

NOTICE TO PARTIES:

The decision here proposed is not effective by reason of this order until a final order of the Washington Utilities and Transportation Commission is issued herein. All parties hereto shall have 20 days from the date of service of this proposed order to file exceptions as provided by WAC 480-08-240(5). Replies to exceptions shall be served within 10 days of the date of service of exceptions as provided by WAC 480-08-240(8). One copy of the exceptions or replies must be served upon all other parties of record, or their attorneys, with proof of service as required by WAC 480-08-060(5). After reviewing the exceptions, replies, briefs and oral arguments, if any, the Commission will affirm, reverse or modify this proposed order by Commission final order.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application)	ORDER S.B.C. NO. 363 A
B-263 of)	
ISLAND MARINER, INC.)	HEARING NO. B-263
for extension of authority under)	FINDINGS OF FACT
Steamboat Permit No. SBC-95.)	CONCLUSIONS OF LAW
.)	AND PROPOSED ORDER
	GRANTING APPLICATION

A hearing in the above-entitled matter was heard after due notice to all interested parties, on the 1st day of February, 1977, at Bellingham, Washington, before Philip W. Richardson, Administrative Law Judge.

The parties were represented as follows:

- APPLICANT: ISLAND MARINER, INC.
By Phillip E. Rosellini
Attorney at Law
109 - 6th Avenue
Lynden, Washington 98264
- INTERVENOR: WILLIAM MERRILL, pro se
Box 75
Olga, Washington 98278
- COMMISSION: WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION
By Ellis Ross Anderson
Assistant Attorney General
Temple of Justice
Olympia, Washington 98504

MEMORANDUM

The instant matter is in part a request for an extension of existing steamboat service, and in part an entirely new grant of authority. Sufficient problems are presented that a preliminary analysis is required. This is due in part to

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there being so few authorities in the area that the Commission's experience is limited, notwithstanding there being a longstanding need for service in the San Juan archipelago. The state has long since preempted a considerable part, but not all of the transportation needs, and provides passenger, freight and motor vehicle service. The application in this matter concerns transportation of passengers and freight only.

Applicant as a transferee holds a certificate of public convenience and necessity to operate vessels in furnishing passenger and freight service under Steamboat Certificate No. 95, which as of June 26, 1968, granted authority to provide passenger and freight service (excluding motor vehicles) between Bellingham, Washington, and Friday Harbor, (San Juan Island) via Elisa, Sinclair and Blakely Island, Rosario Resort and Olga (Orcas Island) and Lopez and Shaw Islands with the limitation that there be no local service between Orcas, Lopez, Shaw and San Juan Islands. Prior to incorporation, the certificate was in the name of Terry Buzzard, d/b/a Island Mariner. Mr. Buzzard is the president and sole stockholder of the applicant corporation.

The applicant now requests authority to include additional termini, such as Doe Bay (Orcas Island) without the limitation above mentioned, and in addition, to serve various other islands. In effect, applicant seeks to eliminate the limitation as is reflected in the notice of hearing in which the limitation is not reflected. Applicant has not operated under its rights since 1974 and has the problem of suiting a tariff to the changes in cost since that time without experience, other than in charter trips he has continued to provide. Between 1974 and the present, the applicant for a time operated a Friday evening service.

Since the restriction as to providing service between certain islands is not included and applicant renews its application as to its original authority, the application may also be considered original in that respect.

The applicant included a map of the route and relies on time schedules and tariff already on file with the Commission. In addition to the tariff being for an earlier era, the time schedules did not include the additional islands which may not all be served as flag stops.

The applicant for some time has been providing a launch service, not reflected in the certificate of public convenience and necessity; and is now seeking authority for that service which has assumed accelerated significance with the rapidly increasing ocean traffic into Puget Sound and the Strait of Georgia. No one has questioned whether this service is entirely intrastate service, but the Commission under OPS Atty. Gen. 1927-1928 p.120, appears to have authority to regulate in these waters. See also United States v. Canadian Pacific R. Co., 4 F.Supp. 851, affd 73 F2 831 (1933).

