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5 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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7 **In the Matter of Application No. B-79418 of**

DOCKET NO. TS-060061

8 SEAN McNAMARA
9 D/B/A PACIFIC SEA TAXI

PROTEST OF PACIFIC CRUISES
NORTHWEST, INC. D/B/A VICTORIA
SAN JUAN CRUISES AND
ISLAND MARINER, INC.

10 **For a Certificate of Public Convenience and**
11 **Necessity to Operate Vessels in Furnishing**
12 **Passenger-Freight-Excursion Commercial**
13 **Ferry Service**

14 COMES NOW Pacific Cruises Northwest, Inc. d/b/a Victoria San Juan Cruises and
15 Island Mariner, Inc. ("Protestants") by and through their attorney, David W. Wiley of
16 Williams, Kastner & Gibbs PLLC, and respectfully protest the proposed authority for
17 Applicant to operate "PASSENGER-ONLY FERRY SERVICE between Bellingham and
18 Orcas Island, with flag stops at Eliza Island, Sinclair Island, Cypress Island, Lopez Island, and
19 Blakely Island."

20 **1. Name and Address of Protestants.**

21 **a.** Pacific Cruises Northwest, Inc.
22 d/b/a Victoria San Juan Cruises
23 355 Harris Avenue, Suite 104
24 Bellingham, WA 98225
25 Phone: 360.738.8099
Email: drew@whales.com

b. Island Mariner, Inc.
#5 Harbor Esplanade
Bellingham, WA 98225
Phone: 360.734.8866

PROTEST OF PACIFIC CRUISES NORTHWEST, INC. D/B/A
VICTORIA SAN JUAN CRUISES AND ISLAND MARINER,
INC. - 1

Williams, Kastner & Gibbs PLLC
Two Union Square, Suite 4100 (98101-2380)
Mail Address: P.O. Box 21926
Seattle, Washington 98111-3926
(206) 628-6600

1 c. Pacific Cruises Northwest, Inc.
2 d/b/a Victoria San Juan Cruises
3 Proposed Transferee of Certificate B-120,
4 Currently issued to **San Juan Island Shuttle Express, Inc.**
5 355 Harris Avenue, Suite 104
6 Bellingham, WA 98225
7 Phone: 360.738.8099
8 Email: drew@whales.com

6 **Represented by:**

7 David W. Wiley
8 Williams, Kastner & Gibbs PLLC
9 601 Union Street, Suite 4100
10 Seattle, WA 98101-2380
11 Phone: 206.628.6600
12 Fax: 206.628.6611
13 Email: dwiley@wkg.com

12 **2. Legislation and Regulation Brought into Issue by This Proceeding.**

13 RCW Ch. 81.84, WAC Chs. 480-07 and 480-51, et seq.

14 **3. Protestants' Interest in This Proceeding.**

15 Protestants are commercial ferry service companies regulated by the Commission
16 pursuant to their Certificates of Public Convenience and Necessity BC-10, BC-95 and BC-120,
17 copies of which are attached hereto as **Exhibits A, B and C**, respectively. As is evidenced by
18 their certificates, Protestants currently hold authority in conflict with the applied-for
19 certificate.¹

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22 ¹ Protestant Pacific Northwest Cruises, Inc. notes that, pursuant to Application B-79421, Docket No. TS-060133,
23 it is a current Applicant to transfer all rights under Certificate BC-120 now held in the name of San Juan Island
24 Shuttle Express, Inc. A copy of the Docket noticing that application is attached hereto as **Exhibit D**. As such,
25 Protestant alleges that Pacific Cruises Northwest, Inc. holds property rights in the prospective transfer which
would be severely impacted by the grant of the above application which was noticed on the February 13, 2006
Commission Transportation Docket with the application protested herein. Should processing and/or action upon
Pacific Cruises Northwest's request for transfer otherwise be delayed into the Spring, Protestant will consider
applying for a temporary certificate for authorization by the Commission to operate BC-120, pending final
decision on the permanent transfer application.

1 Protestants typically operate seasonally, from April to October, in provision of
2 commercial ferry service between Bellingham and various points in the San Juan Islands,
3 including Orcas Island and Friday Harbor. Additionally, in conjunction with their authorities,
4 vessels operated by Island Mariner, Inc. make flag stops at various immediate points, including
5 Sinclair, Eliza, and other such named termini.

6 Protestants' authorities are fully effective and include the authorization to provide
7 commercial ferry service in the points sought by Applicant. Moreover, Protestant Pacific
8 Cruises Northwest, Inc. is currently operating five (5) days a week between Bellingham and
9 Friday Harbor and is encumbered by its ability to provide economically viable service outside
10 its typical seasonal operation. Protestants therefore remain ready, willing and able to provide
11 the services which the Applicant seeks herein to any and all of Applicant's supporting
12 witnesses and to the full satisfaction of the Commission. Authorization of overlapping service
13 would thus pose serious economic impact for Protestants in diminution of their revenue and
14 customer bases.

