and Amending Certificates BC-10 and BC-95 (May 31, 2007). Island Commuter Service never operated year-round but instead offered seasonal service only. Schmidt, TR. 327:4 – 328:2 and 344:12-25. In 2010, Island Commuter Service initiated weekend service in May and daily service from mid-June through Labor Day. Exh. SCM-3; *see also* Docket TS-100441 and Schmidt, TR. 328:3-5. In 2011, Island Commuter Service limited its operations to three holiday weekends (Memorial Day, July 4th, and Labor Day). Exh. SCM-2; *see also* Docket TS-110057 and Schmidt, TR. 328:6-11. In early 2012, San Juan Cruises and Island Mariner Cruises disbanded their joint operation. *See* In the matter of the Application for authority to lease a portion of rights under Certificate of Public Convenience and Necessity BC-95 from Island Mariner Cruises, Inc. to Island Commuter Service, LLC, d/b/a Island Commuter Service, Docket TS-070019, Order 02 (April 5, 2012) and In the matter of Application for authority to lease a portion of rights under Certificate of Public Convenience and Necessity BC-10 from Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises to Island Commuter Service, LLC, d/b/a Island Commuter Service, Docket TS-070020, Order 02 (April 5, 2012). Neither San Juan Cruises nor Island Mariner Cruises offered passenger ferry service between Bellingham and Friday Harbor at any time during 2012. Schmidt, TR. 279:9-16.

⁷ Island Mariner Cruise's routing includes stops at Elisa, Sinclair, Cypress, Blakely, Decatur, Crane, Jones, Spieden, Johns, Stuart, Waldron, Sucia and Matia Islands as well as additional stops at Roche Harbor on San Juan Island, Rosario Resort, Olga and Doe Bay on Orcas Island, Lopez, and Shaw Islands.

⁸ Exhibit DMS-10; *see also* In the Matter of the Petition of Island Mariner Cruises, Inc., Relating to Discontinuance of Commercial Ferry Service Authorized by Certificate of Convenience and Necessity No. BC-95, Docket TS-120418, Order Granting Discontinuance of Service (April 26, 2012) (Discontinuance Order).

Pass with a series of flag stops scattered throughout the San Juan Islands. Bellingham Water Taxi seeks to extend its existing authority to include Friday Harbor and to add flag stops at Cypress Island and Vendovi Island. San Juan Cruises seeks to re-enter the market and obtain a certificate authorizing it to offer seasonal express service between Bellingham and Friday Harbor.

12 The following table and map illustrate the current situation as relevant to this matter:

	Bellingham	Eliza Island	Vendovi Island	Sinclair Island	Cypress Island	Blakely Island	Lopez Island	Orcas Island	Obstrxn Pass	Friday Harbor
Island Mariner Cruises	C	C	X	C	C	C	C	C	X	C
Bellingham Water Taxi	C	C	R	C	R	C	C	C	C	R
San Juan Cruises	R	X	X	X	X	X	X	X	X	R

C = Certificated Territory/Stop R = Requested Territory/Stop X = Unserved



- 13 *Do the Applicants Seek to Operate in Territory Already Served?* The Commission will not grant a certificate to operate in territory already served unless the existing certificate holder does not object or has failed or refused to furnish reasonable and adequate service. Here, Island Mariner Cruises has objected to both applications. Further, although the company has not offered service since summer 2011, Island Mariner Cruises plans to resume service along its multi-stop route for the coming summer season.⁹ If the company resumes service as required by the discontinuance order, the Commission must determine whether the applicants seek to provide service in territory that Island Mariner Cruises already serves within the meaning of RCW 81.84.020.
- 14 The Commission narrowly interprets certificates that arguably establish monopoly authority and distinguishes between different types of service, even when offered between the same two points. In a prior case, the Commission evaluated competing applications to initiate passenger ferry service on Lake Washington and determined the Commission could grant more than one application for authority to conduct commercial passenger ferry service if the nature of the service, the level of need, and the applicants' ability to fully meet shippers' needs were consistent with a grant of authority to more than one carrier.¹⁰ The Commission allowed both applicants to move ahead with plans to initiate service but did not allow more than one operator to serve any particular route.¹¹
- 15 The Commission has also previously evaluated the need for more than one certificate holder in the San Juan Islands. Several years ago, at least three companies simultaneously held certificates authorizing provision of passenger ferry service between Bellingham and Friday Harbor: San Juan Cruises (Certificate BC-10), Island Mariner Cruises (Certificate BC-95), and San Juan Island Shuttle Express (Certificate

⁹ Buzzard, TR. 384:4-10 and 385:7 – 386:24.

