

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In the Matter of the Application of )  
 ) DOCKET NO. TS-002054  
 )  
SEATTLE FERRY SERVICE, LLC, ) FIRST SUPPLEMENTAL ORDER  
for Authority to Provide Commercial )  
Ferry Service; and ) INITIAL ORDER APPROVING  
 ) SETTLEMENT AGREEMENT;  
 ) GRANTING APPLICATION  
..... )

*Synopsis: This Initial Order would grant an uncontested application for authority to provide commercial ferry service on Lake Washington between South Lake Union and Port Quendall.*

- 1 **Proceedings.** This proceeding concerns one of three related applications for authority to provide commercial ferry service on Lake Washington between various communities on the north, east, and south shores of the lake and Seattle, on the western shore. The applicant is Seattle Ferry Service, LLC (Seattle Ferry Service). Pursuant to a settlement agreement among the three applicants, Seattle Ferry Service’s application is uncontested. *See Bench Exhibit No. 1.*
- 2 The other applicants are Dutchman Marine, LLC d/b/a Lake Washington Ferry Service (Dutchman Marine), Docket No. TS-001774, and Seattle Harbor Tours Limited Partnership (Seattle Harbor Tours), Docket No. TS-002055. These two applicants contest each other’s requests for authority. The disposition of their applications is the subject of a separate Initial Order entered today in Docket Nos. TS-001774 and TS-002055 (consolidated).
- 3 **Parties.** David W. Wiley, attorney, Seattle, represents Seattle Ferry Service, LLC (“Seattle Ferry Service”). Matthew C. Crane, attorney, Seattle, represents Dutchman Marine, LLC (“Dutchman Marine”). Gregory J. Kopta, attorney, Seattle, represents Seattle Harbor Tours Limited Partnership (“Seattle Harbor Tours”). Gordon B. Davidson, Assistant City Attorney, Seattle, represents the City of Seattle (“Seattle”). Lori M. Riordan, Assistant City Attorney, Bellevue, represents the City of Bellevue (“Bellevue”). Jonathan C. Thompson, Assistant Attorney General, Olympia, represents the Commission’s regulatory staff (“Staff”).
- 4 **Initial Decisions.** Subject to further review by the Commission pursuant to WAC 480-09-780, this Initial Order would approve the settlement agreement filed in this proceeding and in related Docket Nos. TS-001774 and TS-002055 and would grant a

certificate of public convenience and necessity to Seattle Ferry Service to operate commercial passenger ferry service over Lake Washington, between South Lake Union and Port Quendall, near Renton.

- 5 Also subject to further review by the Commission pursuant to WAC 480-09-780, a separate Initial Order entered today would grant certificates of public convenience and necessity to Dutchman Marine, LLC, and Seattle Harbor Tours Limited Partnership to operate commercial passenger ferry service over various routes across Lake Washington, subject to conditions.

## MEMORANDUM

### **I. Procedural History.**

- 6 The Commission convened a joint prehearing conference in the three dockets in Olympia, Washington, on March 7, 2001. A Prehearing Conference Order, entered on March 14, 2001, granted petitions for intervention by the City of Seattle and the City of Bellevue. The proceedings to consider the applications of Dutchman, Seattle Harbor Tours, and Seattle Ferry Service were consolidated. Pursuant to a settlement agreement, however, the Seattle Ferry Service application was severed for separate determination largely on the basis of a paper record.
- 7 The Commission convened joint evidentiary and public comment hearing in these three dockets on June 12, 2001. Hearing proceedings continued through June 15, 2001. Although Seattle Ferry Service's application was severed, the hearing provided an opportunity for the applicant to offer evidence in support of its settlement with the other applicants and in support of its application. Because the three pending applications for commercial ferry service on Lake Washington are related, and because they were jointly heard, it is appropriate to adopt by reference the record of proceedings in Docket Nos. TS-001774 and TS-002055 (consolidated) into the record of this proceeding.

### **II. The Applicants' requests for authority.**

- 8 **Seattle Ferry Service, LLC.** Seattle Ferry Service requests authority to provide commercial passenger ferry service between South Lake Union, in Seattle, and Port Quendall, in Renton. The Parties filed for approval their settlement agreement that limits the scope of authority sought by Seattle Ferry Service to this single route, which does not overlap any routes that Dutchman Marine or Seattle Harbor Tours proposes to serve. *See Bench Exhibit No. 1.*
- 9 To provide additional context for the settlement agreement and the Commission's treatment of Seattle Ferry Service's application, we relate below the authorities requested by the applicants in Docket Nos. TS-001774 and TS-002055.

