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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In re Application of

NO. TS-180677

BACKCOUNTRY TRAVELS LLC

BACKCOUNTRY TRAVELS, LLC'S
RESPONSE TO BENCH REQUEST NO.
3 RE: TS-190146 APPLICATION TO
TRANSFER AUTHORITY TO
OPERATE PASSENGER, FREIGHT
AND FERRY SERVICE ON LAKE
CHELAN

For a Certificate of Public Convenience
and Necessity to Operate Vessels in
Furnishing Passenger Ferry Service

I INTRODUCTION

1 On March 5, 2019, Honorable Administrative Law Judge Andrew J. O'Connell issued
2 Notice of Bench Request No. 3 in the above entitled proceedings. Judge O'Connell requested
3 explanation on behalf of all parties what impact, if any, the application to transfer authority
4 from Lake Chelan Recreation, Inc. d/b/a Lake Chelan Boat Company (LCRI), to Discover Lake
5 Chelan, LLC, (Discover) should have on the proceeding. The Court further instructed the
6 parties to explain how they feel the above referenced application should be considered by the
7 Commission in this proceeding should it believe that it has an impact on the same. As directed
8 by Judge O'Connell, Backcountry Travels, LLC (Backcountry) submits this Response.

BACKCOUNTRY TRAVELS, LLC'S OBJECTION TO LAKE
CHELAN RECREATION, INC.'S MOTION TO WITHDRAW
PROTEST
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1 **II IMPACT OF APPLICATION**

2 The application to transfer authority has a direct impact on these proceedings.
3 Backcountry believes that this impact will ultimately be positive for both this proceeding
4 and travelers up lake. This application by Discover is part of the beginning of an exciting
5 new era for transportation on Lake Chelan. An era of new ideas and cooperation in order
6 to better serve the public. Backcountry fully supports this application to transfer operating
7 authority to Discover. Transferor LCRI has now not only withdrawn as a party to these
8 proceedings, it is now divesting itself of its interests in the future operations of a ferry on
9 Lake Chelan. LCRI was the only protesting party in these proceedings. As Backcountry
10 pointed out in its Objection to Withdrawal submitted in response to LCRI’s motion for
11 withdrawal, but for LCRI’s protest, the need for adjudicative proceedings may not have
12 arisen. LCRI submitted its testimony as to why Backcountry’s application should be denied
13 based on its stated concerns and dire predictions about the impact to its business operations.
14 As LCRI no longer intends to operate their business it is submitted that their entire
15 testimony should be disregarded as no longer relevant.

16 The fact that these proceedings were pending is something that is known to
17 prospective transferee Discover. Despite the pendency of this application, the knowledge
18 of the overwhelming public support that exists for this application and having been made
19 aware of the fact that the testimony submitted by the Commission supports the application,
20 Discover still seeks to secure authority to operate the ferry service on Lake Chelan. While
21 we do not know the specific financial details of the sale of the assets of LCRI to Discover,
22 it is reasonable to assume that the investment by Discover is significant. It is illogical that
23 a decision to move forward with a purchase of this magnitude while the application is
24 pending would have been made had Discover not believed that continued operation of the

1 current ferry service was viable regardless of the outcome of this proceeding.

2 Perhaps the most important reason that the transfer application impacts these
3 proceedings is because a member of Discover authored one of the 227 statements in support
4 of Backcountry's application. Reed Courtney signed his statement in support of the
5 application on September 4, 2018. He stands by that statement now. In his statement
6 Mr. Courtney echoes those sentiments shared by so many of the other supporters: need for
7 year-round daily service; necessity for additional commuting options; the negative impact
8 that the current service has on economic development in the Stehekin Valley; the necessity
9 of private persons to find costly alternatives to the current service to meet their individual
10 needs. The fact that these opinions are those of one of the member's of the entity seeking
11 to take over and continue to operate the existing service has a major impact on this
12 proceeding.

13 **III CONSIDERATION OF TRANSFER APPLICATION BY COMMISSION**

14 It is submitted that the Commission should consider the transfer application in
15 multiple ways. First, it should be considered as evidence which undermines, substantially
16 nullifies, and renders irrelevant the testimony submitted by LCRI. While it remains the
17 position of Backcountry that its application does not rest singularly on the principles of
18 free economics, the economic decision making of Discover speaks volumes. The testimony
19 from LCRI focused on business forecasts and projections based on their operations.
20 Clearly Discover believes otherwise enough to make a significant investment in taking over
21 those operations despite Backcountry's application. It is submitted that the beliefs of
22 Discover should be considered much more important to the Commission than what has
23 been offered previously by LCRI.

24 Second, it should be considered as being indirectly the strongest statement in

1 support of Backcountry's application considering the timing of the submission and the fact
2 that one of the members of Discover has individually articulated his belief that the services
3 to be provided by Backcountry are necessary to meet the public need and convenience as
4 well the fact that the current service fails to do so.

5 Lastly, it should be considered as evidence that the operation of two ferry service
6 providers on Lake Chelan is economically viable. If this were not the case, it is submitted
7 that Discover would have at the very least awaited the outcome of these proceedings before
8 moving forward with its acquisition of authority to operate under Certificate BC000034.
9 Instead, they have demonstrated through actions that the viability of their continued
10 operation of ferry services on Lake Chelan is not dependent on the outcome of this
11 application. It should further be considered as evidence that granting the application of
12 Backcountry would only enhance the level of services offered to the public in relation to
13 access to Lake Chelan, not diminish them.

14 IV CONCLUSION

15 The impact and importance of the application to transfer authority, particularly at
16 this point in the proceeding, cannot be overstated. Both parties to these proceedings are
17 testifying that the application should be granted. Now, the successor in interest to the
18 former party who protested the application, has demonstrated by corporate action and
19 individual submission of one of its members that the application should be granted based
20 on public need, convenience and the failure of the current service to meet the same. The
21 2010 Commission Report comes from a different time and different circumstances. The
22 focus of the 2010 report was to address whether or not the UTC should continue to regulate
23 ferry service on Lake Chelan. Backcountry's application comes at a time where the
24 interests of those persons who are to be protected and served by the Commission could not

1 be more clearly aligned in support of its request. The application to transfer authority
2 should be considered the last possible piece of evidence needed to confirm that the
3 Backcountry should be allowed to give the public what it wants, needs and should be
4 entitled to on Lake Chelan.

5 DATED the ____ day of March, 2019.

6 JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

7
8 By /s/ Jordan L. Miller
9 JORDAN L. MILLER, WSBA #38863
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11 Attorneys for Applicant Backcountry Travels, LLC
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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 12th day of March, 2019, the foregoing was delivered to the following persons in the manner indicated:

<p>Andrew Richards Hathaway Burden Garvey Schubert Barer, P.C. 1191 Second Avenue, Suite 1800 Seattle, WA 98101-2939</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery – Messenger Service <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: arichards@gsblaw.com hburden@gsblaw.com kmuellet@gsblaw.com</p>
<p>Jeff Roberson Harry Fukano Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Drive SW P.O. Box 40128 Olympia, WA 98504-0128</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery – Messenger Service <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email : jeff.roberson@utc.wa.gov Harry.fukano@utc.wa.gov</p>

/s/ Jerei Bargabus
JEREI BARGABUS