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[Service Date July 9, 2004]

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application No. B-079273 of	)	DOCKET NO. TS-040650
	)	
AQUA EXPRESS, LLC	)	ORDER NO. 05
	)	
For a Certificate of Public	)	FINAL ORDER GRANTING
Convenience and Necessity to	)	APPLICATION FOR
Provide Commercial Ferry Service	)	CERTIFICATE OF PUBLIC
	)	CONVENIENCE AND
	)	NECESSITY

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1 **SYNOPSIS.** *The Commission grants the application of Aqua Express, LLC for a certificate to provide commercial passenger-only ferry service between Kingston and Seattle, Washington.*

**SUMMARY OF PROCEEDING**

2 **PROCEEDING.** Docket No. TS-040650 involves an application by Aqua Express, LLC for a certificate of public convenience and necessity to provide commercial passenger-only ferry service between Kingston and Seattle, Washington.

3 **PROCEDURAL HISTORY.** On April 8, 2004, Aqua Express, LLC (Aqua Express or Applicant), a partnership of Clipper Navigation, Inc. (Clipper), Nichols Boat Builders, Inc. (Nichols), Argosy, L.P. (Argosy) and TMT Corp., d/b/a Four Seasons Marine Services, Corp. (Four Seasons Marine), filed an application for a commercial ferry certificate to provide passenger-only service between Kingston and Seattle. On May 6, 2004, the Inlandboatmen’s Union of the Pacific (IBU) filed the only protest to the application.

- 4 On May 18, 2004, Aqua Express filed a motion to strike the IBU's protest. Following written responses filed by the IBU and Commission Staff, a reply filed by Aqua Express, and oral argument on the motion at a May 21, 2004, prehearing conference, the Commission entered Order No. 02, granting in part Aqua Express' motion and limiting the IBU's protest. In paragraph 36 of Order No. 02, the Commission limited the IBU's participation in the proceeding to addressing the issues of the need for the proposed service, the Applicant's financial fitness, and the effect of the Commission's decision on the Washington State Ferries, or WSF. The Commission allowed the IBU to address the effect on the WSF, finding that the term "public agencies" in RCW 81.84.020(4) can reasonably be read to include the State ferry system. *Order No. 02, ¶ 34.*
- 5 At a prehearing conference held on June 8, 2004, before Administrative Law Judge Ann Rendahl, Staff requested clarification that the term "public agencies" in RCW 81.84.020(4) includes the Department of Transportation (Department), not the WSF, which is the part of the Department that operates ferries in Washington State. In the prehearing conference and in Order No. 03, the Administrative Law Judge clarified that the IBU's participation is appropriately limited to addressing the effect of the Commission's decision on public agencies, "recognizing that the state ferry system is a part of the public agency that operates the state ferries." *Order No. 03, ¶ 5.*
- 6 On June 16, 2004, Staff filed a motion seeking interlocutory review of Order No. 02 pursuant to WAC 480-07-810.
- 7 On June 21 and 22, 2004, the Commission held evidentiary hearings in this proceeding in Olympia, Washington.
- 8 The Applicant and the IBU filed answers to Staff's petition on June 25, 2004. On June 30, 2004, the Commission entered Order No. 04 in this proceeding, accepting Staff's petition for interlocutory review, and denying Staff's request to

reconsider its decision as to whether the term “public agencies” in RCW 81.84.020(4) includes the Department of Transportation and its subdivision, the WSF.

9 On June 30, 2004, through an e-mail message sent to counsel and the administrative law judge, the IBU notified all parties that it was withdrawing its protest of the application.

10 On July 1, 2004, in Kingston, Washington, the Commission concluded the evidentiary hearing and held afternoon and evening public-comment hearings in this proceeding.

11 **PARTY REPRESENTATIVES.** David W. Wiley, Williams, Kastner & Gibbs, PLLC, Seattle, Washington, represents the Applicant, Aqua Express, LLC. Dmitri Iglitzin, Schwerin Campbell Barnard LLP, Seattle, Washington, represents the Inlandboatmen’s Union of the Pacific. Ronald C. Templeton, General Counsel, Kitsap Transit of Washington, and James K. Sells, Ryan Sells Uptegraft, Inc. P.S., both of Silverdale, Washington, represent Kitsap Transit of Washington (Kitsap Transit). Donald T. Trotter, Assistant Attorney General, Olympia, Washington, represents Commission Staff.

