

0002

1 P R O C E E D I N G S

2 JUDGE CAILLE: We are here for the first
3 prehearing conference in Docket No. TS-050443, and this
4 concerns a commercial ferry application in the name of
5 Mike Lauver and John Solin, doing business as Feet Wet
6 Partners, Saratoga Shuttle, and this is for a
7 certificate of public convenience and necessity to
8 provide commercial, passenger, and freight-only ferry
9 service between Oak Harbor and Coupeville, Coupeville
10 and Madrona Beach, Oak Harbor and Mukilteo, and
11 intermediate points on those routes.

12 My name is Karen Caille, and I'm covering
13 this prehearing conference for Judge Rendahl who was
14 unable to be here today. Today is June 30th, 2005, and
15 we are convened in a hearing room at the Commission's
16 offices in Olympia, Washington.

17 I would like to start this afternoon by
18 taking appearances from the parties. I will ask you to
19 state your name, spelling your last name for the court
20 reporter. State whom you represent, your street
21 address and mailing address, telephone number, fax
22 number and e-mail address, and let's begin with the
23 Applicants.

24 MR. LAUVER: Mike Lauver, L-a-u-v-e-r, on
25 behalf of Feet Wet Partners. I'm a partner. Physical

0003

1 address, 1321-B Barlow Street, Oak Harbor, Washington,
2 and mailing address, PO Box 2895, Oak Harbor,
3 Washington, 98277. E-mail, mike@seatacshuttle.com.
4 Phone number is (360) 679-4003.

5 JUDGE CAILLE: I'll need your fax number, but
6 just back up for a minute on the phone number, because
7 I have 240-8287.

8 MR. LAUVER: That's our second line. This is
9 the primary for this particular one, (360) 240-8287.

10 JUDGE CAILLE: Do you have a fax?

11 MR. LAUVER: Yes. (360) 323-8894.

12 JUDGE CAILLE: Mr. Solin?

13 MR. SOLIN: I'm John Solin, S-o-l-i-n,
14 representing Feet Wet Partners, d/b/a Saratoga Shuttle.
15 Our physical address is 1321-B Southwest Barlow Street,
16 Oak Harbor, Washington, 98277. Our mailing address is
17 PO Box 2895, Oak Harbor, Washington, 98277. Our
18 telephone number is (360) 240-8287. Our fax is (360)
19 323-8894, and my e-mail is john@seatacshuttle.com.

20 JUDGE CAILLE: For Commission staff?

21 MR. THOMPSON: I'm Jonathan Thompson,
22 assistant attorney general, representing the Commission
23 staff. My street address is 1400 South Evergreen Park
24 Drive Southwest, PO Box 40128, Olympia, 98504. My
25 phone number is (360) 664-1225, and the fax is

0004

1 (360) 586-5522. My e-mail is jthompso@wutc.wa.gov.

2 JUDGE CAILLE: Let the record reflect there
3 are no other appearances. The Commission received no
4 protests in this application within the 30 days
5 required by Commission rules. The Commission must
6 still hold a hearing on this application since RCW
7 81.84.020 requires the Commission grant authority only
8 after hearing.

9 During the last legislative session, an
10 amendment to the statute was enacted into law that
11 would allow the Commission to issue a certificate to
12 operate commercial ferry service without a hearing as
13 long as proper notice and an opportunity for a hearing
14 was originally provided and no objections were made
15 regarding the issuance of the certificate. That was
16 Substitute Senate Bill 5105.

17 Now, those changes, according to the bill, do
18 not become effective until July 24th, 2005, and prior
19 to going on the record this afternoon, the parties and
20 myself had just a general discussion about how to
21 approach this and maybe use the legislation in this
22 particular matter. So I will now ask for, perhaps
23 beginning with you, Mr. Thompson, a little bit of
24 background on what you think may be possible to do in a
25 situation, and then I will call on Applicants to

0005

1 comment as well.

2 MR. THOMPSON: It would be Staff's view that
3 the first place you would look to try to resolve this
4 would be the language of the legislation itself, and
5 there is nothing in there to indicate that it does not
6 apply to applications filed prior to the effective date
7 of the law, which is July 24th.