10 **Dutchman Marine, LLC.** Dutchman Marine requests authority to provide service between Seattle and Kirkland, Seattle and Renton, Seattle and Bellevue, and Seattle and Kenmore. Dutchman Marine proposes the following termini for the routes in its application: The Leschi Park dock, in Seattle, to the Marina Park dock, in Kirkland<sup>1</sup>; the Leschi Park dock, in Seattle, to the Southport dock, in Renton; the University of Washington, in Seattle, to Meydenbauer Bay or Newport Shores, in Bellevue; and the Leschi Park Dock, in Seattle, to Kenmore, at the north end of Lake Washington. *See Ex. 1-3, Tr. at 111-113.* Dutchman Marine's request for authority includes alternate routes between Kirkland and the University of Washington, Leschi Park and Kenmore, and Kenmore and Southport. *Ex. 148.*

11 **Seattle Harbor Tours Limited Partnership.** Seattle Harbor Tours, in its application, requests authority to provide two-way commercial passenger ferry service from the University of Washington Marine Service Dock, in Seattle, to Kenmore, Bellevue, and Renton. Seattle Harbor Tours requested at hearing that its application be deemed to include service between University of Washington to Kirkland, a route for which it previously was granted authority to serve, but as to which its certificate of public convenience and necessity arguably has expired as a matter of law.

12 It is uncontested that the single route proposed by Seattle Ferry Service does not overlap any of the routes for which the other applicants seek authority. Seattle Ferry Service's application is unopposed. The Commission concludes that it should approve the settlement agreement by which Seattle Ferry Service agreed with Dutchman Marine and Seattle Harbor Tours to limit its application to the route between South Lake Union and Port Quendall.

### III. Applicable Statutes and Rules.

13 The Commission regulates commercial ferries under Chapter 81.84 RCW. RCW 81.84.010 defines the circumstances under which the legislature has seen fit to require a certificate of public convenience and necessity for operation of a commercial ferry:

(1) No commercial ferry may hereafter operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation . . .

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<sup>1</sup> Dutchman plans to add a stop at Carillon Point, just to the south of Marina Park once ridership has developed on the Marina Park to Leschi route. *Tr. at p. 113.*

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The standards to be applied by the Commission in deciding whether, or under what conditions, to issue a certificate are set out in RCW 81.84.020:

(1) Upon the filing of an application the commission shall give reasonable notice to the department, affected cities and counties, and any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission shall have power after hearing, to issue the certificate as prayed for, or to refuse to issue it, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require; but the commission shall not have power to grant a certificate to operate between districts and/or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless such existing certificate holder has failed 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 [five years] has elapsed. . . .

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma financial statement of operations. Issuance of a certificate shall be determined upon, but not limited to, the following factors: ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section shall comply with the provisions of RCW 9A.72.085.

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The statutes allow an applicant for ferry service five years from the issuance of a certificate to initiate service, and they contemplate the possibility that many of the details of the operation will not have been worked out prior to issuance of the certificate:

(2) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate. The certificate holder shall report to the commission every six months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations. However, if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a

twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service.

RCW 81.84.010.