It should be stated that the obsolete term "steamboat service" issued since the statute as earlier enacted in 1927 used that term and has never been amended in that regard.

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The term "launch service" is not reflected in RCW 81.84. Applicant has filed for such service for one and possibly two reasons; namely, that it is engaged in providing passenger and freight service by boat, has been advised by a Commission staff executive that it should file for authority (thereby eliminating apprehensions of being found guilty of exceeding its authority), and secondly the tremendous increase presently and likely in the immediate future of crude oil into the Straits offers a very substantial opportunity which should be protected by the first to apply for it.

The pertinent part of RCW 81.84.010 provides, with emphasis supplied, as follows:

No steamboat company shall hereafter operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters of this state including . . . Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation: PROVIDED, That no certificate shall be required for a vessel primarily engaged in transporting freight other than vehicles, whose gross earnings from the transportation of passengers and/or vehicles are not more than 10 percent of the total gross earnings of such vessel. . .

A launch service has been stated to be a boat service from docks to ships lying in anchorage areas, operating on fixed schedules set by the captains or shipping companies' agents in providing passenger and freight service to the ships. Applicant has been providing this service for the past three or more years without regulation, but has included the income from the launch service with the other data in the annual reports. Chandlery service is also being provided by transporting freight to ships.

The general anchorage areas involved do not appear to have been established by any state or federal authority except two, but are accepted by the ports, ship owners, pilots, ship repair businesses and others involved in maritime activities, and are described in the Federal Register and the U.S. Coast Pilot 7, a publication. They are usually about five miles in diameter, or less, depending upon distances between land masses. The anchorage areas are used by incoming ships which have no place to berth and are required to anchor in the stream to wait for certain inspections and for a berth to become available, and the anchorage areas are well known as to their location and extent and where possible are outside the shipping lanes, to provide safety for the ships to ride at anchor, taking the weather into consideration, and out of the way of shipping traffic. Ships are often forced to ride at anchor in the areas involved for considerable periods of time, occasionally up to a month.

The Boundary Bay anchorage area lies off Blaine, Washington, in open waters, as do the Cherry Point and Ferndale general anchorage areas. The facilities in Bellingham

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Bay are noted on the navigation charts, the general anchorage area and the smaller explosives anchorage area are defined by the United States Coast Guard. The Anacortes area is within a defined restricted dumping ground and the Port Angeles anchorage area lies in waters partly enclosed by the spit Ediz Hook, and the mainland. All points of origin are established termini, namely, the dock at Blaine, the docks owned by Puget Sound Launch and Chandlery off Cherry Point and Ferndale, the Hilton Dock at Bellingham, leased by Puget Sound Launch and Chandlery, Inc., a marina at Anacortes, and the Port of Port Angeles. While not all general anchorage areas appear to be established by the Coast Guard, such as those in Bellingham Bay, they are certain enough to be considered as fixed termini for purposes of regulation and identification by the public.

Inasmuch as the statute is in the alternative, between fixed termini or over a regular route, it is not necessary that such regular route be shown. It first appeared that this would be a problem because the schedules which would establish routes appear to be those governed by the requirements of the shipping companies or other circumstances. Customs officers, immigration officials, representatives of the ship owners and pilots need to be taken to the ships on arrival, or before departure. All American flag ships must comply with the Seaman's Union requirements of having eight off-watch moves between ship and shore for the crews, and foreign ships have lesser moves to enable their crews to have off-duty hours. The problem does not arise except in relation to tariffs. The testimony is that the tariffs are uniform from coast to coast and the tariffs filed by applicant appear to be both just and reasonable and consistent with the established charges.

It would appear that there is an existing unfulfilled need for the service to the various San Juan Islands which has been demonstrated by testimony and statements of members of the traveling public, some of whom are residents of islands which have no public service whatever, and include both residents of Bellingham who need transportation to the various islands, tourists from Bellingham to the islands, and those residing on the islands who do not need to use motor vehicles, many of whom reside on islands which presently have no public transportation service. It is obvious, however, that such service must be based on tariffs which will produce a reasonable return. With the increase in population and activities on the islands, the need for passenger and freight service that is dependable has the correlary of adequate rates to support the service, insure safe and adequate vessels, trained and qualified staffing, and a reasonable profit to the operator. From hearing the testimony, the writer has concluded that the rate schedule formerly on file was in fact inadequate and was a cause of the lessening of service and ultimate stoppage of service which applicant seeks to resume and augment.