¹⁰ In re Dutchman Marine, LLC and Seattle Harbor Tours, Dockets TS-001774 and TS-002055, First Supplemental Order, ¶ 63 (Sept 2001) *citing* In re Jack Rood and Jack L. Harmon Jr., d/b/a Arrow Launch Service, Order S.B.C. No. 467; Order S.B.C. No. 468, In re Belairco, Inc. (May 1990).

¹¹ *Id.*, ¶¶ 67 and 70. In that case, no carrier was serving any of the proposed routes. The Commission acknowledged that its decision was “intended to spur both applicants to work diligently and aggressively with the appropriate authorities . . . toward the goal of implementing commercial ferry service over multiple routes within the shortest possible time.”

BC-120).¹² In creating this competitive situation, the Commission focused on the particular types of service offered and whether entrepreneurial expansion might develop new market niches.¹³ The Commission determined that a direct service between Bellingham and Friday Harbor sufficiently differed from a service that required flag stops along the way and, considering the unmet demand for such a route, justified issuance of additional authority to serve the territory despite the fact that similar authority was already held under existing certificates by two other companies.¹⁴

16 The competing applications in this matter generally are distinguishable from Island Mariner Cruises' existing authority and its seasonal service. San Juan Cruises seeks to create direct routing between Bellingham and Friday Harbor, coupled with its existing non-regulated seasonal sightseeing operations, which is a distinct service from Island Mariner Cruises' seasonal route with multiple stops between these two termini. Thus San Juan Cruises does not propose to operate in the same territory as Island Mariner Cruises within the meaning of RCW 81.84.020.

17 Similarly, the year-round multiple-stop route that Bellingham Water Taxi proposes does not overlap with Island Mariner Cruises' authority except during the peak summer season. Bellingham Water Taxi thus does not seek to offer service within the same territory as Island Mariner Cruises with respect to service provided nine months out of the year. During the peak summer season, however, Bellingham Water Taxi may not offer multi-stop service between Bellingham and Friday Harbor as long as Island Mariner Cruises retains the authority to provide such service.

¹² See *In re Pacific Cruises Northwest, Inc., d/b/a/ Victoria San Juan Cruises*, Docket TS-031996, Order 04, ¶¶ 13-20 and 60-61 (Feb. 11, 2005); see also Schmidt, TR. 279:9 – 281:14. In 2006, San Juan Cruises obtained all authority held by San Juan Island Shuttle Express under Certificate BC-120. See *In the Matter of Application No. B-79421 of Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises to Transfer All Rights under Certificate BC-120 in the name of San Juan Island Shuttle Express, Inc.*, Docket TS-060133, Order 02 (June 8, 2006).

¹³ *In re Pacific Cruises Northwest, Inc., d/b/a/ Victoria San Juan Cruises*, Docket TS-031996, Order 04, ¶¶ 21-23 (Feb. 11, 2005) citing *In re Application B-78450 of Pacific Cruises Northwest, Inc.*, Order S.B.C. No. 524 (1996).

¹⁴ *Id.*, ¶¶ 24-26. The Commission acknowledged that San Juan Island Shuttle Express had never initiated service and was therefore not providing reasonable and adequate service. *Id.*, ¶ 21.