12 **COMMISSION DETERMINATION.** 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 Aqua Express, LLC, to provide commercial passenger-only ferry service between Kingston and Seattle, Washington. Before the Commission issues a commercial ferry certificate to Aqua Express, the company must clarify the ownership of the vessel, Aqua Express, and file all required documentation with the Commission, including liability and property damage insurance, Coast Guard Inspection records, tariffs, and time schedules.

**MEMORANDUM**

**I. Governing Law**

- 13 The Commission regulates commercial ferries under chapter 81.84 RCW. The Legislature has defined in RCW 81.84.010 the circumstances under which the Commission may grant a certificate of public convenience and necessity for operation of a commercial ferry, *i.e.*, 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 testimony of people who will use the proposed service if it is made available, as well as the testimony of the Applicant's personnel. *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)*.
- 14 The standards the Commission must apply in deciding whether, or under what conditions, to issue a certificate are set out in RCW 81.84.020. 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:
- (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 filed by the Applicant. The documentation required of the Applicant under this section shall comply with the provisions of RCW 9A.72.085.

- 15 During the 2003 legislative session, the Legislature amended chapter 81.84 RCW and chapter 47.60 RCW, both of which concern ferry operations in Washington.<sup>1</sup> In Section 1 of Chapter 373, the Legislature stated its policy for advancing passenger-only ferry service by entities other than the state, by removing entry barriers:

The Legislature finds that the Washington state department of transportation should focus on its core ferry mission of moving automobiles on Washington state's marine highways. The legislature finds that current statutes impose barriers to entities other than the state operating passenger-only ferries. The Legislature intends to lift those barriers to allow entities other than the state to provide passenger-only ferry service. The Legislature finds that the provision of this service and the improvement in the mobility of the citizens of Washington state is legally adequate consideration for the use of state facilities in conjunction with the provision of the service, and the legislature finds that allowing the operators of passenger-only ferries to use state facilities on the basis of legally adequate consideration does not evince donative intent on the part of the Legislature.

- 16 The Legislature removed barriers to entry to passenger-only ferries by providing an exemption from the so-called ten-mile rule.<sup>2</sup> The Legislature also added two sections to RCW 81.84.020, one of which adds a softer requirement that the Commission consider the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service:

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<sup>1</sup> Chapter 373, Laws of 2003.

<sup>2</sup> *RCW 47.60.120(5)*. This statute prohibits commercial ferry operations within ten miles of a route operated by the Washington State ferry system, absent a waiver from the Commission.

(4) In granting a certificate for passenger-only ferries and determining what conditions to place on the certificate, the commission shall consider and give substantial weight to the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service.

(5) Until March 1, 2005, the commission shall not consider an application for passenger-only ferry service serving any county in Puget Sound, unless the public transportation benefit area authority or ferry district serving that county, by resolution, agrees to the application.

17 The Commission determined in Order Nos. 02 and 04 in this proceeding that the State Department of Transportation, including its subdivision the Washington State Ferries, which operates the State ferry system, is a “public agency” as the term is used in RCW 81.84.020(4).

## **II. Aqua Express’ Application and Supporting Evidence.**

18 Aqua Express filed its application for commercial passenger-only ferry service between Kingston and Seattle, Washington, on April 8, 2004, identifying the vessel to be used, as well as the proposed route, tariff, time schedule, proforma financial statement, and ridership and revenue forecasts. *Ex. 9.* Aqua Express LLC is a limited liability corporation whose members or partners are Clipper, Nichols, Argosy, and Four Seasons Marine. *See Ex. 9 at 2; Ex. 2.*

19 During the hearings held on June 21 and 22, and July 1, 2004, Aqua Express presented four witnesses to address its operational and financial fitness and the effect of granting the application on public agencies: Mr. Darrell Bryan, a principal in Clipper, one of the members of Aqua Express, Mr. David Tougas, the Chief Accounting Officer of Aqua Express, Mr. Raymond Deardorf, the Planning Director for the Washington State Ferries, and Mr. Richard Hayes, Executive

Director of Kitsap Transit. Aqua Express introduced a number of exhibits during the hearing to support the testimony of its witnesses, and to demonstrate financial and operational fitness.

20 Aqua Express also presented a number of witnesses on July 1, 2004, to support the need for the proposed service and to demonstrate that there are customers willing to use the proposed service. On June 22, 2004, and during public comment hearings on July 1, 2004, over 30 persons spoke in support of the application, while three persons opposed the application.

