

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In the Matter of the Application	)	
No. B-78950 of	)	S.B.C. ORDER NO. 569
	)	
PACIFIC BOAT ENTERPRISES, LLC	)	DOCKET NO. TS-010062
d/b/a MOSQUITO FLEET	)	
	)	FINAL ORDER GRANTING
For a Temporary Certificate of Public	)	WAIVER OF THE TEN-MILE
Convenience and Necessity to Operate	)	RESTRICTION; GRANTING
Commercial Ferry Service	)	TEMPORARY CERTIFICATE OF
	)	PUBLIC CONVENIENCE AND
	)	NECESSITY
.....	)	

1     **Synopsis.** This Order grants temporary authority to Pacific Boat Enterprises, LLC d/b/a Mosquito Fleet (Mosquito Fleet) to conduct a trial of passenger ferry service between Seattle and Everett, with service to Clinton and Edmonds.

2     **Proceedings.** On January 10, 2001, the Commission received from Mosquito Fleet Application No. B-78950 for a temporary certificate of public convenience and necessity to furnish commercial passenger ferry service (Application). The Application requests temporary authority to operate from February 12 through February 23, 2001.

3     The Commission issued a Notice of Prehearing Conference and Notice of Hearing on January 23, 2001. On January 29, 2001, the Commission held a prehearing conference at its offices in Olympia, Washington, and on January 30, 2001, convened a hearing in the Commission’s hearing room.

4     **Parties.** Michael Bennett, Everett, represents Pacific Boat Enterprises LLC d/b/a Mosquito Fleet. Shannon Smith, Assistant Attorney General, Olympia, represents Commission Staff.

**I. DISCUSSION**

5     **Application.** Mosquito Fleet requests temporary authority to provide commercial passenger ferry service, not including excursion and launch service, between Everett and Seattle, with service to Clinton and Edmonds. Mosquito Fleet states that the proposed trial is necessary to determine the level of need for the service. The Commission decides in this Order whether Mosquito Fleet is fit, willing, and able to provide the service it proposes and whether granting the authority it requests is consistent with the public convenience and necessity.

6 In addition, the route that Mosquito Fleet proposes is subject to the “ten-mile restriction” in RCW 47.60.120. As a result, this Order also decides whether to grant a waiver of the restriction as it applies to the authority requested in the Application.

7 **Should the Commission grant Mosquito Fleet temporary authority?** The Commission may issue temporary certificates, with or without a hearing, only after finding that the issuance of the certificate is “necessary and due to an immediate and urgent need and is otherwise consistent with the public interest.” *RCW 81.84.070*. In deciding whether to grant a temporary certificate, the Commission considers the following: (1) whether there is an immediate and urgent need, (3) whether there is any available service capable of meeting the need, (3) the fitness of the applicant, and (4) any other circumstances indicating that a grant of authority is consistent with the public interest. *WAC 480-51-060(3)*.

8 According to Mosquito Fleet, the docks and loading facilities at Clinton that were once used by the Washington State Ferries (WSF) of the Washington State Department of Transportation will remain in place during the time period requested in the Application, but those facilities may be removed or altered in the future. Staff’s witness testified that the circumstances described by Mosquito Fleet constitute an exigency sufficient to grant Mosquito Fleet temporary authority. The Commission agrees. Furthermore, no person opposed the grant of authority, and there does not appear to be any other commercial passenger ferry service available between Seattle and Everett.

9 Statements of support submitted by interested persons express the need to conduct a trial to explore the need for the Everett to Seattle route. Those support statements confirm that there may be a limited window of opportunity, because of the status of docking and loading facilities in Clinton, for Mosquito Fleet to determine the viability of the Seattle to Everett route.

10 Mosquito Fleet also provided information regarding its fitness, including information pertaining to the vessel it intends to use to provide the service, a copy of the Coast Guard inspection report for the vessel, a financial statement, and a time and fare schedule. Considering that information, the Commission believes that Mosquito Fleet is fit, willing, and able to provide the service it proposes.

11 The Commission grants to Mosquito Fleet temporary authority to provide commercial passenger ferry service, excluding launch and excursion service. The temporary authority is effective until, but not including, February 24, 2001. The parties agree to waive an initial order in this matter and request that the Commission enter this Order as its final order.

