

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

)	
In re Application No. B-079364 of)	DOCKET NO. TS-050443
)	
FEEET WET PARTNERS, LLC., d/b/a)	ORDER NO. 02
SARATOGA SHUTTLE)	
)	FINAL ORDER GRANTING
For a Certificate of Public)	MOTION TO AMEND
Convenience and Necessity to)	APPLICATION AND
Provide Commercial Ferry Service)	GRANTING APPLICATION FOR
)	CERTIFICATE OF PUBLIC
)	CONVENIENCE AND
)	NECESSITY
.....)	

1 **SYNOPSIS.** *The Commission grants the Applicant’s motion to amend the application and grants the application of Feet Wet Partners, LLC, for a certificate to provide passenger-only ferry service between Oak Harbor and Coupeville, Coupeville and Madrona Beach, and Oak Harbor and Mukilteo, Washington, and intermediate points on those routes.*

SUMMARY OF PROCEEDING

2 **PROCEEDING.** Docket No. TS-050443 involves an application by Feet Wet Partners, LLC, for a certificate of public convenience and necessity to provide commercial ferry service on three routes between Oak Harbor and Coupeville, Coupeville and Madrona Beach on Camano Island, and Oak Harbor and Mukilteo, Washington, and intermediate points on those routes.

- 3 **PROCEDURAL HISTORY.** On March 21, 2005, Feet Wet Partners, d/b/a
Saratoga Shuttle, a partnership of Mike Lauver and John Solin, (Feet Wet or
Applicant) filed an application with the Washington Utilities and Transportation
Commission (Commission) for a commercial ferry certificate to provide
passenger and freight-only service between Oak Harbor and Coupeville,
Coupeville and Madrona Beach on Camano Island, Oak Harbor and Mukilteo,
Washington, and intermediate points on those routes.
- 4 Notice of the application was published in the Commission’s weekly docket of
April 4, 2005. The Commission received no protests within the 30 days required
by WAC 480-51-040.
- 5 The Commission convened a prehearing conference in this docket at Olympia,
Washington, on Thursday, June 30, 2005, before Administrative Law Judge
Karen M. Caillé.
- 6 Judge Caillé entered Order No. 01, a prehearing conference order, on July 18,
2005, addressing the process for Commission consideration of the application
and establishing a procedural schedule for the proceeding.
- 7 Between June 7, 2005, and July 13, 2005, the Commission received letters of
support for the application from Island Transit, the Greater Oak Harbor
Chamber of Commerce, the Board of County Commissioners for Island County,
the Mayors of Oak Harbor and Coupeville, the City of Oak Harbor Municipal
Pier Committee, the Island County Economic Development Council, State
Representatives Barbara Bailey (10th Dist.) and Chris Strow (10th Dist.), and State
Senator Mary Margaret Haugen (10th Dist.).
- 8 On August 15, 2005, the Applicant filed a Motion to Amend Application to allow
the Applicant to change line 1 of the application to read “Feet Wet Partners,
LLC,” rather than “Feet Wet Partners (Mike Lauver and John Solin).”

- 9 On August 22, 2005, Commission Staff filed a letter in response to the Applicant's Motion to Amend Application.
- 10 On August 23, 2005, the Applicant submitted supplemental information to address issues raised in the prehearing conference about the sufficiency of the application, and filed the support statements of John Kruse and Gary B. Gordon.
- 11 On September 9, 2005, Feet Wet filed a letter with the Commission notifying the Commission that the Applicant waives its right to an Initial Order in this docket under RCW 34.05.461 and WAC 480-07-825, and requesting the Commission enter a Final Order.
- 12 **PARTY REPRESENTATIVES.** Mike Lauver and John Solin appeared *pro se*, on behalf of Applicant Feet Wet. Jonathan C. Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).
- 13 **COMMISSION DETERMINATION.** The Commission grants the Applicant's request to amend the application to reflect that the Applicant is a limited liability partnership. Finding that the Applicant has satisfied the statutory criteria for granting a certificate of public convenience and necessity under RCW 81.84.010(1) and RCW 81.84.020, the Commission grants the application of Feet Wet Partners, LLC, d/b/a Saratoga Shuttle, to provide commercial passenger and freight-only service between Oak Harbor and Coupeville, Coupeville and Madrona Beach, Oak Harbor, and Mukilteo, Washington, and intermediate points on those routes.