#### **IV. Substantive Issues.**

##### **A. Do the public convenience and necessity require commercial ferry service on Lake Washington?**

- 16 The Commission may grant a certificate to operate commercial passenger ferry service only when it finds that the public convenience and necessity require the service. *RCW 81.84.010(1)*. The required showing generally is established by the testimony of witnesses who would use the service if it were available. *Order S.B.C. No. 524, In re Pacific Cruises Northwest, Inc., App. No. B-78450 (May 1996)*. Persuasive testimony also may be presented by witnesses who are familiar with transportation needs over the routes in question and persons whose employment or business activities gives them special insight into the transportation needs of the public. Finally, members of the public may appear and offer testimony that bears on the question whether the public convenience and necessity require the proposed service. In the case of unopposed applications, the issue of public convenience and necessity may be resolved on a paper record including shipper support statements.
- 17 Seattle Ferry Service appeared in joint hearing proceedings with applicants in related Docket Nos. TS-001774 (Dutchman Marine) and TS-002055 (Seattle Harbor Tours) on June 12, 2001. Seattle Ferry Service presented four shipper support statements, and these were entered into the record as Exhibit Nos. 309-312.
- 18 Exhibit No. 309 is a shipper support statement from Larry Martin, Vice-President, Vulcan Northwest, Inc., a Bellevue based real estate development company. Vulcan Northwest plans a \$60 million to \$80 million, multi-use development on 63 acres at Port Quendall on the south end of Lake Washington. *Exhibit No. 308*. Known as Quendall Landing, the development will include high-tech offices, luxury condominiums, restaurants, retail shops, and hotels, similar to Carillon Point, in Kirkland. Mr. Martin states on behalf of his company that there is a need for passenger ferry service to transport the public between waterfront communities bordering Lake Washington and Lake Union. He states that current transportation alternatives are inadequate to meet the public's needs. He anticipates that without commercial ferry service from South Lake Union, fewer visitors will travel to his company's development in Port Quendall thus adversely affecting commerce.
- 19 Exhibit Nos. 310 and 311 are, respectively, shipper support statements by Mr. Gerry Lamontagne, general Manager of Marriott Courtyard and Denise Books, General Manager of Marriott Residence Inn, both of which are located on the south end of

Lake Washington. *See TR. 286 (Kezner)*. Both statements indicate a need for passenger ferry service on Lake Washington between Port Quendall and South Lake Union. Both statements remark on existing transportation congestion in the region and the limited options available to the traveling public. Mr. Lamontagne and Ms. Books both support the proposed service as an attractive transportation alternative.

20 Exhibit No. 312 is a shipper support statement from E. J. Pietz who represents 511 Properties, in Northlake. Mr. Pietz sees the proposed service as an attractive alternative to crowded roadways that are subject to “traffic jams” and “obvious gridlock” that poses problems for travelers today.

21 Based on the evidence presented, we find that the present or future public convenience and necessity require passenger ferry service between South Lake Washington and Port Quendall.

**B. Do the applicants satisfy the requirement of financial fitness to provide the services for which they have applied?**

22 Our statutes require that an applicant for authority to provide commercial ferry service must show that it has the financial resources to operate the service it proposes for at least twelve months. *RCW 81.84.020(2); In re the Application of Seattle Ferry Service, LLC d/b/a Seattle Ferry Service, Docket No. B-78811 & B-78822 S.B.C. Order No. 563 (June 2000)*. That determination is based in part on the applicant’s pro forma financial statement of operations. *Id.* In addition, the statute provides that the Commission must consider the following factors:

Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing service; a statement of the total assets on hand of the Applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in providing commercial ferry service. *RCW 81.84.020(2); see also WAC 480-51-030(1)*.

23 Seattle Ferry Service called its owner, Mr. Larry Kezner, as the company’s chief operating witness. Mr. Kezner sponsored, among other exhibits, the company’s revised financial statement (Exhibit No. 301); projected ridership and revenues per month (Exhibit No. 302); and Seattle Ferry Service’s pro forma financial statement (Exhibit No. 303). These data, along with the information submitted in its application, show that Seattle Ferry Service is financially fit to provide the service for which it has applied.

24 Mr. Kezner testified generally regarding the company’s operations, equipment, and personnel. According to Mr. Kezner, the company has operated for approximately two years. The authority applied for here is “part of an overall business plan that’s an

adjunct to the existing operation between north and south Lake Union.” *TR. 287.*  
Mr. Kezner’s plan involves targeting “tight business communities where the transit would be desirable” as an alternative to existing transportation options between such communities. *TR. 288.*

25 Seattle Ferry Service already provides commercial ferry service on Lake Union pursuant to Commission authority. There is no evidence of any complaints or other activity that would suggest Seattle Ferry Service has provided less than satisfactory service on its existing route.

26 It appears from the body of evidence presented that Seattle Ferry Service has the financial wherewithal and logistical support to operate the service it proposes for at least twelve months. We find that Seattle Ferry Service is financially, and otherwise, fit to provide the service for which it has applied.