- 12     **The “ten-mile restriction.”** New private ferry crossings are generally prohibited within ten miles of a crossing operated by the Washington State Ferries (WSF) of the Washington State Department of Transportation. *RCW 47.60.120(1)*. The Commission, however, is authorized to grant a waiver of the ten-mile restriction if it finds that doing so would not be detrimental to the public interest. *RCW 47.60.120(3)*. The factors the Commission considers in making a decision include, but are not limited to, “the impact of the waiver on transportation congestion, air quality improvement, and the overall impact on the Washington state ferry system.” *Id.*
- 13     The WSF does not oppose the Application. On January 19, 2001, the Commission received a letter from the WSF, in which the WSF said, “Since the apparent purpose of the demonstration route is to test a north-south passenger-only ferry route, WSF believes the route will not directly compete with existing service nor have a detrimental effect on WSF traffic or revenues.” The WSF stated in this letter that it would not participate further in the proceeding.
- 14     Commission Staff witness Bonnie Allen testified that Staff supports the grant of a waiver of the ten-mile restriction. In her testimony, Ms. Allen noted, without objection, assertions by Mosquito Fleet that the proposed service would lessen traffic congestion. The proposed route could decrease the automobile traffic between Seattle and Everett along the I-5 corridor. Fewer motor vehicles on the road usually results in less pollution and improved air quality. In addition, Ms. Allen testified that the service Mosquito Fleet proposes would not adversely affect the Washington state ferry system.
- 15     Staff requests that the waiver apply only so long as the temporary certificate remains effective. The WSF limited its assent to service to the temporary trial, and the nature of service could change were the Commission to later grant Mosquito Fleet permanent authority. Because the Commission may impose special terms and conditions in connection with the grant of a temporary certificate, under WAC 480-51-060(7), it grants to Mosquito Fleet a waiver of the ten-mile restriction that is effective until, but not including, February 24, 2001.

## II. FINDINGS OF FACT

- 16     (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, and practices of public service companies, including commercial passenger ferry companies.
- 17     (2)     The Commission notified all certificated commercial ferry operators of the application.

- 18 (3) Mosquito Fleet seeks a certificate of public convenience and necessity to  
furnish commercial passenger ferry service.
- 19 (4) No other operator holds a certificate to furnish, or has applied for a certificate  
to furnish, commercial passenger ferry service for the route proposed by  
Mosquito Fleet.
- 20 (5) There is an urgent and immediate need for the proposed service as  
demonstrated by the testimony of Ms. Allen, the shipper support statements,  
and the statements by Mosquito Fleet contained in Exhibit A.
- 21 (6) WSF does not object to the Commission waiving the ten-mile restriction as it  
applies to the authority requested by the Mosquito Fleet in the Application.
- 22 (7) The parties agree to waive an initial order in this matter and request that the  
Commission enter this Order as its final order.

### III. CONCLUSIONS OF LAW

- 23 (1) The Commission has jurisdiction over the subject matter of and parties to this  
proceeding, pursuant to chapters 80.04 and 81.84 RCW.
- 24 (2) The Commission has the authority, pursuant to RCW 47.60.010(3), to grant a  
waiver of the ten-mile restriction.
- 25 (3) The Commission has the authority to impose special terms and conditions in  
connection with the grant of a temporary certificate, pursuant to  
WAC 480-51-060(7), including the authority to specify the duration of a  
waiver of the ten-mile restriction.
- 26 (4) Based on Commission Staff's testimony, the information contained in the  
Application, and because the WSF does not object to a waiver of the ten-mile  
restriction, the Commission finds that granting the temporary certificate is not  
barred by RCW 81.84.020(1) or RCW 47.60.120.
- 27 (5) Mosquito Fleet is required by chapter 81.84 RCW to obtain a certificate of  
public convenience and necessity before operating any vessel on the waters of  
this state.
- 28 (6) There is no existing certificate holder serving the requested territory within  
the meaning of RCW 81.84.020.
- 29 (7) Granting Mosquito Fleet a temporary certificate to furnish commercial  
passenger ferry service as proposed in its Application is consistent with the  
public convenience and necessity.

- 30 (8) The information in the Application demonstrates that Mosquito Fleet is fit,  
willing, and able to provide the service it proposes, as required by chapter  
81.84 RCW and chapter 480-51 WAC.

#### IV. ORDER

31 THE COMMISSION ORDERS That in accordance with RCW 47.60.120, the ten-  
mile restriction is waived as it applies to the authority granted in this Order.

32 THE COMMISSION ORDERS FURTHER That pursuant to RCW 47.60.010(3), the  
waiver of the ten-mile restriction granted in this Order is effective until, but not  
including, February 24, 2001. This waiver shall become permanent if not appealed  
within thirty days after the date the Commission enters this Order.

33 THE COMMISSION ORDERS FURTHER That a temporary certificate of public  
convenience and necessity be issued to Pacific Boat Enterprises LLC d/b/a Mosquito  
Fleet allowing it to furnish commercial passenger ferry service between Everett and  
Seattle, with service to Clinton and Edmonds. The permit is effective until, but not  
including, February 24, 2001. A Certificate of Public Convenience and Necessity  
shall be issued as set forth in the attached Appendix A, and by this reference made a  
part of this Order.

DATED at Olympia, Washington, and effective this      day of February, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

#### NOTICE TO ALL 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**