8 So that not being a bar to application of the
9 new statute to this case, you would have to find a
10 different theory of why the new law wouldn't apply, and
11 the only kind of theory that might support that would
12 be a vested rights theory, perhaps, under a land-use
13 permit analogy.

14 Even if that were the case, which I don't
15 think it is, the right to a hearing would be a right of
16 the Applicant, or at least of an intervenor or a
17 protestant. So there really does not appear to be
18 anything standing in the way of the Applicant in this
19 case requesting or agreeing to have the new law apply
20 to the case, the new law being that no hearing is
21 required for the granting of the certificate.

22 JUDGE CAILLE: Mr. Lauver, are you the
23 spokesperson this afternoon?

24 MR. LAUVER: I'll go ahead and step forward
25 for that. We agree with Staff's comments here and

0006

1 would request that this particular application be
2 viewed in light of the new legislation. It is an
3 unprotested application serving an area that has no
4 other existing service and would lend itself well to
5 being the first application processed under the new
6 legislation.

7 JUDGE CAILLE: Do you have anything to add,
8 Mr. Solin?

9 MR. SOLIN: I do not.

10 JUDGE CAILLE: I find this an interesting
11 question, and I'm sure Judge Rendahl will also find it
12 an interesting question. I'm going to leave it up to
13 her to decide that question.

14 So what I propose that we do is go ahead and
15 assume that we are going to have to have a hearing
16 according to the statute and select a date. Then I
17 would expect in the prehearing conference order for her
18 to rule or discuss this new legislation and the
19 possibility of doing this without a hearing. So that
20 takes care of the legislation.

21 Another option that we discussed off the
22 record before beginning this afternoon was since there
23 are no protestants in this proceeding, and may we just
24 do this by a paper record, and maybe each of you would
25 like to speak to that as well, beginning with you,

0007

1 Mr. Thompson.

2 MR. THOMPSON: It's my understanding that
3 based on what Bonnie Allen has told me in past practice
4 and I think my own recollection of recent case that
5 where there is no protest, the Commission has, even
6 under the existing statute, allowed shipper support
7 statements, sworn statements, to be taken as the
8 evidence of need for the service. So I think that's
9 still a requirement under the statute as amended, even
10 without the hearing requirement.

11 There is a question as to whether those
12 statements would have to be sworn, and there is nothing
13 in the rules under this chapter that require that to be
14 the case like there are in some other transportation
15 chapters. So it may be possible to take the letters
16 that have already come into the record as evidence of
17 need.

18 JUDGE CAILLE: How many letters have come
19 into the record?

20 MR. LAUVER: There are currently eight, and
21 there is a ninth due in any day from senator Mary
22 Margaret Haugen.

23 MR. THOMPSON: The other type of evidence
24 that is taken in these kind of cases is of financial
25 fitness and regulatory fitness, and those are spoken to

0008

1 by the information that's required in the Application,
2 and it may also be possible to just take the
3 Application materials on their face as evidence of
4 those points.

5 JUDGE CAILLE: Mr. Lauver, did you want to
6 speak to that issue?

7 MR. LAUVER: Yes, please. If, in fact, a
8 hearing is deemed necessary, we do request that it be
9 done as a paper record hearing, and we also request
10 that the letters of support that have already been
11 received by the Commission satisfy the requirement of
12 statements of need. I agree with Mr. Thompson that no
13 certification is really, a notary is required on these
14 statements. In previous cases, that has been the
15 situation.

16 As far as financial ability, the Application
17 does speak for itself. However, if more depth for any
18 reason is required under that, that also has been
19 addressed in previous cases simply with written
20 statements by the Applicants.

21 JUDGE CAILLE: Then of course the third
22 option is to actually have a hearing, admit the
23 exhibits, and yes, maybe have live testimony of need,
24 but I'm going to reserve any comment on that and let
25 Judge Rendahl make that decision.