15 **4. Statutory Analysis.**

16 Pursuant to RCW 81.84.020(2):

17 . . . [T]he commission shall not have the power to grant a certificate to
18 operate between districts and/or into any territory . . . already served by an
19 existing certificate holder, unless such existing certificate holder has failed
20 or refused to furnish reasonable and adequate service or has failed to
provide the service described in its certificate or tariffs after the time
period allowed to initiate service has elapsed.

21 Protestants believe and therefore allege that they have neither failed nor refused to
22 furnish reasonable and adequate service and that therefore this Application must be denied.
23 Moreover, Protestants believe that this applicant cannot establish that he is fit, willing, and able
24 to be issued a certificate for commercial ferry service and specifically cannot establish that he
25

1 has the financial resources to operate the proposed service for at least 12 months, as required
2 by RCW 81.84.060(2). Protestants also aver and allege that Applicant cannot establish his
3 fitness to operate and cannot prove that he has complied with Commission law and rule by
4 failing to secure operating authority before commencing service between fixed termini between
5 points in the State of Washington in the past, since at least May, 2003.

6 **5. Protestants Request a Hearing Regarding the Application and This Protest.**

7 Protestants believe the Applicant should be required to submit strict proof in support
8 thereof to establish that Protestants have failed and/or refused to provide reasonable service
9 inconsistent with the public interest and that the Applicant is fit, willing and able to provide the
10 proposed service and/or that the Applicant's service, under analogous theory, is required by the
11 present or future public convenience and necessity pursuant to RCW 81.84, et seq.

12 If a hearing is convened on this matter, Protestants would propose to present the
13 testimony of one to two witnesses, requiring a hearing time of approximately 90 minutes, and
14 would also propose to conduct cross-examination of the Applicant's case.

15 **The Protestants intend to:**

16 a. **Submit written testimony and exhibits of the following people:**

17 One or more representatives of Pacific Cruises Northwest, Inc. and Island
18 Mariner, Inc., including but not limited to Drew M. Schmidt. Other
19 witnesses have not yet been identified; Protestants reserve the right to
submit additional written testimony and exhibits.

20 b. **Submit written arguments and/or motions.**

21 **If a hearing is held regarding the Application and this Protest, Protestants also intend to:**

22 c. **Call the following witnesses to testify:**

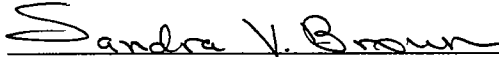
23 One or more representatives of Pacific Cruises Northwest, Inc. and Island
24 Mariner, Inc., including Drew Schmidt. Other witnesses have not yet been
25 identified; Protestants reserve the right to call any additional witnesses, if
necessary.

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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that I have this day served the foregoing Protest upon all parties of record
5 in this proceeding by mailing a copy thereof addressed with first-class postage prepaid to the
6 Applicant at the address indicated below:

7 Sean McNamara
8 d/b/a Pacific Sea Taxi
9 2501 Franklin Street
10 Bellingham, WA 98225

11 DATED this 7th day of March, 2006.

12 
13 Sandra V. Brown

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PROTEST OF PACIFIC CRUISES NORTHWEST, INC. D/B/A
VICTORIA SAN JUAN CRUISES AND ISLAND MARINER,
INC. - 6

1811223.1

Williams, Kastner & Gibbs PLLC
Two Union Square, Suite 4100 (98101-2380)
Mail Address: P.O. Box 21926
Seattle, Washington 98111-3926
(206) 628-6600

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

For the Operation of Motor Propelled Vehicles

pursuant to the provisions of Chapter 81 RCW

THIS IS TO CERTIFY that authority is granted to operate as a MOTOR CARRIER in the transportation of the commodities and in the territory described herein to

PACIFIC CRUISES NORTHWEST, INC.
d/b/a VICTORIA/SAN JUAN CRUISES
355 HARRIS AVE. STE 104
BELLINGHAM, WA 98225

PERMIT NO.
BC-10

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-ONLY FERRY SERVICES between Bellingham and Friday Harbor.

TS-031996

SERVICE DATE

03-10-05

APR 20 2005



WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

By _____

Paul C. ...

EXHIBIT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

For the Operation of Motor Propelled Vehicles

pursuant to the provisions of Chapter 81 RCW

THIS IS TO CERTIFY that authority is granted to operate as a MOTOR CARRIER in the transportation of the commodities and in the territory described herein to

Island Mariner, Inc.
#5 Harbor Esplanade
Bellingham, WA 98225

CERT. NO.

B-95

D-1

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 Matia 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.

LIMITATIONS:

The above authority is restricted against invading jurisdiction of the Washington State Ferries under Chapter 47.60 RCW.