MEMORANDUM

A. Motion to Amend Application.

- 14 At the prehearing conference, the Applicant noted that the name of the Applicant identified on the Application, Feet Wet Partners (Mike Lauver and John Solin), d/b/a Saratoga Shuttle, and as identified in the Commission's Record Management System, has caused confusion and should be amended. *Order No. 01, ¶ 6*. Pursuant to the procedural schedule for this matter, the Applicant filed a motion to amend the application and Staff filed a letter supporting the Applicant's motion.
- 15 The Applicant asserts that a partnership is a legal entity and that the Commission may issue a certificate in the name of the partnership, rather than the name of the individuals who form the partnership. To accommodate Staff's concerns and expedite the proceeding, however, the Applicant has reorganized as a Limited Liability Corporation with the principals remaining the same. The Applicant requests the Commission allow it to amend the Application to read "Feet Wet Partners, LLC, d/b/a Saratoga Shuttle," with a certificate issued in that name.
- 16 Staff asserts that it is important for certificates of public convenience and necessity to be issued in the name of the real owner, not a trade name, as certificates constitute property and may be transferred to a different owner upon approval of the Commission. Staff asserts that prior to the adoption of the Revised Uniform Partnership Act in 1998, partnerships were not recognized as legal entities, but aggregates of individuals. Given this change of law, Staff agrees that a certificate may be issued in the name of the partnership, rather than the individuals. Staff supports the motion to amend the Application, asserting that limited liability corporations are also entities in whose name the Commission may issue a certificate.

17 Staff suggests that the Commission treat the matter as a substitution of parties, and that the Commission need not require Applicants to reapply under WAC 480-51-030, or provide a second notice in the Commission's docket of filed applications to other certificate holders.

18 ***Discussion and Decision.*** We grant the Applicant's motion to amend the Application. We allow the Applicant to amend line 1 of the Application to read "Feet Wet Partners, LLC" and provide that any certificate issued to the Applicant read: "Feet Wet Partners, LLC, d/b/a Saratoga Shuttle." Under current law, the Revised Uniform Partnership Act, there was no need for the Applicant to change the form of its name to obtain a certificate in the name of Feet Wet Partners. That the Applicant has reorganized as a Limited Liability Corporation with the principals remaining the same will clarify the name of the Applicant and eliminate confusion in the Commission's records.

19 The Applicant may amend the name identified on the Application without reapplying under WAC 480-51-030 or requiring the Commission to republish notice of the application. There has been no change of the real parties in interest or the nature of the proposed service. As Staff suggests, the corporate form of the applicant is not a material aspect of the notice of the application.

B. The Application.

1. Governing Law.

20 The Commission regulates commercial ferries under chapter 81.84 RCW. The Commission may grant a certificate of public convenience and necessity for operation of a commercial ferry after determining whether the proposed service is required by the public convenience and necessity. *RCW 81.84.010(1)*. The Commission evaluates the public convenience and necessity of the application by considering whether there is a present and future need for the proposed service.

The Commission determines public need for the proposed service through the statements of people who will use the proposed service if it is made available, as well as information presented by the Applicant. *See, In re Dutchman Marine, LLC et al., Docket Nos. TS-001774 and 002055, First Supplemental Order, Initial Order Granting Applications at ¶ 33 (September 2001), adopted in Second Supplemental Order (October 2001).*

- 21 The Commission must also apply the standards set forth in RCW 81.84.020 in deciding whether, or under what conditions, to issue a certificate. Under RCW 81.84.020(2), the Commission must consider whether the Applicant is fit, willing, and able financially and operationally to provide the proposed service:

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 filed by the Applicant.

- 22 The procedure by which the Commission evaluates commercial ferry applications was amended during the 2005 legislative session. The Commission may now issue a commercial ferry certificate without holding a hearing, as long as the Commission provides proper notice of the application and an opportunity for hearing. *Laws of 2005 ch. 121 § 7.* The Commission published notice of the application in its April 4, 2005, weekly docket of transportation applications. As

no person has protested the application, the Commission will consider this matter on a paper record. *Order No. 01, ¶ 11.*

23 RCW 81.84.020 was also amended to provide that the Commission hold in abeyance until July 1, 2006, any pending applications, and not accept or consider any new applications, for passenger-only ferry service in any county in the Puget Sound area with a population of over one million people. *Laws of 2005 ch. 313 § 609.* The application was filed on March 21, 2005, but does not meet the criteria for the Commission to hold the application in abeyance. The points of origination and destination for the proposed service are in Island and Snohomish Counties. The estimated population of Island County in 2004 was 74,800, and the population in Snohomish County was 644,800.¹ Thus, the Commission may proceed with the Application in question and need not hold it in abeyance.

