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5 **BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**
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7 **In the Matter of the Application of**)
8)

9 **DUTCHMAN MARINE, LLC, d/b/a**)
10 **“LAKE WASHINGTON FERRY SERVICE”**)

11 **For a Certificate of Public Convenience and**)
12 **Necessity to Operate Commercial Ferry Service**)
13)

APPLICATION NO. B078937

PROTEST OF PROTESTANT
THE CITY OF SEATTLE

14 **1. Name and address of Protestant:**

15 THE CITY OF SEATTLE
16 10th Floor, Municipal Building
17 600 Fourth Avenue
18 Seattle, WA 98104
19 Phone: (206) 684-8200

20 **2. Legislation Brought into Issue by this Pleading:**

21 RCW 80.01.040
22 RCW 81.84.010 and -.020
23 RCW 35.21.160
RCW 35.22.195, -.280 and -.570
RCW 35.34.340
RCW 53.08.310-.320

1 WAC Chs. 480-09 and 480-51

2 Seattle City Charter

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

Date:	Docket Number:	Title of Proceeding:
Ongoing	UE-951270	In the Matter of the Proposal by PUGET SOUND POWER & LIGHT COMPANY To Transfer Revenues from PRAM Rates to General Rates
Ongoing	UE-960195	In the Matter of the Application of PUGET SOUND POWER & LIGHT COMPANY and WASHINGTON NATURE GAS COMPANY For an Order Authorizing Merger of WASHINGTON ENERGY COMPANY and WASHINGTON NATURAL GAS COMPANY with and into PUGET SOUND POWER & LIGHT COMPANY, and Authorizing the Issuance of Assumptions of Obligations, Adoption of Tariffs, and Authorizations in Connection Therewith.
10/11/1999 through 6/29/2000	B078811	In the Matter of the Application of SEATTLE FERRY SERVICE, LLC, d/b/a SEATTLE FERRY SERVICE For a Certificate of Public Convenience and Necessity to Operate Commercial Ferry Service
10/11/1999 through 6/29/2000	B078822	In the Matter of the Application of SEATTLE HARBOR TOURS LIMITED PARTNERSHIP For a Certificate of Public Convenience and Necessity to Operate Commercial Ferry Service

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20 **4. The Protestant has the following interest in this proceeding:**

21 The City of Seattle, a municipal corporation of the first class in the State of Washington
22 operating under its own charter, has a population of approximately 540,900 (estimate of the State
23 of Washington for 2000). The City of Seattle is organized to provide local governance to the
geographic area known as Seattle and to exercise all powers vested in it under its Charter and the
laws of the State of Washington pertaining to first class cities.

1 The Applicant has identified four desired transportation routes for its proposed commercial ferry
2 service: between Kenmore and Seattle, Kirkland and Seattle, Bellevue and Seattle, and Renton
3 and Seattle. [Application – Section 5.] The Application submitted by Dutchman Marine, Inc. to
4 the WUTC indicates that the proposed western terminus of the Applicant’s four proposed
5 commercial ferry routes is the simple fishing dock located at the eastern end of Madison Street,
6 the “Madison Park Dock.” The Application includes a time schedule for the Applicant’s
7 proposed Seattle-Bellevue route that indicates a commercial ferry boat is expected to arrive at or
8 depart from the Madison Park Dock approximately every twenty minutes between 6:00 a.m. and
9 10:18 p.m. The Application, however, omits any information about the proposed time schedule
10 for the Applicant’s proposed Kenmore-Seattle, Kirkland-Seattle, and Renton-Seattle service.
11 [Application – Responses to Sections 8 and 9.] Accordingly, insufficient information has been
12 provided to enable The City of Seattle to evaluate the full, potential impacts of the Applicant’s
13 proposed service on the City’s municipal infrastructure, in general; or on its Park & Recreation
14 Department facilities in particular; and on the City neighborhood surrounding the sole proposed
15 western terminus identified in the submitted Application.

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

11 “the commission shall determine that the applicant has the financial resources to
12 operate the proposed service for at least twelve months, based upon the
13 submission by the applicant of a pro forma financial statement of operations. ...”