S. B. C. No. 456

6-26-89



WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

By

Paul C. [Signature]

EXHIBIT B

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

For the Operation of Motor Propelled Vehicles

pursuant to the provisions of Chapter 81 RCW

THIS IS TO CERTIFY that authority is granted to operate as a MOTOR CARRIER in the transportation of the commodities and in the territory described herein to

SAN JUAN ISLAND SHUTTLE EXPRESS, INC.
d/b/a San Juan Island Shuttle Express
355 HARRIS AVENUE, SUITE 105
BELLINGHAM, WA 98225

CERT NO.
BC-00120

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, flag stops at Eliza Island, Sinclair Island, Blakely Island, and Lopez Island. This authority to make flag stops will terminate automatically upon termination of the certificate holder's authority to provide the above service between Friday Harbor and Bellingham and between Obstruction Pass and Bellingham.

The above statements of authority exclude freight service between Obstruction Pass-Friday Harbor, Obstruction Pass-Lopez Island, and Lopez Island-Friday Harbor.

Pursuant to RCW 47.60.010(3), the waiver of the ten-mile restriction granted in this certificate is effective until August 8, 2001. This waiver shall become permanent if not appealed within 30 days after this date.

In conjunction with existing authority, flag stop service at Orcas Landing (Harney Channel, Orcas Island).

Excluding freight service between Orcas Island - San Juan Island, Orcas Island - Lopez Island, and Lopez Island - San Juan Island.

Pursuant to RCW 47.60.120 (3), waiver of the ten mile restriction granted in this certificate is effective until May 21, 2003. This waiver shall become permanent if not appealed within 30 days after May 21, 2003.

(CONTINUED)

WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

By 
for Carole Washburn, Secretary



WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Continuation

In conjunction with the existing authority, flag stop service at Brandt's Landing (Orcas Island).

Excluding freight service between Orcas Island - San Juan Island, Orcas Island - Lopez Island and Lopez Island - San Juan Island.

S. B. C. NO. 555

07-06-99



Docket

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Chandler Plaza Building
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, Washington 98504

February 13, 2006

This docket of permanent operating authority applications pending and temporary operating authority applications granted is issued pursuant to the provisions of Title 81 and WAC 480 of the Commission's Laws and Rules.

PERMANENT OPERATING AUTHORITY APPLICATIONS PENDING.

As provided in WAC 480-51-040 &/or WAC 480-51-050 COMMERCIAL FERRY application filings are subject to protest for 30 days from the date they appear on this docket. Protests must be filed according to the provisions of rule and must set out the specific grounds for opposing the application and must contain a concise statement of the protestant's interest in the proceeding.

<u>Commercial Ferry</u> <u>Application</u>	<u>Date Filed</u>	<u>Applicant & Service Desired</u>
DOCKET NO. TS-060061	01-10-2006	MCNAMARA, SEAN d/b/a PACIFIC SEA TAXI 2501 FRANKLIN STREET BELLINGHAM, WA 98225
APPLICATION NO. B079418		

PASSENGER-ONLY FERRY SERVICE between Bellingham and Orcas Island, with flag stops at: Eliza Island, Sinclair Island, Cypress Island, Lopez Island, and Blakely Island.

<u>Commercial Ferry</u> <u>Application</u>	<u>Date Filed</u>	<u>Applicant & Service Desired</u>
DOCKET NO. TS-060133	01-20-2006	PACIFIC CRUISES NORTHWEST, INC SAN JUAN ISLAND SHUTTLE d/b/a VICTORIA SAN JUAN EXPRESS, INC. CRUISES d/b/a SAN JUAN ISLAND SHUTTLE EXPRESS 355 HARRIS AVE, STE 104 BELLINGHAM, WA 98225 510 EAST MRYTLE STREET BELLINGHAM, WA 98225
APPLICATION NO. B079421		

Application for authority to transfer all rights under Certificate No. BC-120 standing in the name of San Juan Island Shuttle Express, Inc., d/b/a San Juan Island Shuttle Express to Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises. The authority to be transferred is as follows:

WASHINGTON
1905 **UTC** 2005

UTILITIES AND TRANSPORTATION
COMMISSION
Celebrating 100 Years

PO Box 47250 ♦ 1300 S Evergreen Park Drive SW Olympia WA 98504-7250 ♦ Local: (360) 664-1160 ♦ Toll Free: (800) 562-6150
♦ TTY: (877) 210-5963 ♦ Website: www.wutc.wa.gov ♦ E-mail: info@wutc.wa.gov To request availability of the document in alternative formats, call (360) 664-1133

EXHIBIT D

February 13, 2006

Commercial Ferry

<u>Application</u>	<u>Date Filed</u>	<u>Applicant & Service Desired</u>
DOCKET NO. TS-060133	01-20-2006	PACIFIC CRUISES NORTHWEST, INC d/b/a VICTORIA SAN JUAN CRUISES 355 HARRIS AVE, STE 104 BELLINGHAM, WA 98225
APPLICATION NO. B079421		SAN JUAN ISLAND SHUTTLE EXPRESS, INC. d/b/a SAN JUAN ISLAND SHUTTLE EXPRESS 510 EAST MRYTLE STREET BELLINGHAM, WA 98225

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.

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In conjunction with the existing authority, flag stop service at Brandt's Landing (Orcas Island).

Excluding freight service between Orcas Island - San Juan Island, Orcas Island - Lopez Island and Lopez Island - San Juan Island.