2. Feet Wet's Application and Supporting Evidence.

24 Feet Wet filed its application for commercial ferry service on March 21, 2005, submitting the proposed route, tariff, time schedule, proforma financial statement, and ridership and revenue forecasts. *Feet Wet Application, Exs. A-E.* Feet Wet is a limited liability corporation whose principal members or partners are Michael Lauver and John Solin.

25 We rely on the following materials submitted by the Applicant in making findings and conclusions in this matter:

- Information provided in the application, including:
 - Maps of the three proposed routes (Exhibit A);
 - A proposed tariff (Exhibit B);
 - A proposed time schedule (Exhibit C);
 - A pro forma financial statement of operations (Exhibit D);
 - A forecast of projected ridership and revenue (Exhibit E);

- The Partnership Agreement (Exhibit F);
- Supplemental Information provided by the Applicants; and
- Letters of community support received by the Commission.

26 **Need for the Proposed Service.** Feet Wet provides statements from two individuals establishing need and support for the proposed service: Mr. Gary B. Gordon, and Mr. John Kruse. *See Attachments 1a and 1b to Applicant's Supplemental Information.*

27 Mr. Gordon, a resident of Greenbank on Whidbey Island, would use the proposed service to travel to Camano Island for recreation and shopping. Mr. Gordon states that it takes an hour and a half to drive to Camano Island and the proposed ferry ride would take only ten minutes. Mr. Gordon states that delays and long lines on the Washington State Ferry in both summer and winter pose problems in meeting his transportation needs. Mr. Gordon also notes that his wife commutes to Seattle, and that she could decrease her commute time by using the proposed service as well as connecting bus service from Camano Island to Seattle.

28 Mr. Kruse, with Financial Solutions Group in Oak Harbor, would use the proposed service to travel to Coupeville, the county seat of Island County, and to Mukilteo, Lynwood, and Seattle to conduct business. Mr. Kruse states that the proposed service will greatly reduce the commute time on Whidbey Island to get to Coupeville, as well as getting on and off Whidbey Island. Mr. Kruse states that the Washington State Ferry service is expensive and very congested in the summer, with up to two hour wait times. Mr. Kruse also states that travel off Whidbey Island is difficult, as the Deception Pass bridge on the north end of Whidbey Island is a two lane road, often closed due to accidents or congested by tourist traffic.

¹ See 2005 Washington State Yearbook, Ed., Scott D. and Mary B. Dwyer, at 128.

- 29 The Commission has also received letters of community support for the application from Island Transit, the Greater Oak Harbor Chamber of Commerce, the Board of County Commissioners for Island County, the Mayors of Oak Harbor and Coupeville, the City of Oak Harbor Municipal Pier Committee, the Island County Economic Development Council, State Representatives Barbara Bailey (10th Dist.) and Chris Strow (10th Dist.), and State Senator Mary Margaret Haugen (10th Dist.). Island Transit, the Board of County Commissioners for Island County, the Mayor of Coupeville, and Senator Haugen all state that it currently takes an hour and a half to drive between Camano Island and Coupeville. They assert that the proposed service would reduce commute time for county employees and residents needing to conduct business with the County and to access the courthouse. The letters support the proposed service as a component of the new Oak Harbor Pier and waterfront redevelopment plan. The letters also support the service as a means to improve quality of life for county residents and improve the county's economy through more efficient transportation of residents and tourists.
- 30 The individual statements of support submitted by Feet Wet, as well as the sentiments of the community in support of the application, demonstrate a substantial present and future unmet need and a desire for passenger-only service between Oak Harbor and Coupeville, Coupeville and Camano Island, and Oak Harbor and Mukilteo. The proposed service would provide an alternative to the current ground transportation routes between Oak Harbor and Coupeville, and to points off Whidbey Island, including Camano Island. The proposed service would reduce highway congestion, save time and money for a number of commuters living on Whidbey Island and in Island County, and support economic development in the area.
- 31 **Financial Fitness.** Feet Wet submitted a preliminary financial statement, proforma financial statement of operations, and forecast of ridership and revenue in its application. *See Application at 3-4, Exs. D and E.*