III. Public Convenience and Necessity.

- 18 The Commission will only grant a certificate to operate commercial ferry service when it finds that the public convenience and necessity require the service. Customarily, this is demonstrated through witness testimony expressing a desire to make use of the proposed service if it were available. In addition, expert witnesses familiar with transportation needs and patterns over the proposed route can provide relevant evidence with regard to ridership projections, local competition, and historical attempts to offer or sustain similar services.
- 19 Bellingham Water Taxi provided a written shipper support statement from Marilyn O'Connor¹⁵ and called three independent shipper-support witnesses: Bert Webber,¹⁶ Thor Hanson,¹⁷ and Rogan Jones.¹⁸ San Juan Cruises called four independent shipper-support witnesses: Ken Oplinger,¹⁹ Randi Axelsson,²⁰ Christine Smith,²¹ and

¹⁵ Ms. O'Connor is Port Director for the Port of Friday Harbor. She believes that the island community would value a year-round pedestrian connection to Bellingham. Exh. SCM-4.

¹⁶ Mr. Webber is a marine biologist and retired college professor residing in Bellingham. He would like to see a more convenient way to get to the San Juan Islands and avoid the congestion associated with the Washington State Ferry (WSF) terminal in Anacortes. He believes that a regularly scheduled ferry between Bellingham and Friday Harbor would be beneficial to both communities; however, his personal transportation needs are primarily associated with Eliza Island. Webber, TR. 132:6 – 144:4.

¹⁷ Mr. Hanson is a biologist and author residing on San Juan Island, several miles south of Friday Harbor. He would be very supportive of a year-round service directly to Bellingham because it would enable him to accept additional work projects in that vicinity. In the past, he has turned down jobs in Bellingham due to the additional time and expense associated with traveling from the WSF terminal in Anacortes. Hanson, TR. 146:1 – 158:19; *see also* Exh. SCM-5.

¹⁸ Mr. Jones is a business owner residing in Bellingham who also owns property in the San Juan Islands. He travels to Friday Harbor and other nearby island destinations several times per year and wishes to avoid having to depend on the WSF for these trips. Jones, TR. 200:1 – 206:14.

¹⁹ Mr. Oplinger is President and CEO of the Bellingham/Whatcom Chamber of Commerce and Industry. As the voice of the local business community, he supports establishment of a regularly scheduled ferry route between Bellingham and the San Juan Islands. In his opinion, a year-round service would be preferable, but it is most important that whatever service is provided remain viable and dependable, even if that means a seasonal service. Oplinger, TR. 185:1 – 198:20.

²⁰ Ms. Axelsson is a hotel sales manager for the Silver Reef Hotel Casino Spa in Ferndale. She supports creation of a ferry service between Bellingham and the San Juan Islands that could take tour groups of up to 60 people from her hotel out to Friday Harbor and other island destinations

Jeff Ehlers.²² Each witness testified to the need for regularly scheduled passenger ferry service between Bellingham and Friday Harbor as well as other points in the San Juan Islands.

20 The shipper support evidence offered is undisputed. The existing Washington State Ferry service from Anacortes to Friday Harbor is not sufficient to satisfy the public convenience and necessity. The witness testimony offered provides sufficient evidence to support a finding that the public convenience and necessity require regularly scheduled passenger ferry service between Bellingham and Friday Harbor as well as other communities in the San Juan Islands. The witnesses also demonstrate a desire for year-round service, if possible.

21 Establishing regular private passenger ferry service along this route will support economic development in the area. Bellingham Water Taxi's proposed service would provide a year-round alternative to that now intended to be resumed only seasonally by Island Mariner Cruises. San Juan Cruises' proposed point-to-point service would provide a seasonal option for more direct travel between Bellingham and Friday Harbor, saving time for those people commuting between the two termini in the summer months.

22 The Commission finds that the public convenience and necessity requires more than one option for traveling by ferry between Bellingham and Friday Harbor.

IV. Financial and Operational Fitness.

23 RCW 81.84.020(2) requires the Commission to determine that applicants for a certificate of public convenience and necessity have the financial resources to operate the proposed service for at least twelve months, based upon the applicant's

more conveniently than the current sailings available from the WSF. She is interested in year-round ferry service, not just seasonal summer service. Axelsson, TR. 355:7 – 363:17.