21 No other party presented witnesses or evidence concerning the application.

**A. Need for the Proposed Service**

22 Several witnesses, including Mr. Bryan, Mr. Deardorf, Mr. Hayes, Senator Betti Sheldon (23<sup>rd</sup> Dist.), and Representatives Doug Ericksen (42<sup>nd</sup> Dist.) and Beverly Woods (23<sup>rd</sup> Dist.) recounted the history of various efforts by the State, Kitsap Transit, and private enterprise over the last ten years to initiate passenger-only ferry service between Kingston and Seattle.

23 In 1996, Clipper filed an application to provide passenger-only service between Kingston and Seattle, but chose not to pursue the application as the State ferry system showed interest in providing service between Kingston and Seattle. The Legislature passed legislation to fund passenger-only ferry service and presented the proposal to the voters through Referendum 49, which was approved by the voters. The voters then approved Initiative 695 in the November 1999 ballot. Due to the effect of Initiative 695 on Motor Vehicle Excise Tax revenues, the Legislature restricted passenger-only service offered by the WSF to one route – between Vashon Island and Seattle – canceling the Bremerton-Seattle passenger-only ferry route, and never pursuing the planned Kingston-Seattle route.

- 24 In 2003, the Legislature passed legislation discussed above amending RCW 81.84.020 and RCW 47.60.120. The Legislature also approved a passenger-only ferry route between Kingston and Seattle, funded through local taxes and operated by Kitsap Transit, but the voters rejected a referendum on the proposal, Referendum 51. It is unlikely, given the lack of revenue available for transportation services and projects, that the Legislature would authorize funding for a passenger-only ferry route between Kingston and Seattle.
- 25 In 2000 and 2004, Clipper and the Kingston Chamber of Commerce conducted surveys of passengers boarding the Kingston-Edmonds and Bainbridge Island-Seattle ferries to determine the demand and price sensitivity of those traveling between Kingston and Seattle. The results of those surveys, admitted as Exhibits 10 and 11, show an unmet need for the proposed service between Kingston and Seattle, and show that many people are willing to pay more than the current WSF fare for such a service.
- 26 The following Aqua Express witnesses testified during the July 1, 2004, hearing as to the need for and the benefits of the proposed service: Mr. Tom Waggoner, President of Kingston Lumber; Mr. David Bruce, Kingston-Seattle commuter; Dave Atkinson, Realtor, John L. Scott; Larry Elfendahl, Washington Savings Bank, Poulsbo; Bob Screen, Manager, Whitehorse Development Co.; Doug Woodside, President, Woodside Construction; John Rose, President, Olympic Property Group; David Porter, Executive Director of Kitsap Regional Economic Development Council; Bob Hartman, Kingston--Seattle commuter; Dennis Clark, Kingston-Seattle commuter; and Marcia Kelbon, Kingston-Seattle commuter.
- 27 The commuter witnesses testified as to the savings in time and money, and improvement in quality of life, that a Kingston-Seattle ferry would provide. These witnesses testified that it takes at least an hour and a half in the morning and an hour and a half to two hours to return from Seattle using the Bremerton-Seattle ferry. It costs these commuters \$250 to \$450 each month for parking,



fares, and gas to commute between Kingston and Seattle via the Bremerton ferry. Using the Kingston-Edmonds ferry route, it takes less time in the morning, approximately one-hour, and longer in the evening.

- 28 These witnesses also testified to the traffic congestion along State Route 305 through Poulsbo, to the delay in crossing SR 305 to get between North and South Kitsap peninsula, and to the traffic congestion around the Bainbridge Island and Bremerton ferry terminals as reasons their commute takes so long. Several witnesses had bought homes in the area under the assumption that a passenger-only ferry would operate between Kingston and Seattle. These witnesses also testified that they would use the proposed service and pay the higher fares proposed by the Applicant to travel directly between Kingston and Seattle.
- 29 The other witnesses testified as to the present and latent growth in Kitsap, Jefferson, and Clallam counties and the need to provide efficient transportation for people traveling between these areas and Seattle and across Puget Sound. Witnesses testified as to current and proposed residential and recreational development that would support the proposed service in both the eastbound and westbound directions. The community witnesses testified as to the efforts of organizations in Kitsap County to promote economic development and transit alternatives in the area, including development of park-and-ride lots in anticipation of passenger-only ferry service by the State.
- 30 During the public-comment hearings on July 1, 2004, over 30 persons spoke in support of the application. They noted the political efforts to bring passenger-only ferry service between Kingston and Seattle, expressed frustration over the time and expense to commute to Seattle via the Bremerton-Seattle and Kingston-Edmonds ferries, and supported alternative transportation to relieve highway congestion and support economic growth on the Kitsap peninsula.