13 The financial statement submitted by the Applicant in response to the requirements of Section 12
14 of the Application indicates that the Applicant has only \$50,000 available for its proposed
15 operations on Lake Washington. The projected income and expense statement submitted by the
16 Applicant for its first year of operations indicates that it expects a net loss of \$344,346.
17 Regardless of whether this indicated loss for the first year of operations is only with respect to
18 the proposed Bellevue-Seattle run (the only proposed run for which any detailed information is
19 included in the Application), or whether it is for all four proposed commercial ferry runs
20 referenced in this Application, the Application itself strongly suggests that the Applicant does
21 not has the financial resources to operate the proposed service for at least twelve months, as
22 required by RCW 81.84.020(2).

18 The deed for the property surrounding the western terminus identified for the Applicant’s
19 proposed Bellevue-Seattle ferry service was initially offered by King County to The City of
20 Seattle subject to the condition “that the land ... be used as a public approach and public landing,
21 and as a public road and highway... .” [See, Record, County Commissioners, King County,
22 December 18, 1950 (Vol. 49, pp. 318-19.) Seattle officials rejected King County’s offer of the
23 property surrounding the proposed western terminus because they objected to the condition
attached to the proposed conveyance. King County subsequently offered to The City of Seattle
a revised deed that made the conveyance subject to “the condition that the land ... shall be used
for public purposes only... .” That deed (recorded under No. 4121839, Records of King County,
Washington) was accepted by The City of Seattle under Ordinance 79829, effective April 28,
1951, “for park purposes.”

1 No Madison Park Ferry Dock exists anymore. Ferry service from the last such dock ended in
2 1943. The dock and pilings that were last used in connection with a commercial ferry service
3 operation on Lake Washington to and from Madison Park were removed from the lake shore
4 about 1951. The western terminus of the Applicant's proposed service is currently a public park.
5 While a dock does exist in Madison Park, that dock was not designed and is not equipped for use
6 as the loading and unloading platform for passengers on a commercial ferryboat. There is no
7 access between Madison Street or 43rd Avenue in Seattle and the current fishing dock that
8 extends easterly from Madison Park into Lake Washington, except through Madison Park, itself.

9 The Application misstates the current position of The City of Seattle vis-à-vis the Application
10 and the ownership of property within Bellevue, Washington: The Applicant's assertions in the
11 third paragraph of the Applicant's response to Section 13 that

12 "The City of Seattle is supportive of this application. It has acquired commercial
13 marine facilities on Meydenbauer Bay specifically to connect its downtown area,
14 three blocks distant, to Lake Washington..."

15 are not simply true.

16 The City of Seattle owns no commercial marine facility on Meydenbauer Bay in Bellevue. The
17 City of Seattle supports and encourages the development of alternative modes of transportation
18 within the City as a means of reducing automobile traffic and congestion and increasing the
19 mobility of residents and others, but has serious reservations about the expressed intention of the
20 Applicant to dock its commercial ferry at property that has been designated as a park, at a facility
21 that has not been designed to serve the Applicant's purposes. The City of Seattle also has
22 serious reservations about the various impacts on the Madison Park neighborhood that are likely
23 to result from the Applicant's proposed commercial ferry operation, and the increased need for
parking enforcement, police protection, signage, infrastructure improvements, and other, related,
demands upon municipal services.

The grant of a Certificate to the Applicant cannot, in any way, obligate The City of Seattle to
construct, finance, or otherwise provide a dock, any related facility, or space for use by any
commercial ferry service operation, including for service proposed in this proceeding, at
Madison Park or at any other property on Lake Washington that is owned by, or under the
control of, The City of Seattle. If the Applicant desires to use any dock or other facility owned
by, or under the control of, The City of Seattle on Lake Washington, the Applicant will have to
receive authority independently granted by The City of Seattle for such use and will have to
comply with all requirements associated with or imposed by The City of Seattle on such use
including but not limited to the payment of whatever moorage or docking fees and other charges
are established by the City in the exercise of its sole discretion. The WUTC has no jurisdiction or
authority to determine whether the use by a private ferry operator for its commercial ferry
service of a dock or other property owned by The City of Seattle, whether designated as a "park"
or otherwise, is a "public purpose..." or an appropriate use of municipal property. The
Applicant should be required to acknowledge that the WUTC's granting of authority to engage in
commercial ferry boat operations on Lake Washington for service to and from Seattle does not