²¹ Ms. Smith is Vice President of a Bellingham-based tour company with business in the San Juan Islands. She would like to see a ferry service established between Bellingham and Friday Harbor and other local destinations in the San Juan Islands to facilitate more direct transportation of her clients to and from the vicinity. Smith, TR. 373:14 – 379:5.

²² Mr. Ehlers has a Bellingham-based business performing automobile diagnostics and repairs. He supports establishment of a ferry service between Bellingham and the San Juan Islands so that he can provide better and more affordable service his customers in Friday Harbor and other local islands. Ehlers, TR. 364:2 – 372:23.

submission of a pro forma financial statement of operations. The statute further requires the Commission to consider the application in light of 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 field.

We evaluate each applicant, in turn, against these statutory requirements.

1. *Bellingham Water Taxi*

24 Bellingham Water Taxi intends to offer two round trips daily between Bellingham and Friday Harbor during peak summer months and a single round trip most of the rest of the year.²³ Sean McNamara, Bellingham Water Taxi's principal, created a ridership forecast projecting operations five days per week in the peak summer season (May to September) and two days per week in the winter season (October to April). He forecasts a total of 100 passengers per week in the summer season and 56 passengers per week the remainder of the year. Relying on an average round trip fare of \$70, Bellingham Water Taxi projects annual revenue of \$327,880.²⁴

25 Mr. McNamara included a preliminary financial statement as part of his extension application²⁵ and submitted an updated pro forma financial statement at hearing.²⁶ Mr. McNamara included estimated operational expenses for fuel, insurance,

²³ McNamara, TR. 43:1 – 44:15.

²⁴ Exh. SCM-10; *see also* McNamara, TR. 44:16 – 48:4. According to one reading of his Ridership and Revenue Forecast, Mr. McNamara hopes to board approximately 40 passengers each summer day and board 15 passengers each winter day. *See* McNamara, TR. 80:15 – 83:15.

²⁵ Exh. SCM-12, page 11.

²⁶ Exh. SCM-11. The updated pro forma financial statement revises most cost estimates upward. *See* McNamara, TR. 49:13-19.

maintenance and repairs, and dock fees. Mr. McNamara has not yet signed any contracts for dock space in Bellingham or in Friday Harbor.²⁷

- 26 Mr. McNamara has not yet secured a vessel to provide the service, but he estimates the cost of an annual lease to be \$72,000.²⁸ In addition, Mr. McNamara budgeted for office expenses, advertising, taxes, licensing, and two employees, including himself as vessel captain. Taking all of Mr. McNamara's admittedly rough estimates into account, Bellingham Water Taxi projects total expenses for the first year to be \$314,500.²⁹ If Mr. McNamara's updated numbers pencil out, Bellingham Water Taxi would show a profit of \$13,380 for its initial year of operation. Mr. McNamara admits this might not occur without extending his service to Friday Harbor.³⁰
- 27 In July 2012, Mr. McNamara estimated that he had \$40,000 cash on hand and stock holdings of approximately \$58,000.³¹ At hearing, his updated financial statement claimed \$28,000 cash on hand, reduced stock holdings of approximately \$5,000, machinery and tools (a new vehicle) valued at \$40,000, and real estate (a personal residence in Alaska) valued at \$350,000.³² Mr. McNamara also provided a letter from his father-in-law pledging to invest an unnamed amount in the business.³³ Taken as a whole, the record reflects that Bellingham Water Taxi appears to have sufficient financial backing to sustain its services for a full year.

²⁷ McNamara, TR. 70:4 – 73:15.

²⁸ McNamara, TR. 49:22-24. In his original filing, he had estimated this cost at \$60,000. *See* Exh. SCM-12, page 11. In its six-month progress report, Bellingham Water Taxi identifies several vessels it is considering for lease or purchase. *See* Exh. SCM-13.

²⁹ Exh. SCM-11. In his original filing, he estimated total expenses for year 1 to be \$260,500. *See* Exh. SCM-12, page 11. At hearing, Mr. McNamara stressed that all of his figures were “best guess” estimates. McNamara, TR. 50:13-25 and 51:6-9.