31 Three people testified or submitted comments in opposition to the application. Those opposed expressed concern over whether there will be public financing for the proposed service, indicating that the voters have rejected public financing. Those opposed also expressed concern over the effect of the proposed service on the state ferry system given that the proposed service will only run during commute hours. During the public-comment hearing on July 1, 2004, a member of the IBU read into the record a letter dated June 30, 2004, and which expressed opposition to the application. As the letter was prepared the same day that counsel for the IBU (in the afternoon) withdrew the union's protest of the application, we consider the IBU's action through its counsel as the expression of its formal position, but we acknowledge the concerns raised by the witness at the public-comment hearing.

32 The Commission has also received a number of letters and written comments, overwhelmingly in support of the application, and has included these written comments in Exhibit 32, which represents sentiment in the community concerning the application.

33 The testimony of Aqua Express' community and commuter witnesses, as well as of those members of the public in support of the application, demonstrate a substantial present and future unmet need and a strong desire for passenger-only service between Kingston and Seattle. The proposed service would provide an alternative to the current transportation routes between the Kitsap Peninsula and Seattle, reduce highway congestion, save time and money for a number of commuters living in Kingston and along the Kitsap and Olympic Peninsulas, and support economic development in the area.

#### **B. Financial Fitness**

34 Aqua Express submitted a preliminary financial statement, proforma income statement and forecast of ridership and revenue in its application. *See Ex. 9.*

Prior to and during the hearing, Aqua Express submitted an interim balance sheet (Ex. 15), a revised proforma income statement for year one and years one through five (Ex. 16 and 19), revised ridership and revenue forecasts for year one and years two through five (Exs. 17 and 18), and a break-even cash flow analysis (Ex. 20). In response to a record requisition by Staff, Aqua Express submitted a corrected proforma income statement for the first year of operations. *See Ex. 22.* In response to a records requisition by the IBU, the Aqua Express submitted the operating agreement of Aqua Express, LLC. *Ex. 21.*

35 The interim balance sheet shows assets and liabilities of \$1,295,000 which include the vessel, purchased for \$710,000, a five-year \$500,000 loan from Foundation Bank, and profits realized from leasing the vessel to Four Seasons Marine until the proposed service is initiated. *Ex. 15; Tr. 201-4.* The four partners have equal interests in and have contributed capital equally to Aqua Express to purchase the vessel. *Ex. 9 at 2; Ex. 21 at 1-2; Tr. 105, 162-63.* Aqua Express purchased the vessel for \$710,000, and has made improvements to the vessel, increasing the asset value to \$922,000. *Ex. 15; Tr. 105.* Aqua Express estimates the current market value of the vessel at approximately \$2.5 million. *Tr. 295.* Mr. Tougas' testimony concerning the assets of the company, the revenue projections, and the opportunity for additional bank loans, together with the representation of the partners' agreement under the operating agreement, indicates the company has sufficient assets to operate for at least the first year. *Tr. 262-63; 269-70.*

36 There was some confusion on the record as to whether Aqua Express owns the vessel it plans to operate. Mr. Bryan testified that the partners formed an entity known as ACNT in 2003 to purchase the vessel from a broker, Kim Marine. *Tr. 104.* Each partner contributed equally to purchase the vessel. Aqua Express, LLC appears on the Coast Guard Certificate of Inspection as the owner of the vessel. *See Ex. 5; Tr. 295.* Mr. Tougas testified, however, that he is not sure which entity currently owns the vessel. *Tr. 270-71.* Due to tax considerations, ACNT

will likely merge with Aqua Express, or the vessel will be sold from ACNT to Aqua Express. *Id.*