Applicant has now submitted tariffs effective July 1, 1977, between its inter-island docks and between Bellingham and the various island docks both one way and round trip. Applicant considers that the rate schedule proposed is adequate and will be compensatory. Analysis

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of the rate schedules previously on file as compared to the new filings shows that the schedule now includes service to islands under the present application not authorized to be served previously, and the rates are greatly increased over the earlier filing. In the absence of any protests to the application in this matter or of evidence that the proposed rates are unreasonable, they require acceptance.

Testimony of Mr. Jim Bolster, who holds 55 percent of the issued stock of Puget Sound Launch and Chandlery, Inc., and in which Mr. Buzzard holds 25 percent, reveals that applicant corporation is very heavily supported by the Chandlery corporation and Mr. Bolster is willing to provide very substantial support to the Buzzard enterprise, the applicant herein. All but one of the vessels involved, two of the docks, and various other assets and facilities used or to be used by the applicant belong to the chandlery company, and the Bellingham facility is held pursuant to a long and very valuable lease by the chandlery company. In addition, the launch service and certain chandlery activities of applicant are connected directly or indirectly with the launch and chandlery corporation, and the present arrangement in operation of the launch service of applicant for which it seeks legal recognition, is handled under what amounts to an employment arrangement with different scales of compensation to applicant, depending upon whether he is the pilot of the vessel used.

These are two separate legal entities. Support of one by the other is understandable, but is subject to scrutiny for several reasons. In addition to the fact that Puget Sound Launch and Chandlery, Inc., must secure adequate return for use of its facilities, for instance, the use of docks entails a necessary part of applicant's activities and must be paid for. Any vessel leased by applicant must be under its own control and remuneration for use must be in accordance with that control and services in providing chandlery service and paid for in accordance with established rates. Also, income from the launch service under the authority requested shall be that of the applicant and any such use by Puget Sound Launch and Chandlery, Inc., must also be compensated by adherence to the tariff established.

The bare boat charter, or one-year lease of vessels by Puget Sound Launch and Chandlery, Inc., to applicant, achieves one objective above mentioned, namely, that it provides availability of the vessels not owned by applicant to the services applicant seeks to provide on a lessor-lessee arrangement rather than under an oral, ephemeral arrangement subject to question. Whether the rental is reasonable or not, the writer has no evidence or measurement and at least for the present must be accepted as a business arrangement between two separate entities.

Granting of the authority requested is done in recognition of the monopoly granted to the Puget Sound Ferry and Toll Bridge authority under RCW 47.60 and is not intended to grant any authority in contravention of the same. The letter dated January 28, 1977, from Richard A. Berg, general manager of the Washington State Ferries, stating that there

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is no objection by that system to the application and that it would provide a needed service was not accepted as an exhibit owing to a valid objection being made to it.

The intervention of William Merrill on behalf of the residents of the village of Olga, on Orcas Island, does not create any reason for the authority not to be granted as to that landing and service to people in that area of that island. It is possible that parked vehicles could cause some inconvenience to owners of the cottages, but the service to be provided appears to outweigh that possibility which, in fact, may never occur, and the use of the dock and raft is a matter to be solved between applicant and the other users of it. The dock appears to be satisfactory for the service sought to be rendered.

After review of the record in the above-entitled matter, findings of fact and conclusions of law are made and entered herein.

FINDINGS OF FACT

Those parts of the foregoing memorandum and analysis setting out facts pertinent to the proceeding are included as findings by reference.

