

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

In the Matter of Cancellation of)	DOCKET TS-080825
Certificate of)	
)	ORDER 01
KITSAP FERRY COMPANY, LLC)	
(BC-128))	INITIAL ORDER CANCELLING
)	CERTIFICATE
)	
.....)	

1 **Synopsis.** *This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order would cancel the commercial ferry company certificate of Kitsap Ferry Company, LLC, for failure to file a pro forma financial statement of operations, a report on the progress of obtaining alternate funding and an up-to-date plan to resume ferry service by April 1, 2008, as required by Commission order in Docket TS-070474; for failure to seek permission from the Commission to discontinue service pursuant to WAC 480-51-130; and for failure to comply with WAC 480-51-025(1).*

2 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this proceeding to cancel the certificate of public convenience and necessity to provide passenger-only commercial ferry service held by Kitsap Ferry Company, LLC, Certificate BC-128, for failure to meet statutory requirements and file the information required by the Commission’s order in Docket TS-070474.

3 **Background and Procedural History.** Kitsap Ferry holds authority to provide scheduled passenger-only ferry service between Bremerton and Seattle, Washington, granted by the Commission on August 13, 2004.¹

4 On March 8, 2007, Kitsap Ferry filed a petition with the Commission in Docket TS-070474 requesting permission to temporarily discontinue passenger-only ferry service

¹ Order No. 01 Granting Permanent Certificate of Public Convenience and Necessity, Docket TS-041007.

under WAC 480-51-130. In its petition, the Company requested permission to discontinue ferry service beginning April 1, 2007, and resuming service by April 1, 2008.

- 5 In its petition, the Company stated its request was based on Kitsap Transit no longer providing operating funds. Its request was also based on lower than expected ridership, increased fuel prices and the Washington State Ferries' fare-free eastbound travel policy.
- 6 On March 28, 2007, the Commission granted the Company's petition to temporarily discontinue service for a twelve-month period, beginning April 1, 2007, and resuming service by April 1, 2008. In addition, the Commission's order required the Company to file, by September 28, 2007: (1) a pro forma financial statement of operations that includes ridership and revenue forecasts identifying likely alternative funding options, and (2) a report on the progress of obtaining alternate funding and an up-to-date plan to resume service by April 1, 2008. The order stated that the information in the reports would allow the Commission to determine, midway through the suspension period, if progress was being made in acquiring funding to resume service by the end of the suspension period.
- 7 Kitsap Ferry did not file the information required by the Commission's order, nor did Kitsap Ferry resume service on April 1, 2008.
- 8 On May 13, 2008, the Commission notified Kitsap Ferry that it intended to cancel the company's certificate of public convenience and necessity for failure to meet certain statutory requirements as required in the Commission's order in Docket TS-070474. The Commission issued a Notice of Intent to Cancel Certificate and Notice of Opportunity for Hearing and set a deadline of June 13, 2008, for Kitsap Ferry to contest the factual allegations and request a hearing to contest the cancellation of its certificate. This notice was returned to the Commission as "undeliverable".
- 9 On May 22, 2008, the Commission issued a correction notice that it had inadvertently mailed the notice dated May 13 to an undeliverable address and that it had obtained a current address. The Commission set a new deadline of June 23, 2008, for Kitsap Ferry to contest the factual allegations and request a hearing. This notice was also returned to the Commission as "undeliverable".

- 10 On July 10, 2008, the Commission issued a second correction notice to an address obtained from the Secretary of State's office as a final attempt to serve the notice with a new deadline of August 8, 2008. The Commission did receive a signed certified card acknowledging the receipt of the notice. The Commission has not received a response to the notice.
- 11 WAC 480-51-025(1) provides that "commercial ferries must comply with all pertinent federal and state laws, chapter 81.84 RCW, and the rules of the Commission."
- 12 WAC 480-51-130 provides that: "no certificate holder shall discontinue the service authorized under its certificate and set forth in its filed time schedule without first having given to the Commission and to the public, at least fifteen days' notice, in writing, of its intention to discontinue such service, and without having secured the Commission's permission. The Commission shall not grant permission for discontinuance of service for periods exceeding twelve months."
- 13 WAC 480-51-140(2) provides, in part, that: "Discontinuance or suspension of service by a certificate holder for a period of five consecutive days without notice to the Commission shall be deemed a forfeiture of all right secured under and by virtue of any order or permission to operate, issued by the Commission."
- 14 RCW 81.84.060 and WAC 480-51-150 provide that the Commission may cancel a certificate for the violation of any provision in RCW 81.84, or for violation of an order, decision, rule, regulation, or requirement established by the Commission under this chapter.
- 15 **Discussion and Decision:** The Notice of Intent to Cancel Certificate informed Kitsap Ferry Company that the Commission was taking this action due to the Company's failure to comply with the Commission's Order in Docket TS-070474, and for failure to comply with Commission's statutes and rules.

- 16 The notice gave the Carrier's the option, within 30 days of service of the notice, to come into compliance with the Commission's statutes and rules by submitting the delinquent annual safety report and paying the delinquent regulatory fees, or to request a hearing to demonstrate why their certificate should not be cancelled.
- 17 These facts, which Kitsap Ferry has not rebutted or responded to, demonstrate the company's failure to comply with the requirements of Order 01 dated March 28, 2007, in Docket TS-070474 by failing to file (1) a pro forma financial statement of operations that includes ridership and revenue forecasts identifying likely alternative funding options, and (2) a report on the progress of obtaining alternate funding and an up-to-date plan to resume service by April 1, 2008.
- 18 Kitsap Ferry did not respond to the Commission's notice, despite mailing the notice to three different addresses on file for the company, the company did not file the information required by the Commission's order, nor did Kitsap Ferry resume service on April 1, 2008. Based on these facts the Commission should cancel Kitsap Ferry's certificate for passenger-only commercial ferry service.

ORDER

- 19 THE COMMISSION ORDERS That Certificate BC-128, the certificate of public convenience and necessity to provide passenger-one commercial ferry service held by Kitsap Ferry Company, LLC, is cancelled.

DATED at Olympia, Washington, and effective August 19, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. 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. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry 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 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 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.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and three (3) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250