#### **V. Waiver of Ten-Mile Restriction.**

27 RCW 47.60.120 prohibits new private ferry crossings within ten miles of a crossing already operated by the Washington State Ferries (WSF). Although the WSF do not operate any routes on Lake Washington, the WSF does operate routes on other bodies of water that are within 10 miles of Lake Washington. The Commission may, however, grant a waiver of the ten-mile restriction if it finds that the waiver is not detrimental to the public interest. *RCW 47.60.120(3).* When the Commission decides whether to waive the ten-mile restriction, it must consider the impact of the waiver on transportation congestion mitigation, air quality improvement, and the overall impact on the Washington state ferry system. *RCW 47.60.120.*

28 The service proposed by the Applicants will provide an alternative means of transportation that can lessen the number of cars traveling over the Lake Washington bridges. Fewer motor vehicles on the road means less pollution and improved air quality.

29 In addition, the WSF states that the proposed route will not have a detrimental effect on WSF traffic or revenues. *Exhibit No. 127.* The Commission therefore grants to Seattle Ferry Service a waiver of the ten-mile restriction for the purposes of furnishing services consistent with the terms of this Initial Order.

#### **FINDINGS OF FACT**

30 Having discussed above all matters material to this decision, and having stated general findings and conclusions, we now make the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions are incorporated by this reference.

- 31 (1) The Washington Utilities and Transportation Commission is an agency of the  
State of Washington, vested by statute with authority to regulate rates, rules,  
regulations, practices, and accounts of public service companies, including  
electric companies.
- 32 (2) The public convenience and necessity require commercial ferry service on  
Lake Washington between South Lake Union and Port Quendall, as discussed  
in the body of this Initial Order.
- 33 (3) Seattle Ferry Service is financially and otherwise fit to provide the service for  
which it has applied for a period of at least 12 months.
- 34 (4) There presently is no commercial ferry service in operation on the route  
between South Lake Union and Port Quendall.
- 35 (5) The single route proposed by Seattle Ferry Service does not overlap any of the  
routes proposed by other operators in pending applications in Docket Nos. TS-  
001774 and TS-002055.
- 36 (6) Seattle Ferry Service's application is unopposed.
- 37 (7) The settlement agreement by which Seattle Ferry Service agreed with  
Dutchman Marine and Seattle Harbor Tours to limit its application to the route  
between South Lake Union and Port Quendall is in the public interest.

### **CONCLUSIONS OF LAW**

- 38 Having discussed above in detail all matters material to this decision, and having  
stated general findings and conclusions, we now make the following summary  
conclusions of law. Those portions of the preceding detailed discussion that state  
conclusions pertaining to the ultimate decisions of the Commission are incorporated  
by this reference.
- 39 (1) The Washington Utilities and Transportation has jurisdiction over the parties  
and the subject matter of their applications. Chapter 81.84 RCW.
- 40 (2) The Commission should approve the settlement agreement by which Seattle  
Ferry Service agreed with Dutchman Marine and Seattle Harbor Tours to limit  
its application to the route between South Lake Union and Port Quendall.
- 41 (3) Seattle Ferry Service should be authorized to provide commercial ferry  
service on Lake Washington between South Lake Union and Port Quendall.  
RCW 81.84.020.



**ORDER**

42 IT IS ORDERED That the settlement agreement among Seattle Ferry Service,  
Dutchman Marine, and Seattle Harbor Tours is approved.

43 IT IS FURTHER ORDERED That an appropriate certificate of public convenience  
and necessity be issued to Seattle Ferry Service granting authority to provide  
commercial ferry service on Lake Washington between South Lake Union and Port  
Quendall.

DATED at Olympia, Washington, and effective this 19<sup>th</sup> day of September, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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DENNIS J. MOSS

Administrative Law Judge

**NOTICE TO PARTIES:**

**This is an Initial Order. The action proposed in this Initial Order is not effective until entry of a final order by the Utilities and Transportation Commission. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below.**

**WAC 480-09-780(2) provides that any party to this proceeding has twenty (20) days after the service date of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-09-780(3). WAC 480-09-780(4) states that an *Answer* to any Petition for review may be filed by any party within ten (10) days after service of the Petition.**

**WAC 480-09-820(2) provides that before entry of a Final Order any party may file a *Petition To Reopen* a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition To Reopen will be accepted for filing absent express notice by the Commission calling for such Answer.**

**One copy of any Petition or Answer filed must be served on each party of record, with proof of service as required by WAC 480-09-120(2). An original and three copies of any Petition or Answer must be filed by mail or hand delivery to:**

**Office of the Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
1300 South Evergreen Park Drive, S.W.  
Olympia, WA 98504-7250**