1. On November 12, 1976, Island Mariner, Inc., a Washington Corporation organized in 1968, with its principal place of business at Bellingham, Washington, filed its application designated Cause No. B-263, for extension of authority contained in its Steamboat Certificate No. 95, under which it presently is authorized to furnish freight and passenger service (excluding motor vehicles) between Bellingham, Washington, and Friday Harbor (San Juan Island) via Elisa, Sinclair, and Blakely Islands, Rosario Resort and Olga (Orcas Island) and Lopez and Shaw Islands with the limitation that there shall be no local service between Orcas, Lopez, Shaw and San Juan Islands.

2. By the extension application herein, the applicant has again sought authority to furnish similar service, also excluding motor vehicles, but without the limitation against inter-island service set forth in the original authority, between Bellingham and Friday Harbor (San Juan Island) via Elisa, Sinclair, Cypress and Blakely Islands; Rosario Resort, Olga and Doe Bay (Orcas Island) and Shaw and Lopez Islands and by amendment to serve additional islands in the San Juan archipelago as follows: namely, Decatur, Crane, Jones, Spieden, Johns, Stuart, Waldron, Sucia and Mitia Islands and Roche Harbor (San Juan Island), and for freight and passenger launching service (excluding motor vehicles) to ships at anchor from Bellingham to Bellingham Bay general anchorage zones, from Sandy Point or Cherry Point to Cherry Point general anchorage zones, from Anacortes to Anacortes and March Point general anchorage zones; from Blaine to Boundary Bay general anchorage zones; from Port Angeles to Port Angeles general anchorage zones. The proof as to the various zones disclosed that there appears to be only one zone for each port or landing dock. Tariffs

for both types of service accompanied the application as well as schedules setting out the docks to be used, their respective values and ownership, and whether leased or to be leased.

3. William Merrill, Olga, Washington (Orcas Island) was permitted to participate as a general intervenor.

4. Terry A. Buzzard is president and sole stockholder and H. Allen Buzzard is vice-president of the applicant corporation, both are residents of Bellingham, Washington.

5. Although the ferry landing at Orcas on Orcas Island was not named in the application as a landing, such was intended; and the president stated it has always been used under the impression it was authorized under the present certificate. By letter dated December 1, 1976, applicant submitted a map of the islands involved, together with the requested amendment of the application to include the additional islands. The amendment which did not list the landing at Orcas was included in the notice of the proceedings. Elisa Island was noted on the map, but was not included in the requested stops since applicant already has authority to furnish service to Elisa.

6. A general anchorage zone was defined by applicant's president as well as the manager of the Port of Bellingham, as an area in which incoming ships ride at anchor while waiting for a berth at a dock or for customs, immigration or other inspections, and to take on pilots. A launching service was defined as a boat service on schedules set by the incoming ships' captains or ship owners' agents in which pilots and customs and immigration officers, ships chandlers, repairmen, or others are conveyed to and from the ships at anchor to and from the adjacent dock. Crew are also conveyed according to schedules which vary. All American flag ships are required to provide for the seamen off watch to go to and return from shore on 8 trips each 24 hours and foreign vessels vary in number of said off-watch trips to shore. The launch service also includes transportation of ship supplies such as groceries, equipment, oil and machinery to the ships and parts to shore for repair on occasions only. At times chandlery supplies may weigh as much as 10,000 pounds, requiring special equipment capable of snugging up to the ships being supplied.

Applicant has been operating a launch service for the past 10 to 12 years but has been advised by Commission executives that the service is subject to regulation. Applicant operates from fixed landings such as Cherry Point, Bellingham, Port Angeles; ships arriving or on previous notice, advise as to the anchorage area that will be used and remain in the area for periods up to 30 days. The schedules are fixed by the ship owners' agents or captains and are usually certain eight times per day on nationally-established watch hours for American ships and on a fixed schedule of the same in a lesser number of watches for foreign vessels. At times applicant serves several ships in the same anchorage area on the same trip out from the landing. The schedule, however, cannot be set for certain times as to all vessels. About 50 percent of the vessels are American flag ships.

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The anchorage areas are known to the marine world, and may be several miles in diameter. The Port Angeles and Bellingham Bay anchorage areas are established by the land bordering them, but the others are more general. A ship may anchor at any spot in the area deemed safest considering weather, as well as other factors. They are usually about five miles in diameter. The anchorage areas of Bellingham Bay, one for explosive only, are set by the United States Coast Guard.