³⁰ McNamara, TR. 85:13 – 87:8.

³¹ Exh. SCM-12, page 3.

³² Exh. SCM-14. Mr. McNamara explained that his only current income is from renting out the Alaska residence (\$1,800 per month) and from selling stock. *See* McNamara, TR. 97:25 – 98:23 and 104:19 – 105:5.

³³ Exh. SCM-15.

- 28 Mr. McNamara testified about his prior experience operating a charter water taxi service from Bellingham to the San Juan Islands, a jet boat tour company in Haines, Alaska, and his years on fishing boats in Alaska and the South Pacific.³⁴
- 29 The Commission previously determined Bellingham Water Taxi to be financially fit to obtain the authority to provide passenger ferry service between Bellingham and Obstruction Pass and six flag stops along that route.³⁵ In this proceeding, much greater scrutiny has been applied to Mr. McNamara's financial filings. Undoubtedly, Mr. McNamara's pro forma filings are not as detailed or as thorough as those a more experienced businessman might have filed. We certainly question whether his projected expenses are realistic, but our skepticism is moderated by the conservative nature of his projected ridership and revenues. Further, extending Bellingham Water Taxi's authority to include Friday Harbor should enhance the fiscal viability of the overall route he has already been authorized to serve, particularly if Mr. McNamara actually operates year-round, as planned.
- 30 The Commission finds Bellingham Water Taxi fit to provide the proposed extended services to Friday Harbor, Cypress Island, and Vendovi Island. Bellingham Water Taxi has addressed the required statutory elements and demonstrated sufficient assets, financial resources, and experience to operate for at least twelve months.

2. *San Juan Cruises*

- 31 San Juan Cruises intends to combine passenger ferry service with its seasonal excursion service and offer one daily round trip between the Bellingham Cruise Terminal and Friday Harbor during the summer months.³⁶ Drew Schmidt, San Juan Cruises' president, created a ridership forecast projecting operations for the months of May, June, July, August, and September 2013. He intends to charge \$49.50 per one-way trip and, forecasting 3,800 total riders (1,900 each direction) for the entire summer season, San Juan Cruises projects annual revenue of \$188,100. According to

³⁴ McNamara, TR. 28:25 – 29:8 and 90:25 – 97:24.

³⁵ See Docket TS-120446; see also TR. 177:8-16.

³⁶ Schmidt, TR. 295:9-19; see also Exh. DMS-6 and DMS-7.

Mr. Schmidt's projections, total allocated expenses for the ferry service portion of his seasonal operation will be \$177,370, which shows an overall profit of \$10,731.³⁷

32 San Juan Cruises owns three different vessels from which it can provide this service: the Victoria Star (licensed for 149 passengers), the Salish Sea (licensed for 56 passengers), and the Viking Star (licensed for 42 passengers).³⁸ All three vessels are insured and have the requisite U.S. Coast Guard certifications.³⁹ Mr. Schmidt plans to rely primarily on the Victoria Star for the proposed service.

33 In support of its application, San Juan Cruises filed a balance sheet stating over \$16,000 in liquid assets available and more than twice that amount in receivables. The balance sheet is comprehensive, professionally prepared, and accounts for equal amounts of assets and liabilities.⁴⁰ No party challenged San Juan Cruises' financial ability to operate the proposed service for a period of twelve months, even at a loss.

34 Mr. Schmidt testified about his nearly 40 years of experience in the marine transportation industry. The record demonstrates that he has extensive experience operating passenger vessels on Puget Sound.⁴¹

35 The Commission finds San Juan Cruises fit to provide the proposed passenger ferry service between Bellingham and Friday Harbor. San Juan Cruises has addressed the required statutory elements and demonstrated sufficient assets, financial resources, and experience to operate for at least twelve months.