- 32 The financial statement in the application identifies the Applicant has \$10,000 in the bank or cash on hand, with a letter of credit available in the amount of \$200,000, with liabilities totaling \$210,000. Mr. Lauver and Mr. Solin have agreed to contribute capital equally to the partnership and to assign losses and gains equally. *See Ex. F.*
- 33 Feet Wet intends to use two 16 passenger vessels in the proposed service, each with an unladen, or empty, weight of approximately 14,000 pounds. *Application at 3; Supplemental Information at 2.* Feet Wet has not purchased the vessels yet, but projects the vessels will cost approximately \$40,000 each. *Application at 3; Ex. D.* Feet Wet asserts these vessels satisfy the definition of a vessel in RCW 81.84.010, which specifies that a vessel be at least five tons. *See Tr. 10: 11-15; Supplemental Information at 2.*
- 34 Feet Wet projects revenue from fares, including cargo fares, to be \$212,400 for the first year, beginning with \$12,772 in the first month and reaching \$21,220 by the ninth month of operations. *Ex. E.* Feet Wet proposes to charge \$5.00 for one-way service on Routes 1 and 2, between Oak Harbor and Coupeville and Coupeville and Camano Island, and \$10.00 for one-way service on Route 3 between Oak Harbor and Mukilteo. *See Ex. B.* Feet Wet projects the vessels to operate 22 days a month, but projects ridership of only 30 percent of capacity in the first two months of service, increasing to 50 percent at the end of the first year. *Id.* Feet Wet projects revenue from cargo fares of \$100 per month, which equates to approximately one excess weight bag or one pet per day of service. *See Ex. E.*
- 35 Feet Wet projects expenses of \$16,475 per month, based upon projected operating expenses, general, administrative and advertising costs, and depreciation on the vessels and costs for charters and rentals. *Ex. D.* Feet Wet projects to operate profitably after losses in the first eight months. *Id.* Feet Wet projects monthly fuel costs of \$3,600 representing 26% of operating costs and 22% of all expenses.

See Ex. D. Given the recent volatility of fuel costs, it is not clear for the Applicant's *pro forma* statement or other materials whether the Applicant's projected revenues will cover final costs. Rather than delay or deny the application out of uncertainty, we grant the application finding that the assets of the Applicant on hand demonstrate that the Applicant likely has sufficient resources to operate the proposed service for at least twelve months. We recognize that before the Applicant begins service under the certificate, the Applicant may need to revise its *pro forma* expenses and must file an updated tariff to ensure viable operations.

36 **Operational Fitness.** Mr. Lauver and Mr. Solin, the principals of Feet Wet Partners, LLC, are currently principals of the Whidbey-SeaTac Shuttle, LLC, providing airporter service between Whidbey Island and the Seattle-Tacoma International Airport under certificate C-1077. *Supplemental Information at 3.* While neither Mr. Lauver nor Mr. Solin have prior commercial ferry experience, both have other transportation related experience. *Application at 5.* In addition to operating the Whidbey-SeaTac Shuttle, Mr. Lauver has other transportation related experience as the President and Director of Operations at Denali Wings, Inc., an FAA certified air carrier, and president of TMI, Inc., providing hotel and hotel shuttle service. *Supplemental Information at 3.* Mr. Lauver has marine experience in underwater recovery and salvage, as well as commercial submarine operations. *Id.*

37 In addition to operating the Whidbey-SeaTac Shuttle, Mr. Solin served twenty years in the United States Navy, retiring with the rank of Commander, and has other business experience in real estate and theater operations. *Id.* Mr. Lauver and Mr. Solin certify in the application that they are familiar with the provisions of chapter 81.84 RCW and chapter 480-51 WAC, which govern the operations of commercial ferries in Washington State, and that they will comply with all federal and state laws governing registration of vessels, navigation, and maritime rules and regulations. *Application at 6.*

38 Feet Wet proposes to use the following docks in the proposed service: Oak Harbor Marina, the Coupeville Port District Pier, the Camano Yacht Club dock in Madrona Beach, and the Mukilteo Ferry Dock. *Id. at 3.* The Applicant does not identify whether it has contracts or agreements to use the docks identified in the application, nor does the application disclose the terms of those agreements. In responding to a Staff concern about when the Applicant would begin operations, the Applicant notes that RCW 81.84.010(2) allows the holder of a passenger-only ferry certificate to initiate service within 20 months after obtaining the certificate. *Supplemental Information at 2.*

39 The application and supplemental information provided by the Applicant demonstrates that Feet Wet is willing and able to provide the proposed service, and plans to comply with all applicable laws and rules, although it is not yet operationally ready to provide the proposed service. Under RCW 81.84.010(2), a passenger-ferry certificate holder need not be operationally ready to provide service at the time the certificate is granted, but may take up to 20 months before initiating service.