7. Applicant provided a regular service to the islands and docks authorized to be served until 1974, at which time the service was greatly reduced, and operations for a time were on a Friday night service only. The reason for the reduction was that the return was inadequate since the vessel used was not fast enough and needed substantial repairs. Charter service has been provided from time to time. Applicant's president stated that he advised the Commission of the reduction in service. Applicant expects to serve the various islands depending upon the season, either on a regular scheduled run or on flag stops for the very small islands. All docks will be passed regularly, but stops on several will be on flagging only. Applicant also intends to provide occasional charter service especially for the college at Bellingham, but not to interfere with the regular runs. The inhabitants will be supplied schedules and will know the times to flag the vessel.

8. The various vessels available for use were described by applicant and by a Mr. Bolster, majority stockholder in Puget Sound Launch and Chandlery, Inc. All except Island Mariner I, an informal name, are owned by the launch and chandlery company. Island Mariner I, owned by applicant, is a licensed twin screw gas vessel, authorized to transport 24 passengers and freight. It will cruise at 25 knots and is equipped with comfortable seating, a cabin and outside decking. Island Mariner II is a 44-foot catamaran, presently being repowered with a pair of 400-horsepower diesel motors. It will be licensed by the United States Coast Guard to carry 49 passengers and freight and cruise at about 25 knots, and will be ready by June 1, 1977. Island Mariner III is a diesel powered landing barge, licensed for six passengers, but is not so used except in exceptional circumstances. It is used to move machinery and salvage and is equipped with a basket used to deliver up to 10,000 pounds of freight alongside a ship. Island Mariner IV is a diesel powered single screw vessel licensed at 10 knots to carry 28 passengers and freight. It is a recent acquisition and cost \$30,000. Island Mariner IV is licensed to carry under 7 passengers. It is a high-speed boat, gas powered, used only on special occasions. The Seacrest is presently not in service; it will be reconditioned.

9. Applicant has filed a schedule of rates in passenger and freight service throughout the islands, including landings requested in this matter as well as those already in the authority. As to the launch service, the tariffs are uniform from coast to coast and the tariff filing in that regard are on the basis, depending upon the trip, of a number of trips contracted for by the individual ship, and appear just and reasonable. The tariffs do not appear to include freight

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charges, however. The launch service schedules are dependent upon the needs of the individual ships and will be regular in that connotation. A regular route will be established as to the San Juan Island archipelago on a daily basis in the summer months and a lesser number of trips from September through the following May. The docks to be used appear to be adequate for the service contemplated. The passenger rate schedules appear to be compensatory and, so far as record shows, are just and reasonable.

10. The vessels available to applicant appear to be adequate for the service, but in the event additional craft are needed, arrangements have been made through Puget Sound Launch and Chandlery, Inc., in this regard. The vessels presently contemplated to be used were agreed upon as a gentleman's agreement, but the writer has insisted upon bare boat leases between Puget Sound Launch and Chandlery and Island Mariner, Inc., the applicant, which have been provided.

11. While the data in the application and testimony of applicant's president are somewhat at variance, it appears that the applicant is worth approximately \$50,000, subject to an \$18,415 debt owed to Mr. Buzzard. The Island Mariner I alone is estimated to be worth between \$20,00 and \$25,000 and is in excellent condition. It is considered that applicant's finances are adequate to carry on the services contemplated in this matter.

12. Arrangements between applicant and the chandlery company are discussed in the memorandum in this matter and need not be repeated as a finding of fact.

13. No protestant appeared in this matter, but William Merrill, on behalf of the residents of Olga, Washington, on Orcas Island, requested appearance as a general intervenor and the intervention was granted. Olga is on the east wing of Orcas Island, south of Rosario Resort and its dock is at the end of a deadend street with very limited parking space in the area. A float is attached to the dock during the season. The residents are worried that passengers will clog the area by parking their cars while using the applicant's vessel. Also, all the repairs and upkeep are done by the residents of that community. It is apparent, however, that since there is little commuter traffic, the only car-owning passengers would be other than the residents of the general area. It was admitted that the applicant's services would be helpful to Bellingham people owning cottages at Olga and intervenor made no objection to there being a regulated regular route service especially for those who do not need to go by car, including year-round residents of Olga and other areas of the island. Mr. Merrill acknowledged that applicant's services would be a real benefit, lessening the burden of using a car, plane or private boat.