- 37 The Applicants' pro forma income statements project that Aqua Express's operations will be profitable in the first year, but that the Kingston/Seattle Division will operate at a loss in the first year. *See Ex. 16, 19.* The revised proforma income statement for year one indicates that Aqua Express will operate as three separate divisions: The Kingston/Seattle Division, the Concessions Division, and the Leasing Division. *See Ex. 19.* Under this arrangement, the Leasing Division will lease the vessel to the Kingston/Seattle Division, as well as other third parties when the Kingston/Seattle Division is not operating the vessel. *Tr. 205.* By separating the operations into divisions, Aqua Express can determine more clearly the income it derives from operating the ferry and leasing the vessel. *Tr. 206.* The Kingston/Seattle Division will incur all the costs of maintaining the vessel under a "bare boat charter." *Tr. 206.*
- 38 Aqua Express projects revenue from fares, including bicycle and cargo fares, together with revenue from concessions to be \$1, 593,848 for the first year. *Ex. 22.* Although the vessel seats 292 persons, Aqua Express projects ridership of 1000 persons per day, at 45 percent of capacity, for the ten legs, or one-way trips between Kingston to Seattle. *See Exs. 6, 17.* Aqua Express proposes to charge \$5.25 per leg, or \$10.50 for a round trip. *Exs. 7, 17.* Aqua Express proposes to offer a five percent discount fare for those passengers purchasing monthly passes. *Exs. 7, 17.* The proposed fares are nearly double those charged by the WSF. *Tr. 187.*
- 39 As Mr. Tougas testified during the hearing, all of the Applicant's calculations are projections, based upon the partners' experience in operating passenger-only ferries. Until operations begin, Aqua Express will not know whether these projections are realistic. However, the assets of the Applicant on hand, together with the prospects of further loans from the bank and the possibility under the

operating agreement of infusing additional capital from its partners demonstrate that the Applicant has sufficient resources to operate the proposed service for at least twelve months. In addition, the surveys conducted by Clipper in 2000 and 2004 and witness testimony appear to support the fares that Aqua Express proposes as well as the projected ridership.

40 We note that bicycle ridership is expected to double in the second year of operations, with revenue from bicycle fares representing close to ten percent of the overall revenue by the fifth year. Based upon a \$6.00 round trip fare for bicycles, Aqua Express estimates that at least 25 passengers per day in the first year will bring bicycles onto the vessel. *See Exs. 7, 22.* By the fifth year of operations, Aqua Express projects to derive almost \$125,000 in fares from bicycles, representing close to 70 passengers per day bringing bicycles on the vessel. *See Ex. 18.* While we have some question as to the projected revenues from bicycle fares and whether these revenues will reach ten percent of the total revenue for the Kingston/Seattle Division, our skepticism is exceeded by the remainder of the record.

### **C. Operational Fitness**

41 The four partners plan to operate a vessel known as the Aqua Express, formerly named the Tyee and used on the Bremerton-Seattle route by the WSF. *Tr. 78; 116.* The four partners have extensive experience in building and operating passenger vessels and ferries in the Puget Sound. *Ex. 2; Tr. 72.* The Applicant has developed a proposed tariff and time schedule, and submitted a Certificate of Inspection from the Coast Guard indicating it is safe to operate. *Exs. 5-7.* The Applicant's plans for the number of crew on the vessel are consistent with the Coast Guard certificate. *Tr. 229-231.* The Applicant is familiar with new Coast Guard security arrangements that will go into effect on July 1, and plans to make an application with the Coast Guard concerning the proposed service. *Tr. 140.* The Applicant has arranged for docking facilities at the Port of Kingston and

with Argosy in Seattle. *See Ex. 8; Tr. 85-86.* Aqua Express will comply with all relevant statutes and rules governing commercial ferries. *Tr. 88; Ex. 9.* Neither Aqua Express nor any of its members has ever been cited by the Commission for violation of laws or rules. *Id.*

42 The testimony and evidence shows that the Applicant, Aqua Express, is operationally ready, willing, and able to provide the proposed service, and plans to comply with all applicable laws and rules.

**D. Approval of Affected PTBA**

43 The Commission may not “consider an application for passenger-only ferry service serving any county in Puget Sound, unless the public transportation benefit area authority or ferry district serving that county, by resolution, agrees to the application.” *RCW 81.84.020(5).*

44 Kitsap Transit, a party in this proceeding, is a municipal corporation and public transportation benefit area authority, or PTBA, formed pursuant to chapter 36.57A RCW. *Prehearing Brief of Intervenor Kitsap Transit, at 1.* On April 6, 2004, the Board of Commissioners of Kitsap Transit adopted Resolution 04-22 agreeing to Aqua Express’ application for passenger-only ferry service between Kingston and Seattle. *Id. at 2; Ex. 25.*

45 Given Kitsap Transit’s agreement to the proposed service, the requirements of RCW 81.84.020(5) have been met.

**E. Effect of Proposed Service on Public Agencies**

46 RCW 81.84.020(4) requires the Commission to “consider and give substantial weight to the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service.” The Applicant presented the testimony of

Mr. Deardorf, Planning Director for the WSF, and Mr. Hayes, Executive Director of Kitsap Transit to address this issue.