40 ***Discussion and Decision.*** Taking into consideration all of the information provided by the Applicant, the statements of need and support for the proposed service by Mr. Gordon and Mr. Kruse, and letters expressing community support, the Commission finds merit in the application. We find that Feet Wet Partners, LLC, has met the statutory requirements for a certificate of public convenience and necessity for commercial ferry service.

41 There is a substantial need for the proposed passenger-only ferry service between points on Whidbey Island, Camano Island and Mukilteo, and a desire by the public for such a service. Despite some uncertainty in Feet Wet's projected proforma income statement, it appears that Feet Wet has the financial resources to operate the proposed service for at least twelve months. As

required by RCW 81.84.020(2), Feet Wet has provided sufficient information as to the cost of the proposed service and a statement of its total assets on hand. Feet Wet has demonstrated that it has some experience in operating transportation certificates under the Commission's governing statutes and rules, and is fit, willing, and able to provide the proposed service.

42 Feet Wet has met the statutory requirements to obtain a commercial ferry certificate and should have the opportunity to provide the service that the public needs and demands. Based on the above findings, we grant the requested certificate of public convenience and necessity for passenger-only service to Feet Wet Partners, LLC, subject to the following conditions:

- (1) The Applicant must file progress reports every six months from the effective date of this Order as required by RCW 81.84.010(2) and WAC 480-51-120; and
- (2) Prior to initiating service under the authority granted in this Order, the Applicant must file an acceptable tariff, time schedule, proof of insurance, and copy of the Coast Guard inspection certification for each vessel to be used under the authority granted.

FINDINGS OF FACT

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

44 (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 commercial ferry companies.

- 45 (2) On March 21, 2005, Michael Lauver and John Solin, partners of Feet Wet Partners, d/b/a Saratoga Shuttle, filed an application (No. B-079364) for a certificate of public convenience and necessity to provide commercial passenger-only ferry service between Oak Harbor and Coupeville, Coupeville and Madrona Beach on Camano Island, and Oak Harbor and Mukilteo, Washington, and intermediate points on those routes.
- 46 (3) After filing its application, Feet Wet reorganized its corporate status to become a Limited Liability Corporation, using the name Feet Wet Partners, LLC, d/b/a Saratoga Shuttle.
- 47 (4) There is an unmet need for the proposed service between Oak Harbor and Coupeville on Whidbey Island, between Whidbey Island and Camano Island, and between Oak Harbor and Mukilteo.
- 48 (5) Feet Wet has demonstrated sufficient financial resources to operate the proposed service for at least twelve months, and has submitted the required information concerning revenue and ridership forecasts, cost of operations and assets, and assets on hand.
- 49 (6) Feet Wet is operationally and financially fit to provide the proposed service.

CONCLUSIONS OF LAW

50 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes 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.

- 51 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. *Title 81 RCW.*
- 52 (2) Where the applicant changes its corporate form, but there is no change in the real parties in interest or the nature of the proposed service, the applicant may change the name of the applicant identified on an application without reapplying for authority under WAC 480-51-030 or the Commission republishing notice of the application.
- 53 (3) The Applicant, Feet Wet, has met all statutory requirements for issuing a certificate of public convenience and necessity, including the requirement that the public convenience and necessity require the service proposed in Application B-079273. *RCW 81.84.010(1); RCW 81.84.020.*
- 54 (4) The Commission should retain jurisdiction to effectuate the terms of this Order. *Title 81 RCW.*

ORDER

THE COMMISSION ORDERS:

- 55 (1) The Motion of Feet Wet Partners, LLC, d/b/a Saratoga Shuttle, to Amend Application is GRANTED.
- 56 (2) Application No. B-079364 of Feet Wet Partners, LLC, d/b/a Saratoga Shuttle, for a certificate of public convenience and necessity to operate commercial passenger-only ferry service between Oak Harbor and Coupeville, Coupeville and Madrona Beach on Camano Island, and Oak

Harbor and Mukilteo, Washington, and intermediate points on those routes, is GRANTED, subject to the following conditions:.

- (A) The Applicant must file progress reports every six months from the effective date of this Order as required by RCW 81.84.010(2) and WAC 480-51-120; and
- (B) Prior to initiating service under the authority granted in this Order, the Applicant must file an acceptable tariff, time schedule, proof of insurance, and copy of the Coast Guard inspection certification for each vessel to be used under the authority granted.

Dated at Olympia, Washington, and effective this 28th day of September, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.