V. Conditional Grant of Applications for Authority

36 The Legislature has recognized that initiating commercial ferry service is inherently risky. The governing statutes require certificate holders to initiate service within a

³⁷ Exh. DMS-1; *see also* Schmidt, TR. 297:7-18, 299:21 – 301:15, and 304:18-20. Mr. Schmidt estimates that the ferry service would provide approximately 20% of his business, with excursion passengers making up the other 80%. *See* Schmidt, TR. 336:24 – 338:16.

³⁸ Exh. DMS-5; *see also* Exh. DMS-3, page 2.

³⁹ Exh. DMS-2.

⁴⁰ Exh. DMS-4.

⁴¹ Exh. DMS-8.

specified time frame and to file periodic progress reports with the Commission as they work to do so. Many well-intentioned and experienced companies have received certificates from the Commission, only to fold within a matter of months or years.⁴² Therefore, the Legislature has authorized the Commission to condition grants of authority in order to protect the public interest.

37 Darrell Bryan of Clipper Navigation, Inc., has nearly three decades of experience in the commercial maritime transportation business on Puget Sound. He has been associated with San Juan Express, Inc. (Certificate B-117) since 1991 and is familiar with the challenges of sustaining a seasonal passenger ferry service between Seattle and Friday Harbor. Mr. Bryan testified about the current economic climate for commercial ferry operations and explained that without financial support from ancillary tourism businesses, such as hotel room discounts and whale watching excursions, San Juan Express' seasonal summer service would not be profitable. In his opinion, there is no demand for year-round passenger ferry service between Seattle and the San Juan Islands.⁴³ Mr. Bryan similarly believes that the Bellingham to Friday Harbor route is sustainable only seasonally, not on a year-round basis.⁴⁴

38 After full consideration of the law, our past decisions, and the evidence presented, the Commission finds that the nature of the service, the level of need, and the applicants' ability to fully meet the shippers' needs are consistent with a grant of authority to more than one carrier in a manner that promotes a variety of service options for consumers traveling between Bellingham and Friday Harbor. The Commission further finds that the failure of any operator to provide service between these two points during summer 2012 requires additional measures in order to prevent another season lost to a certificate holder's failure to provide service in an exclusive territory when a fit, willing, and able provider may be ready to enter the market.

⁴² See, e.g., Aqua Express. In July 2004, the Commission approved the company's application to provide commercial passenger-only ferry service between Kingston and Seattle (In re Application No. B-079273 of Aqua Express, LLC, Docket TS-040640, Order No. 05 (July 9, 2004)). After several successful petitions for additional time to initiate service (see Dockets TS-051318, TS-060903, TS-061812, and TS-070889), Aqua Express ultimately surrendered its certificate in July 2008 (In re cancellation of Certificate of Public Convenience and Necessity No. BC-129, Docket TS-070889, Order Canceling Certificate (July 7, 2008)). See also Bryan, TR. 236:3 – 238:25.

⁴³ Bryan, TR. 232:19 – 236:2 and 239:1-20.

⁴⁴ *Id.*, 255:3-10. Mr. McNamara apparently does not share Mr. Bryan's opinion with regard to the viability of year-round ferry service in the San Juan Islands.

39 Given the inherent riskiness of start-up ferry operations and the economic realities involved in maintaining a profitable marine transportation business, the Commission deems it necessary to condition any grant of authorities to Bellingham Water Taxi and San Juan Cruises to avoid any more than two commercial ferry operations providing service between Bellingham and Friday Harbor at any one time. Each offers a distinct route between Bellingham and Friday Harbor, but both proposed routes lead to the same Friday Harbor dock where Island Mariner Cruises is already authorized to operate. The possibility exists that concurrent operations of all three services could result in ruinous competition and threaten the economic viability of all operators.⁴⁵

40 As the Commission previously recognized in this market, the public convenience and necessity would be best served by having a choice between a “commuter” service with multiple stops and an “express” non-stop service between Bellingham and Friday Harbor.⁴⁶ Therefore, the Commission will allow two certificate holders to serve Friday Harbor at the same time, one express route and one commuter service.