- 47 The evidence indicates that if there is an effect on the WSF from current passengers on the Bremerton-Seattle car ferry choosing to use the proposed service between Kingston and Seattle, this possible shift in passenger usage is not a significant concern of the WSF, financially or operationally. Indeed, the net effect complements the underlying purposes of the State transportation system, including the efficient and convenient transportation of people, cars, and goods across or around bodies of water.
- 48 First, and foremost, the WSF does not object to the proposed service. The Chief Financial Officer of the Washington State Ferries, Sam Kuntz, filed a letter with the Commission on May 24, 2004, stating that the WSF does not object to Aqua Express' application. *Ex. 30*. If the WSF had significant concerns about the effect of the proposed service on its own car and passenger-only ferry service, including the financial impact, the WSF would have expressed those concerns.
- 49 Mr. Deardorf testified as to the projected annual level of fare box recovery for WSF operations, but no party presented evidence as to what portion of the projected fare box recovery is due to car-only operations, walk-on passengers, or passenger-only service. *Tr. 322-323; See Ex. 31*. As Aqua Express proposes to charge nearly double the fare charged by the WSF, it is unclear whether this will cause some WSF passengers to continue to ride state ferries. Without additional evidence, it would be speculative to find a financial effect on the WSF from the proposed service.
- 50 Testimony during the hearing indicates that the Legislature, through its budget authority, directs ferry operations "to the service hour, by vessel class, by route." *Tr. 303; see also Tr. 323*. Thus, the WSF will continue to provide the existing service through the biennium unless the Washington Transportation

Commission or the state Legislature acts to change the fare structure or service levels. *Tr. 328-329.*

- 51 There may be a beneficial effect on the state ferry system in improving the overall perception of the WSF. Several members of the public testified that the existing car ferries to and from Bremerton, Bainbridge, and Kingston are at capacity, over-crowded, and that wait times for the ferries, in particular for cars driving onto the return ferries from Seattle are significant. Reducing congestion on and around these ferry routes may improve the experience of all passengers using the State ferry system.
- 52 Kitsap Transit, the PTBA in Kitsap County, supports the application and the proposed passenger-only service. *See Ex. 25.* Mr. Hayes testified as to Kitsap Transit's efforts over the last fifteen years to promote passenger-only ferry service between Kingston and Seattle. Kitsap Transit participated in the Cross-Sound Survey in 1992, implemented park-and-ride lots in anticipation of State plans to operate a Kingston- Seattle passenger-only ferry, worked to promote Referendum 51 to fund a similar passenger-only ferry, and has worked with private operators to develop service on the route. Mr. Hayes testified that Kitsap Transit was the primary proponent of legislation in 2003 to remove barriers to entry for entities other than the State to provide passenger-only ferry service.
- 53 Kitsap Transit operates a full-range of small and large routed bus service, commuter programs, dial-a-ride vans, special access vans, "worker/driver" buses, a passenger-only ferry and park-and-ride lots. Kitsap Transit's basic transportation plan is focused on ground transportation linked to other modes of transportation, including ferry service. Mr. Hayes testified that Kitsap Transit has been meeting ferries and providing transportation for ferry passengers for the last 20 years.



54 Because Kitsap Transit has been planning for a Kingston-Seattle passenger-only ferry run for years, it is operationally ready to provide the necessary bus service to and from established park-and-ride lots, and can reroute buses to provide service to the Kingston Terminal. The proposed service will allow Kitsap Transit to reduce the amount of long-haul service it provides to the Bremerton and Bainbridge Island ferry terminals. Kitsap Transit will provide capital funding for developing the docking and terminal facilities at the Port of Kingston.