0009

1 MR. THOMPSON: In the event of a hearing, I'm
2 just reminded that one of the things that typically is
3 offered is testimony from operating witnesses as to how
4 the business will operate, how the service will
5 operate.

6 JUDGE CAILLE: So in other words, testimony
7 from Mr. Lauver and Mr. Solin.

8 MR. LAUVER: If I might add, if it's
9 determined that we need a hearing with live witnesses,
10 we would request that that hearing be held in Oak
11 Harbor.

12 JUDGE CAILLE: So if live witnesses are not
13 needed, will Olympia suffice?

14 MR. LAUVER: Yes.

15 JUDGE CAILLE: Does anyone else have anything
16 further to say about the options for hearing?

17 MR. LAUVER: That pretty well has it covered.

18 JUDGE CAILLE: I note there are no other
19 petitions to intervene. I assume there is no need for
20 any discovery in this proceeding.

21 MR. THOMPSON: No. However, there is one
22 issue that could probably just be addressed by the
23 Company in the materials that it files, and that is the
24 boats that are referred to in the Application are
25 fairly small, and there is at least a question in

0010

1 Staff's mind as to whether they meet the definition of
2 a vessel under 81.04.010, which requires that the
3 vessel be at least five gross tons, and that's a fairly
4 arcane measure and probably something that might be
5 stated on a Coast Guard document. It apparently has
6 some significance under Coast Guard regulations.

7 Perhaps if the Commission could just make the
8 stipulation that the Company submit that information so
9 we could determine whether the service would, in fact,
10 be subject to the Commission's jurisdiction.

11 MR. LAUVER: To that end, we do have now
12 updated engineer's drawings of our proposed vessels,
13 which will be in the seven- to ten-ton class, and we
14 will be happy to submit those at the time that all the
15 rest comes in.

16 JUDGE CAILLE: Thank you. Is there anything
17 else that Staff noticed that would need
18 supplementation?

19 MR. THOMPSON: Well, there is a number of
20 things that have to be considered when a certificate
21 comes in. It's our understanding that the ten-mile
22 waiver requirement does not apply, because when you
23 place a ruler on the map and try to figure out whether
24 the end points of the service are within ten miles of
25 one another, they do not appear to be -- I should say

0011

1 within ten miles of a Washington State Ferry's route --
2 that does not appear to be the case based on the way
3 that requirement has been interpreted. There is an
4 attorney general opinion on how you do that.

5 MR. LAUVER: Actually, if I could interrupt
6 for a second here. Passenger-ferry-only is excluded
7 from the ten-mile rule and no waiver is required.

8 MR. THOMPSON: I agree with that. That's a
9 good point. There is a secondary issue, however, in
10 that the Company proposes to have fares for express or
11 freight, and there is at least an open question as to
12 whether carrying freight would take a company out of
13 that exemption for passenger-only ferry service, which
14 hasn't been addressed by the Commission, but it came up
15 in an earlier case.

16 MR. LAUVER: That was not our interpretation,
17 but if, in fact, that's the way it comes down, we are
18 more than happy to eliminate freight. That was in
19 there after a suggestion from down at this end, so I
20 believe we are pretty comfortable in just removing
21 freight from it if it comes to that.

22 MR. SOLIN: Would that freight removal
23 requirement be on all routes or only those that are
24 within ten miles of a Washington State Ferry route?

25 MR. THOMPSON: It would be with respect to

0012

1 those routes that are within ten miles of Washington
2 State Ferry route. However, I don't believe that to be
3 the case here, so I don't think it would be necessary
4 for you to eliminate your freight in order to avoid the
5 application of the ten-mile rule.

6 JUDGE CAILLE: What we are doing now here is
7 just kind of exploring any issues that may arise in a
8 perusal by someone of the Application, so I just wanted
9 to try to get these things up front so that everyone is
10 aware of them, and Judge Rendahl, in particular, can
11 read the record and my notes and know what the various
12 issues are so that perhaps she can deal with it just on
13 a paper record.

14 MR. LAUVER: We appreciate all Staff's
15 comments. Being as we represent ourselves, anything
16 they can bring to our attention that we can get
17 smoothed over, the better for everyone.