41 *Express Service.* San Juan Cruises’ application for authority to provide express seasonal passenger-only ferry service between Bellingham and Friday Harbor during peak summer season (Memorial Day weekend through Labor Day weekend) is granted, subject to the condition that San Juan Cruises be prepared to initiate service within two months. Although the law normally allows 20 months for a new certificate holder to actually initiate service, the Commission expects San Juan Cruises to be prepared to initiate service in time for the coming peak summer season. The Commission regards this condition as an appropriate check on its determination that this applicant is fit, willing and able to serve.

42 The Commission requires this accelerated initiation of service because San Juan Cruises is not new to this route. The record clearly demonstrates that San Juan Cruises is presently fit, willing, and able to initiate its proposed service for the peak summer season of 2013; Mr. Schmidt pledged as much at hearing. The Commission also seeks to preclude the possibility, however remote, of San Juan Cruises holding a certificate without initiating service for up to 20 months and precluding a potential rival from entering this currently underserved market.

⁴⁵ Mr. Bryan warned against this sort of destructive competition. *See* Bryan, TR. 257:18 – 258:6.

⁴⁶ Docket TS-031996, Order 04, ¶¶ 24-26, cited *supra* ¶ 15 and n. 12-14.

- 43 *Commuter Service.* Bellingham Water Taxi's application to extend its authority under Certificate BC-64619 to include scheduled service at Friday Harbor and flag stop service at Cypress Island during non-peak seasons (the Tuesday after Labor Day weekend through to the Thursday prior to Memorial Day weekend) is granted.⁴⁷ No other certificate holder is currently authorized to provide service at these locations during non-peak season.
- 44 Bellingham Water Taxi's application to extend its authority under Certificate BC-64619 to provide additional flag stop service at Vendovi Island is granted. No other certificate holder is currently authorized to provide service at this location.
- 45 The Commission does not consider these extensions of the current authority under Certificate BC-64619 to be of sufficient scope or complexity to merit a grant of additional time for Bellingham Water Taxi to initiate service.⁴⁸ Bellingham Water Taxi must actually initiate the entirety of its authorized service no later than January 31, 2014, the original 20-month deadline established in Docket TS-120446.
- 46 The remaining portion of Bellingham Water Taxi's application seeks to extend its authority under Certificate BC-64619 to include scheduled service at Friday Harbor and flag stop service at Cypress Island during peak summer season (Memorial Day weekend through Labor Day weekend). The Commission cannot grant that aspect of the application at this time because Bellingham Water Taxi seeks to provide service in the same territory as Island Mariner Cruises, which holds a certificate authorizing it to operate a seasonal commuter service.
- 47 The Commission's Discontinuance Order, however, requires Island Mariner Cruises to resume operations for the peak summer season in 2013 if an immediate need for this service arises. The Commission considers the application of Bellingham Water Taxi to provide this service as a demonstration that such a need exists. Accordingly, if Island Mariner Cruises does not exercise its authority to resume operations for the summer peak season of 2013, the Commission will authorize Bellingham Water Taxi to provide year-round commuter passenger ferry service between Bellingham and Friday Harbor per the terms of its application.

⁴⁷ The Commission makes no determination with regard to the financial viability of this service.

⁴⁸ At hearing, Mr. McNamara did not request any additional time.

48 Island Mariner Cruises must file in this docket a confirmation of its intent to resume services no later than May 15, 2013. If Island Mariner Cruises does not commit to resuming service for the peak summer season by May 27, 2013 (Memorial Day), and if that company does not resume service by that date, the Commission will grant Bellingham Water Taxi's application to extend its authority under Certificate BC-64619 to include scheduled service at Friday Harbor and flag stop service at Cypress Island during peak summer season (Memorial Day weekend through Labor Day weekend).

