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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of

AQUA EXPRESS LLC

**For a Certificate of Public Convenience and
Necessity to Operate Commercial Ferry Service**

APPLICATION NO. B079273

**PROTEST OF PROTESTANT
INLANDBOATMEN'S UNION OF
THE PACIFIC**

1. Name and address of Protestant:

Inlandboatmen's Union of the Pacific
1711 W. Nickerson St. Ste. D.
Seattle WA 98119

Phone: 206-284-6001
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2. Legislation Brought into Issue by this Pleading:

RCW 80.01.040
RCW 81.84.010 and -.020
RCW Ch. 47.64
WAC Ch. 480-51

Protest of Inlandboatmen's Union of the Pacific - 1

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3. **The Protestant has participated in the following WUTC cases in the last two years:**

To the best of its knowledge, the Inlandboatmen's Union of the Pacific has not participated in any cases in the last two years.

4. **Protest and the Protestant's interest in this proceeding:**

The Inlandboatmen's Union of the Pacific, I.L.W.U., AFL-CIO ("IBU") is the exclusive bargaining representative of deckhands, ticket-takers, ticket-sellers and certain other terminal personnel working for the Washington State Ferries ("WSF"). The IBU is also the exclusive bargaining representative, under federal law, of certain snack bar and concessionaire workers who are employed by private companies doing business on the Washington State Ferries. Thus, the IBU is both a "Ferry employee organization" under RCW 47.46.011(6) and a labor organization under 29 U.S.C. § 152(5). Additionally, the workers represented by the IBU are residents of the Puget Sound Region who are negatively impacted by operations which cause deterioration in the air and water quality of this area.

Generally, RCW 81.84.020(1) requires that the Washington Utilities and Transportation Commission ("Commission") may only certify commercial ferry operations based on public convenience and necessity. Specifically, RCW 81.84.020(4) requires that before the Commission issues a certificate to operate as a commercial ferry, "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."

In Sections 5 and 9 and Exhibits A and C of its application, Aqua Express, LLC ("Aqua Express") seeks to operate on a route between Kitsap County and Seattle during peak commuter hours. Specifically, Aqua Express seeks to operate ten scheduled runs. Five of these will occur between the hours of 5:30 a.m. and 9:30 a.m. The other five will occur between 4:00 p.m. and 8:00 p.m.

(a) Need for Passenger-Only Ferry Service Between Seattle and Kitsap County Not Shown

In Section 13 of its application, Aqua Express represents that there is an unfilled need to provide passenger only ferry service between Seattle and Kitsap County. However, the application fails to acknowledge the existence of WSF ferries that currently transport car-less passengers between Kitsap County and Seattle, or to explain why that ferry service is inadequate to meet the needs of car-less passengers.

(b) Effect of Aqua Express Service on IBU-Represented WSF Employees

The Aqua Express application appears to shadow-price WSF tariffs. For instance, in Section 8, Exhibit B, it proposes one-way fares of \$5.25 and round-trip fares of \$10.50. By comparison, one-way peak fares on the Seattle/Bainbridge and Seattle/Bremerton ferries are \$5.70 or \$11.40 round-trip. Additionally, in Section 16 of the Aqua Express application projects serving 284,050

1 passengers per year and generating nearly \$1.6 million in revenue in the first year alone. The
2 only reasonable inference which can be drawn from this information is that Aqua Express will
3 create and maintain its customer base by drawing customers from the car ferries currently being
4 operated by WSF.

5 The IBU's concern is that by operating only during peak times and at slightly lower prices, Aqua
6 Express will skim the cream off of WSF's business. Should this occur, it will put the ferry
7 system in even worse financial straits, potentially leading to the canceling of WSF runs and the
8 loss of jobs. Among the jobs which would be lost, as a result of this occurrence, would be the
9 jobs currently held by IBU-represented WSF employees.

10 (c) Effect of Aqua Express Service on IBU-Represented WSF Concessionaire Employees

11 With fewer passengers on the state ferries, there will be less need for the products and services
12 provided by WSF concessionaires. This, too, will lead to the elimination of existing jobs,
13 including the jobs held by IBU-represented employees.

14 Indeed, an integral part of Aqua Express' business plan is the revenue it will generate from
15 concessions. For instance, it anticipates concession revenue of around \$1.65 million in the next
16 five years. *See Pro forma Income Statement.* The IBU does not believe that Aqua Express can
17 obtain these results without effectively cutting into the concessions businesses being run by WSF
18 concessionaires, thus causing the job loss just noted.

19 (d) Effect of Aqua Express Service on WSF

20 For the reasons just set forth, the Aqua Express service appears very likely to have a very serious
21 detrimental effect on WSF. It will cause this effect directly, by depriving WSF of both revenue
22 from ticket sales and WSF's share of profits and/or gross sales made by WSF concessionaires.
23 The service will also indirectly injure WSF by depriving WSF of vital public support and the
ability to reintroduce passenger-only ferry service in the future.