14. The application was supported by:

(a) A representative of Mobil Oil Corporation appeared in support as to the launch service and stated that shipping into Cherry Point, Ferndale and Anacortes is increasing greatly. Mobil has had ten ships in the area in

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the past four months and they are often unable to berth on arrival, being compelled to stay in the stream at anchor. Texaco, Shell and Arco ships are having the same difficulty. He stated that the chandlery and crew services are vital at these times for supplies, repairs, taking crew ashore and securing additional fuel oil and any delay means loss of money to the shipping company. Applicant's services in such emergencies is imperative, and as the only launch service operator supplying the service with boats built to nudge up to the ship and load and unload, it is anticipated that the number of ships will increase even more due in part to the shut off of Canadian crude oil.

(b) Ray Romine, a Bellingham resident and college professor, supported the application on behalf of groups of students and faculty members who make trips to the islands, mainly to Orcas and Rosario Resort, for educational activities and also smaller groups of students who go to the islands for leisure and study. Resumption of service with additional ships would reduce individual use of cars. Various islands are available to students having boats, but other student groups cannot do so without public transport and as a result are unable to use these islands. The 49-passenger boat would be of sufficient capacity to handle any group and he stated that having backup vessels would be beneficial in case of overloads caused by a group and other individuals on the same trip.

(c) Tom Walton, Bellingham, Washington, is general manager for the Firs, a Christian camp and conference association which operates camps, and reflected a need for service to the islands having state parks for camping trips. The islands used have been Sucia, Clark, Orcas and others. Re-establishment of the regular service, including the additional islands having parks, would be of great benefit and the need has not been filled. A regular route service would reduce expenses for the Christian camp and conference association participants.

(d) Bill Lausch, harbor superintendent of the Port of Bellingham, stated that he is constantly asked by tourists how to get to the various San Juan Islands from Bellingham, especially those not served by the State ferry system. He considers applicant's requested service to be much needed by the traveling public as well as Bellingham residents having summer homes on the islands. He has several years of background knowledge as to the tankers coming into the area and needing launch service while anchored in the stream. He is acquainted with both the general anchorage areas and the explosives area designated by the Coast Guard in Bellingham Bay and knows of no one else providing the launch service which he recognizes as being much needed.

(e) The application was also supported by several residents of small islands who presently have no regular means of getting to the mainland and return to their island homes, and who supported the application.

15. By supplemental information it appears that applicant is able to secure insurance for the operations both into the San Juans and in the launch service. All vessels used presently are covered by insurance.

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16. The tariffs and schedules on file with the Commission and reflected in the application as to the inter-island service, were approved in 1968, costs have greatly increased since that time and new tariffs and routes for that reason are required; and since additional service is requested, hence new tariffs and rate schedules are required under WAC 480-50-040 and Tariff Circular No. 6 and rules therein. New tariffs and route schedule have been provided.

The tariff filed as to the launch service appears fair, just and reasonable, and is a uniformly applied tariff. A new freight tariff has also been provided.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this application and of the parties thereto.

2. Applicant is fit, willing and able to provide the service herein requested.

3. It is in the public interest and is required by the public convenience and necessity under the provisions of RCW 81.84.010 that the applicant be granted a certificate of public convenience and necessity to operate vessels for the public use for hire furnishing freight and passenger service as set forth in the foregoing portion of this order and launch service as hereinabove set out.

4. The provisions of RCW 47.60.120 are in large part inapplicable to the application herein in view of the fact that applicant proposes to furnish a vessel rather than a ferry, and a ferry will not be operated under the certificate granted.


Having entered findings of fact and conclusions of law herein, the proposed order follows.