55 Mr. Hayes also testified that the proposed service would likely reduce congestion on the highways and at the Bremerton and Bainbridge Island ferry terminals. Mr. Hayes described the current traffic patterns from Kingston, and points north and south of Kingston, to the Bremerton and Bainbridge Island ferry terminals. He described how the proposed service would reduce traffic crossing SR 305 and along Miller Road in Kingston, and would provide a more efficient transportation alternative to those persons traveling from Clallam and Jefferson counties.

56 Overall, Mr. Hayes describes a positive effect on Kitsap Transit's operations, especially as Kitsap Transit has a fully developed bus system and park-and-ride lots, with options to create additional lots if needed, to support the proposed service. The likelihood of reduced traffic congestion in Kingston, Poulsbo, and at the Bremerton and Bainbridge Island ferry terminals provides additional benefits to Kitsap Transit and the region, generally.

### **III. Discussion and Decision**

57 Taking into consideration all of the evidence and testimony provided by the Applicant and the comments of state and local elected officials and members of the public, the Commission finds great merit in the application. We find that Aqua Express has met the statutory requirements for a certificate of public convenience and necessity for commercial ferry service.

- 58 There is a substantial need for the proposed passenger-only ferry service between Kingston and Seattle, and a strong desire by the public for such a service. Despite some uncertainty in Aqua Express's projected proforma income statements and revenue and ridership forecasts, it appears that Aqua Express has the financial resources to operate the proposed service for at least twelve months. As required by RCW 81.84.020(2), Aqua Express has provided ample information as to the cost of the proposed service and a statement of its total assets on hand. Aqua Express has demonstrated that it has substantial experience in operating similar passenger-only ferries in Puget Sound and Alaska, and is fit, willing, and able to provide the service.
- 59 Finally, we have considered and given substantial weight to the effect of the proposed service on public agencies operating or eligible to operate passenger-only ferry service, namely the Department of Transportation, WSF Division, and Kitsap Transit. The WSF does not object to the service proposed in the application, and Kitsap Transit actively supports the application. The projected effect on WSF finances and operations, both positive and negative, is speculative, and thus we must rely on the WSF's lack of objection as an indication of a minimal effect or concern. The effect on Kitsap Transit's operations is positive, as the transit agency has planned for such service for years. The proposed service will contribute to and complement the integrated transportation system developed by Kitsap Transit.
- 60 Based on the above findings, we grant the requested certificate of public convenience and necessity to Aqua Express. We applaud the efforts of the Applicant, Kitsap Transit, and state and local representatives who have worked long and hard to promote passenger-only ferry service between Kingston and Seattle. Aqua Express 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.

**FINDINGS OF FACT**

61 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.

62 (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.

63 (2) On April 8, 2004, Aqua Express, LLC, filed an application (No. B-079273)  
for a certificate of public convenience and necessity to provide commercial  
passenger-only ferry service between Kingston and Seattle.

64 (3) There is a strong unmet need for the proposed service between Kingston  
and Seattle.

65 (4) Aqua Express 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.

66 (5) Aqua Express is operationally and financially fit to provide the proposed  
service.

67 (6) Kitsap Transit, the public transportation benefit area authority in Kitsap  
County, has agreed, through Resolution No. 04-22, to the application filed  
by Aqua Express.

- 68 (7) The Washington State Ferries Division of the State Department of Transportation filed a letter with the Commission on May 24, 2004, stating that the Washington State Ferries does not object to the Aqua Express application.

**CONCLUSIONS OF LAW**

69 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.

- 70 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. *Title 81 RCW.*
- 71 (2) The proposed service will be complementary, not detrimental, to the Washington State Ferries and Kitsap Transit, public agencies operating, or eligible to operate, passenger-only ferry service. *RCW 81.84.020(4).*
- 72 (3) The Applicant, Aqua Express, 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.*
- 73 (4) The Commission should retain jurisdiction to effectuate the terms of this Order. *Title 81 RCW.*

**ORDER**

**THE COMMISSION ORDERS:**

- 74 (1) Application No. B-079273 of Aqua Express, LLC, for a certificate of public convenience and necessity to operate commercial passenger-only ferry service between Kingston and Seattle, Washington is GRANTED.
- 75 (2) Before the Commission issues a commercial ferry certificate to Aqua Express, LLC, the company must clarify the ownership of the vessel Aqua Express, and file all required documentation with the Commission, including liability and property damage insurance, Coast Guard Inspection records, tariffs, and time schedules.

Dated at Olympia, Washington, and effective this 9<sup>th</sup> day of July, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, 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.**