18 MR. THOMPSON: There is one other issue I
19 would like to bring up along those same lines, and that
20 is that under the statute, 81.84.010, if this does
21 constitute a passenger-only ferry service, then there
22 are different timing requirements for how long the
23 Company has to initiate service, so it's 20 months for
24 passenger-only ferry service; whereas it's longer, five
25 years, for other commercial ferry service. It would be

0013

1 Staff's position that this probably does constitute a
2 passenger-only ferry service.

3 MR. LAUVER: We agree with that.

4 JUDGE CAILLE: Is there anything further on
5 the Application?

6 MR. THOMPSON: Those were the only issues
7 that we thought should be mentioned.

8 JUDGE CAILLE: Thank you. Prior to going on
9 the record this morning, we also considered hearing
10 dates that would work with Judge Rendahl's schedule,
11 and the hearing dates that we come up with are August
12 24th and 25th. I'm assuming one day is going to be
13 enough if a hearing is necessary, and I will leave it
14 up to Judge Rendahl which date that is, and she will
15 indicate that in the prehearing conference order.

16 MR. THOMPSON: Just to clarify, assuming we
17 do this solely on a paper record or just require the
18 Company to file something in writing as opposed to
19 actually appearing for a hearing, I assume the same
20 date would work for the Company to file documents?

21 MR. LAUVER: That's perfectly satisfactory.

22 JUDGE CAILLE: Let's go off the record for
23 just a moment.

24 (Discussion off the record.)

25 JUDGE CAILLE: We've had some further

0014

1 off-record discussion concerning the date that the
2 Applicant would file additional documents if the judge
3 were to rule that this could be done on a paper record
4 or that a hearing was not necessary.

5 The date that the Applicants have agreed to
6 have that information would be by the date of the
7 hearing, so it would be either the 24th or the 25th of
8 August. And there was further discussion about if
9 there were a paper record that Staff would maybe be
10 given an opportunity to respond to that record in order
11 to bring any conditions to the attention of the
12 presiding judge.

13 I believe I've covered everything other than
14 if we go to hearing, we would need three copies of each
15 of your exhibits. On any filings for -- this is other
16 than exhibits, if there is some motions, some argument.
17 If, say, for instance, Judge Rendahl should ask for
18 support for the argument about not holding a hearing
19 because of the new legislation, those kind of documents
20 we would need nine copies filed, an original plus nine
21 filed with the records center, and all of this will be
22 incorporated into the prehearing conference order,
23 which I will sketch out for her, but I will leave the
24 important decisions to her.

25 I think that covers everything. Does anyone

0015

1 have any questions or anything further to add?

2 MR. LAUVER: I've got one other matter we
3 would like to address, and that is the name of the
4 company. We made an initial filing under Feet Wet
5 Partners, and then we had a little miscommunication and
6 that filing was withdrawn sort of inadvertently. We
7 subsequently refiled the Application that we have here
8 today, and we were told by Staff that it had to be
9 filed as Mike Lauver, John Solin, Feet Wet Partners,
10 Saratoga Shuttle.

11 As far as we can tell, WUTC is the only
12 administrative entity in the universe that uses this
13 sort of filing. We are Feet Wet Partners. Our UBI is
14 under Feet Wet Partners. Our FEIN is under Feet Wet
15 Partners. When you go to the Web site for WUTC, you
16 find it under Mike, not under Lauver, not under Solin,
17 not under Saratoga, not under Feet Wet Partners, but
18 under Mike.

19 When we came here today to this meeting,
20 there was a notice at the front desk and one taped to
21 the door that refers to us as Saratoga Shuttle. The
22 confusion is snowballing. This is causing us some
23 problems with junk mail, for one, because now, I as an
24 individual and John as an individual are being blasted
25 all over the Web out there, and we strongly request

0016

1 that we be able to change the name to its proper
2 registered business name of Feet Wet Partners.