O R D E R

IT IS THEREFORE ORDERED That Application No. B-263 as amended of Island Mariner, Inc., a corporation, be, and the same is hereby, granted; and that upon compliance by the applicant with the law and rules governing passenger and steamboat companies a certificate of public convenience and necessity be issued to him, authorizing the authority sought as set forth in Appendix A, attached hereto and incorporated herein by this reference.

DATED at Olympia, Washington, and effective this 30th day of June, 1977.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


PHILIP W. RICHARDSON
Administrative Law Judge

APPENDIX A

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 Mitia Island with an additional stop at Roche Harbor on San Juan Island, Rosario Resort, Olga and Doe Bay (Orcas Island) Lopez and Shaw Islands; and Freight and passenger launching service (excluding motor vehicles) to ships at anchor from Bellingham to Bellingham Bay general anchorage zones; from Sandy Point or Cherry Point to Cherry Point general anchorage zones; from Anacortes to Anacortes and March Point general anchorage zones; from Blaine to Boundary Bay general anchorage zones; and from Port Angeles to Port Angeles general anchorage zone.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Application) ORDER S.B.C. NO. 364
B-263 of)
ISLAND MARINER, INC.) HEARING NO. B-263
) FINAL ORDER
for extension of authority) ADOPTING PROPOSED
under Steamboat Permit No. 95) ORDER WITH REVISION
.) OF APPENDIX A

The above-cited matter was heard at Bellingham, Washington, on February 1, 1977. During the hearing, the following parties made appearances of record:

- APPLICANT: ISLAND MARINER, INC.
By Phillip Rosellini
Attorney at Law
109 - Sixth Avenue
Lynden, Washington 98264
- INTERVENOR: WILLIAM MERRILL, pro se
Box No. 75
Olga, Washington 98278
- COMMISSION: WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION
By E. Ross Anderson
Assistant Attorney General
Temple of Justice
Olympia, Washington 98504

Under date of June 30, 1977, the Administrative Law Judge issued his proposed order in this matter, in effect, granting the application of Island Mariner, Inc.

During the period of time permitted for exceptions to the proposed order, under WAC chapter 480-08, no exceptions were filed. Therefore, the Commission issues this Final Order on its own analysis of the record. In doing so, a short history of the instant matter will be set forth, a summary of the proposed order of the Administrative Law Judge, and conclusions of the Commission from the record will follow.

BACKGROUND

This reference to background proceedings is taken from the detailed and informative memorandum of the Administrative Law Judge on pages 1 through 6 of the proposed Order S.B.C. No. 363. For file reference in Commission records, the citation to the order is hereby changed to be S.B.C. No. 363-A; this should be noted for purposes of future reference to the proposed order.

The record reflects that the Commission had previously issued Steamboat Certificate No. 95 to Terry Buzzard d/b/a Island Mariner in June of 1968; however, later through incorporation of operations as Island Mariner, Inc., such entity is shown as the holder of the certificate.

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Under its certificate, applicant is authorized by the Commission to provide passenger and freight service (excluding motor vehicles) between Bellingham, Washington, and Friday Harbor on San Juan Island via Elisa, Sinclair and Blakely Island, Rosario Resort and Olga (Orcas Island) and Lopez and Shaw Islands; the authority given contains a limitation that there be no local service between Orcas, Lopez, Shaw and San Juan Islands. On page 2 of the proposed order, it is stated:

The applicant now requests authority to include additional termini, such as Doe Bay on Orcas Island without the limitation mentioned above, and in addition, to serve various other islands. In effect, applicant seeks to eliminate the limitation . . . Applicant has not operated under its rights since 1974 and has the problem of suiting a tariff to the changes in cost since that time without experience, other than in charter trips he has continued to provide. Between 1974 and the present, the applicant for a time operated a Friday evening service.

The above quotation provides from the record a succinct summary of the operations of the corporate certificate holder; of prime import is the elimination of the limitation of authority as in the existing certificate.