1 entitle the Applicant to use any City-owned or –controlled property, including but not limited to
2 any dock, wharf, landing site, pier, park, or street end, in connection with such operations, and
3 that The City of Seattle retains exclusive control over the use of all such property, regardless of
4 any decision, authorization or grant by the WUTC in response to the Application filed with the
5 WUTC by the Applicant.

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

- 7 1. Should the Application of Dutchman Marine, LLC (Application No. B-78937) be granted
8 where the Applicant has no current right to use or occupy any portion of the Madison
9 Park Dock, the property identified by the Applicant as the exclusive Seattle terminus for
10 the Applicant’s proposed Bellevue-Seattle service, and the presumptive Seattle terminus
11 for the Applicant’s Kenmore-Seattle, Kirkland-Seattle and Renton-Seattle service?
- 12 2. Should the Application of Dutchman Marine, LLC be granted where the WUTC has no
13 jurisdiction to decide whether to allow the Applicant to use the property designated in its
14 Application as the terminus for a portion of its proposed commercial ferry operation, and
15 the WUTC has no authority to require that such designated property be made available to
16 the Applicant for such use?
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17 **6. The Protestant requests, as authorized by WAC 480-09-420(6), a hearing regarding the
18 Application and this Protest. The Protestant intends to:**

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

20 One or more representatives of City governmental agencies including but not
21 limited to Seattle Transportation and the Parks and Recreation Department.
22 Others have not yet been identified.

23 X b. **submit written arguments and/or motions.**

If a hearing is held regarding the Application and this Protest, the Protestant also intends to:

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

One or more representatives of City governmental agencies including but not
limited to Seattle Transportation and the Parks and Recreation Department.
Others have not yet been identified.

X d. **Cross-examine the witness called by other parties.**

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

3 The City of Seattle requests that the Washington Utilities & Transportation Commission
4 schedule a hearing regarding Application B077937 so that the issues raised by said Application
5 may be subject to a full and open examination and discussion before the Commission makes any
6 determination regarding whether a certificate of authority to engage in a commercial ferry
7 operation on Lake Washington between Kenmore and Seattle, Kirkland and Seattle, Bellevue
8 and Seattle, and Renton and Seattle, should be issued to the Applicant. The City of Seattle also
9 requests that if the Commission grants the requested certificate, that the Commission make no
10 determination regarding the specific location within the geographic limits of The City of Seattle
11 of the western terminus of the Applicant's proposed commercial ferry operation on Lake
12 Washington, and that the Commission expressly withhold any opinion regarding the legal
13 authority of the Applicant to use any property owned by or under the control of, The City of
14 Seattle for that western terminus.

15 Respectfully submitted this nineteenth day of December, 2000.

16 MARK S. SIDRAN, City Attorney

17 By: _____

18 Gordon B. Davidson, WSBA # 3271
19 Assistant City Attorney

20 Seattle City Attorney's Office
21 10th Floor, Municipal Building
22 600 Fourth Avenue
23 Seattle, WA 98104
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Facsimile Copier Number: (206) 684-8284
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24 STATE OF WASHINGTON)
25) ss.
26 KING COUNTY)

27 I, Gordon B. Davidson, affirm that this Protest is true and complete to the best of my knowledge and
28 belief.

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30 Gordon B. Davidson, WSBA # 3271

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I hereby certify that I have this day arranged for the service of the original and the required number of copies of the foregoing document to the Washington Utilities & Transportation Commission's secretary, the Attorney General, and the Applicant's attorney, using a legal messenger service under contract with The City of Seattle, no later than Wednesday, Dec. 20, 2000. I certify I have also provided to the Washington Utilities & Transportation Commission's secretary an electronic file containing the foregoing document.

Dated at Seattle, Washington, this nineteenth day of December, 2000.

Kay Smith