3 JUDGE CAILLE: Are you ready, Mr. Thompson?

4 MR. THOMPSON: To tell you the truth, I'm not
5 in a position to address that issue right now. I know
6 Ms. Allen could, but I don't know if that's
7 appropriate.

8 JUDGE CAILLE: Perhaps maybe this is
9 something that you could discuss with them. I don't
10 know if this is going to become an issue, but maybe you
11 could explain and work things out?

12 MR. THOMPSON: It certainly would lend itself
13 to having a discussion to try to work it out, but that
14 failing, if the Applicants want to make a motion to --

15 JUDGE CAILLE: Amend the Application to read
16 --

17 MR. THOMPSON: To read differently. Then I
18 think that would be their procedural avenue for doing
19 that, and then we could respond to that motion.

20 JUDGE CAILLE: Why don't we do that, because
21 then Mr. Lauver and Mr. Solin, you can present your
22 arguments and attach whatever you have about the UBI
23 number, FEIN number, and whatever it was that was going
24 back and forth, and then Staff can respond.

25 MR. LAUVER: Our intent is not to clutter up

0017

1 or extend the proceedings, but that's become a bit of a
2 nuisance, and frankly for the public, they can't find
3 us. Who would ever look under Mike?

4 JUDGE CAILLE: There are reasons why the
5 Commission does the things that it does, usually, so I
6 cannot comment on that right now, but I can appreciate
7 some of the confusion because I was feeling a little
8 confused myself. I was just wondering what you were
9 going to call your --

10 MR. LAUVER: Ralph's Boats.

11 JUDGE CAILLE: -- ferries. Can we look at a
12 calendar quickly and pick a date for filing that
13 motion?

14 MR. LAUVER: Certainly.

15 JUDGE CAILLE: This can be a little further
16 out. We are approaching the 4th of July weekend.

17 MR. LAUVER: Jonathan, how long do you think
18 you would need to respond? We can push this out until
19 the very end, as far as I'm concerned. You indicate
20 how much time you want and we will back it up and make
21 it fit within the window.

22 MR. THOMPSON: I think that would be pretty
23 easy to respond to in a week, if that, depending on
24 whatever else is going on in my life during that week.

25 MR. LAUVER: If we make it due around the

0018

1 15th of August, and maybe we can have conversations
2 with Staff, and we understand why then and that's the
3 end of it or we decide that we need to proceed with it.

4 JUDGE CAILLE: All right. Because I think
5 Judge Rendahl is on vacation the first part of that, so
6 I think she's back on the 15th. So the Applicant will
7 file that motion to amend on the 15th?

8 MR. SOLIN: No later than, or do you want a
9 firm date?

10 JUDGE CAILLE: Let's go off the record for a
11 second.

12 (Discussion off the record.)

13 JUDGE CAILLE: We've had an off-record
14 discussion, and a concern of mine has been satisfied
15 about how quickly we might need to amend the
16 Application if we were to amend it, and I'm satisfied
17 that it doesn't need to be done immediately. We chose
18 a date of August the 15th for the Applicant to file
19 that motion to amend.

20 MR. LAUVER: Correct.

21 JUDGE CAILLE: Then your response would be
22 due a week later, the 22nd of August?

23 MR. THOMPSON: Fine.

24 MR. LAUVER: If that's too tight, we can back
25 it up a week. I was just trying to toss it out there a

0019

1 ways to give the judge time to deal with the July 24
2 issue.

3 MR. THOMPSON: That should be fine.

4 Actually, I think it's going to be a pretty simple
5 matter, and hopefully, we can resolve it without the
6 need for a motion.

7 JUDGE CAILLE: All right. So perhaps we'll
8 put that into the procedural schedule, the motion to
9 amend if needed.

10 MR. LAUVER: Works for us.

11 JUDGE CAILLE: Again, all this will be
12 memorialized in the prehearing conference order, and
13 the various things that need to be decided will be
14 decided there as well, I'm assuming.

15 That is all I have. If there is nothing
16 further from anyone, then this matter is adjourned.
17 Thank you.

18 (Prehearing adjourned at 2:30 p.m.)

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