FINDINGS OF FACT

49 Having discussed above in detail the evidence received in this proceeding regarding all material matters, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

- 50 (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.
- 51 (2) The public convenience and necessity require commercial ferry service on Puget Sound between Bellingham and Friday Harbor with flag stops at various islands in the vicinity, to include Cypress Island and Vendovi Island.
- 52 (3) The public convenience and necessity require more than one option for ferry service between Bellingham and Friday Harbor.
- 53 (4) Island Mariner Cruises has expressed its intention to resume passenger-only ferry service on a multi-stop route between Bellingham and Friday Harbor when its currently authorized period of discontinuance ends on April 30, 2013.
- 54 (5) Bellingham Water Taxi has demonstrated that it has the financial and operational fitness to extend its current passenger-only ferry authority to include new service to Friday Harbor and new flag stops at Vendovi Island and Cypress Island.

- 55 (6) Pacific Cruises Northwest, Inc. d/b/a San Juan Cruises has demonstrated that it has the financial and operational fitness to provide passenger-only ferry service between Bellingham and Friday Harbor.

CONCLUSIONS OF LAW

56 Having discussed above all matters material to this decision, and having stated its findings, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 57 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties to these proceedings and the subject matter of their applications.
- 58 (2) Bellingham Water Taxi has satisfied the requirements of RCW 81.84.020(2) for extending the authority of its current certificate and, subject to the conditions set out in this order, should be authorized to provide off-peak seasonal commercial ferry service on Puget Sound between Bellingham and Friday Harbor with a flag stop at Cypress Island.
- 59 (3) Bellingham Water Taxi's proposed year-round flag stop service at Vendovi Island is not territory already served by any existing certificate holder and should be awarded to Bellingham Water Taxi.
- 60 (4) Bellingham Water Taxi's proposed peak season scheduled service to Friday Harbor and flag stop service at Cypress Island overlaps with the authority already held by Island Mariner Cruises under Certificate BC-95 and, to the extent Island Mariner Cruises provides service during peak summer season, cannot be granted to Bellingham Water Taxi at this time but should be granted if Island Mariner Cruises fails to exercise its authority under its Certificate to provide peak summer season service in 2013.
- 61 (5) Pacific Cruises Northwest, Inc. d/b/a San Juan Cruises has satisfied the requirements of RCW 81.84.020(2) for obtaining a certificate of public convenience and necessity and should be authorized to provide seasonal commercial ferry service on Puget Sound between Bellingham and Friday Harbor.

- 62 (6) Pacific Cruises Northwest, Inc. d/b/a San Juan Cruises' proposed point-to-point service between Bellingham and Friday Harbor is sufficiently distinct from the authority already held by Island Mariner Cruises under Certificate BC-95 that it is not territory already served by any existing certificate holder and should be awarded to San Juan Cruises.
- 63 (7) Pacific Cruises Northwest, Inc. d/b/a San Juan Cruises should be required to initiate service on an accelerated time frame.
- 64 (8) The Commission should retain jurisdiction to effectuate the terms of this Order.

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ORDER

THE COMMISSION ORDERS:

- 65 (1) Island Mariner Cruises must file with the Commission a status report
confirming its intent to resume ferry services no later than May 15, 2013.
- 66 (2) Bellingham Water Taxi's application to extend its authority to include a flag
stop at Vendovi Island is granted. Bellingham Water Taxi's application to
extend its authority to include scheduled service at Friday Harbor and a flag
stop at Cypress Island are also granted, but only for non-peak season (the
Tuesday after Labor Day weekend through to the Thursday prior to Memorial
Day weekend). The application to serve Friday Harbor and Cypress Island is
denied with respect to peak season; provided that if Island Mariner Cruises
does not exercise its authority to provide peak season commuter ferry service
on this route in 2013, Bellingham Water Taxi's entire application will be
granted by subsequent order in this proceeding.
- 67 (3) Bellingham Water Taxi must initiate commercial ferry service subject to the
original 20 month period of time established in Docket TS-120446 and
continue to file progress reports as previously required by order of the
Commission.
- 68 (4) Pacific Cruises Northwest, Inc. d/b/a San Juan Cruises' application for
authority to provide peak season service (Memorial Day weekend through
Labor Day weekend) is granted, subject to the condition that it must initiate
commercial ferry service within two months of obtaining the certificate.

Dated at Olympia, Washington, and effective March 26, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. 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. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

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 ten (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.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

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 (7)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250