PROPOSED ORDER

The Administrative Law Judge notes that the applicant, in addition to the extension authority sought and the elimination of the limitation above mentioned, seeks authority from the Commission to operate a launch service. The latter is evidenced to be a boat service between docks to ships lying in anchorage areas; the schedule for service to be set by the captains or shipping companies in order to provide passenger and freight service to and from the ships. Anchorage areas are described by the proposed order on page 3 as follows:

The general anchorage areas involved do not appear to have been established by any state or federal authority except two, but are accepted by the ports, ship owners, pilots, ship repair businesses and others involved in maritime activities, and are described in the Federal Register and the U.S. Coast Pilot 7, a publication. They are usually about five miles in diameter, or less, depending upon distances between land masses.

The record reveals that the anchorage areas are used by incoming ships; the ships await inspection and berth assignment. The areas are well known, and where possible are outside shipping lanes. Ships are often forced to ride at anchor in the areas for considerable time, sometimes up to a month.

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By memorandum in the proposed order the Administrative Law Judge reviewed the tariff filing, equipment ownership, and lease arrangements of the applicant; also, considered the extent to which the proposed service would invade the jurisdiction of the Washington Ferries operated under RCW chapter 47.60. Insofar as the latter, the memorandum cites a January 28, 1977 letter from the General Manager of the state agency; however, such was not made a part of the official record herein.

In the ultimate, the Administrative Law Judge finds and determines that the existing certificate should be extended; he proposes the following extension authority via revised certificate (see Appendix A of proposed order):

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 Island with an additional stop at Roche Harbor on San Juan Island, Rosario Resort, Olga and Doe Bay on Orcas Island, Lopez and Shaw Islands; and Freight and Passenger launching service (excluding motor vehicles) to ships at anchor from Bellingham to Bellingham Bay general anchorage zones; from Sandy Point or Cherry Point to Cherry Point general anchorage zones; from Anacortes to Anacortes and March Point general anchorage zones; from Blaine to Boundary Bay general anchorage zones; and from Port Angeles to Port Angeles general anchorage zone.

The above quoted authority contains that given in the initial certificate as well as proposed for grant by the Judge.

COMMISSION REVIEW

On its own motion, the Commission is of the belief that the following issues are raised by the proposed order: (1) whether the proposed service conflicts with the jurisdiction of Washington Ferries under RCW chapter 47.60; and (2) whether the launch service should be amplified to include "between" points on mainland "and" ships at anchor. As to the first issue, the grant of authority in Certificate No. 95 should be conditioned or restricted so as not to invade the jurisdiction of the Ferry System under the provisions of RCW chapter 47.60. As to the second issue, the grant of extension authority for launching service should use the words "between" mainland points "and" the ships at anchor. In the vernacular, authority so granted permits two-way traffic.

CONCLUSION

Having reviewed the record herein, including the proposed order of the Administrative Law Judge, the Commission is of the opinion that the proposed order should be adopted as the final order of the Commission herein, with changes as stated last above.

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O R D E R

IT IS ORDERED That the proposed order of the Administrative Law Judge, namely, Order S.B.C. No. 363-A (new number designation) be affirmed and adopted as the final order of the Commission in this matter, save and except the changes and the modifications set forth on page 3 of this order under Commission Review; that in so doing, Application No. B-263 of Island Mariner, Inc., a corporation, is granted, and contingent upon the applicant complying with law and rules of this state relating to the proposed service, Certificate No. 95 will be revised and reissued to read as shown on Appendix A of this order.

Dated at Olympia, Washington, and effective this *1st*
day of September, 1977.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Robert C. Bailey

ROBERT C. BAILEY, Chairman

Elmer C. Huntley

ELMER C. HUNTLEY, Commissioner

Frank W. Foley

FRANK W. FOLEY, Commissioner

APPENDIX A

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; and Passenger and Freight Launching Service (excluding motor vehicles) between mainland points and ships at anchor as follows:

Between Bellingham and Bellingham Bay general anchorage zones;

Between Sandy Point or Cherry Point and Cherry Point general anchorage zones;

Between Anacortes and Anacortes and March Point general anchorage zones;

Between Blaine and Boundary Bay general anchorage zones; and

Between Port Angeles and Port Angeles general anchorage zones.

(the above authority is restricted against invading jurisdiction of Washington State Ferries under RCW chapter 47.60)