(e) Effect of Aqua Express Service on Air and Water Quality in this Region

The Aqua Express service sought by applicant will involve the operation for extended periods of
time of a large engine-driven vessel. That vessel will generate emissions of pollutants and other
controlled substances to the air of this region. It also will leak and/or generate pollutants and
other controlled substances into Puget Sound.

The precise amounts and identities of the substances which will be released have not been stated
by applicant, nor is there any evidence in the application that the amounts, identifies, and impacts
of these substances have been evaluated by applicant or by any third party. To the extent that
these substances cause further deterioration in the air and water quality of this region, and do so
needlessly, i.e., by providing a service which is essentially duplicative of the service which is
now and which will continue to be provided by WSF, that deterioration is a substantial reason for
this application to be denied.

1
2 (f) Financial Resources of Aqua Express Not Demonstrated

3 RCW 81.84.020(2) requires that before the Commission issues a certificate to operate as a
4 commercial ferry,

5 [T]he commission shall determine that the applicant has the financial resources to
6 operate the proposed service for at least twelve months, based upon the
7 submission by the applicant of a pro forma financial statement of operations....

8 Here, Section 12 of the Aqua Express application contains an extremely limited financial
9 statement identifying only \$6,000 in assets. According to the application, these assets are from
10 "professional fees (estimated capitalized start-up costs)." The nature of this small amount of
11 assets is unclear.

12 Moreover, Aqua Express anticipates operating of a net loss of \$149,868 in year one, \$90,154 in
13 year two and \$3,907 in year three. The Application itself strongly suggests that the Applicant
14 does not have the financial resources to operate the proposed service for at least twelve months,
15 as required by RCW 81.84.020(2). This is even more troubling if Aqua Express undermines the
16 financial health of the Washington State Ferries and then goes out of business. Clearly, the
17 citizens of Washington would be adversely affected by such a turn of events.

18
19 **5. The Protester intends to raise the following issues in this proceeding:**

- 20 1. Whether there is a demonstrated need for the service sought to be provided by Aqua
21 Express LLC.
- 22 2. Whether the service sought to be provided by Aqua Express LLC would adversely affect
23 the Washington State Ferries.
3. Whether the service sought to be provided by Aqua Express LLC would adversely affect
IBU-represented Washington State Ferries employees.
4. Whether the service sought to be provided by Aqua Express LLC would adversely affect
the IBU-represented employees of Washington State Ferries concessionaires.
5. Whether the service sought to be provided by Aqua Express LLC would adversely and
needlessly affect the air and water quality of this region.
6. Whether Aqua Express LLC has the financial resources to operate the proposed service
for at least twelve months, as required by RCW 81.84.020(2).

1 **6. The Protestant requests a hearing regarding the Application and this Protest.**


2 The IBU has not decided at this time whether to submit written testimony or exhibits or to call
3 witnesses, but reserves the right to do all of these things. The IBU intends to cross-examine the
4 witnesses called by other parties and to submit written argument and/or motions.

5 **7. Conclusion; Request to Commission**

6 The IBU requests that the Washington Utilities and Transportation Commission schedule a
7 hearing regarding Application B079273 so that the issues raised by said Application may be
8 subject to a full and open examination and discussion before the Commission makes any
9 determination regarding whether a certificate of authority to engage in a commercial ferry
10 operation between Kitsap County and Seattle should be issued to the Applicant.

11 Respectfully submitted this 5th day of May, 2004.

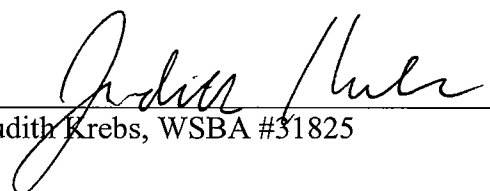
12 By:


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Attorneys for the Inlandboatmen's Union

17 STATE OF WASHINGTON)
18) SS.
19 KING COUNTY)

20 I, Judith Krebs, affirm that this petition is true and complete to the best of my knowledge and belief.

21 
22 Judith Krebs, WSBA #31825
23

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2004 I caused to be served the original and twelve copies of the foregoing document to via UPS Overnight Mail to the following address:

Carole Washburn, WUTC Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, Washington 98504-7250

I certify I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via email to:
records@wutc.wa.gov

and an electronic copy via email to:
WUTC Division, Office of the Attorney General
Sally Johnston
sjohnston@wutc.wa.gov

and a copy sent via legal messenger to:

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Seattle, WA 98101-2380
Attorney for Aqua Express LLC

Dated this 5th day of May, 2004.


Judith Krebs