

UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO BENCH REQUEST

DATE PREPARED: March 8, 2019
DOCKET: TS-180677
REQUESTER: Bench

WITNESS: Mike Dotson
RESPONDER: Mike Dotson
TELEPHONE: (360) 664-1223

BENCH REQUEST NO. 2 TO ALL PARTIES:

- A. Please provide a thorough explanation and any supporting documentation of the analysis leading to your conclusion that the public convenience and necessity require approval of Backcountry Travels LLC's Application.
- i. Please provide the data or information you relied upon to determine that allowing two operators to provide ferry service on Lake Chelan is commercially viable.
 - ii. Please provide the data or information you relied upon to determine that allowing two operators to provide ferry service on Lake Chelan will not result in diminished levels of service by either or both operators.
- B. How did you factor the Commission's 2010 Report to the Legislature Pursuant to ESB 5894 on the Appropriateness of Rate and Service Regulation of Commercial Ferries Operating on Lake Chelan into your analysis provided in response to Bench Request 2.A.? If you did not factor the Commission's Report into your analysis, please explain your decision.

RESPONSE:

- A. Please see the prefiled testimony of Mike Dotson in this docket. Commission Staff measured public convenience and necessity by way of the overwhelming public support for approval of the application.
- B. Commission Staff did not factor the 2010 Report to the Legislature Pursuant to ESB 5894 into its analysis. Commission Staff based its analysis of whether the Commission should approve the application on the regulatory standards set forth in chapter 81.84 RCW and chapter 480-51 WAC.

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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In re Application of

BACKCOUNTRY TRAVELS LLC

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

NO. TS-180677

BACKCOUNTRY TRAVELS, LLC'S
RESPONSE TO BENCH REQUEST NO.
2A AND 2B RE: TS-180067
APPLICATION

I INTRODUCTION

1 On February 26, 2019, a Notice of Bench Requests was issued by the Honorable
2 Andrew J. O'Connell, Administrative Law Judge, seeking explanation and analysis relied upon
3 by the parties in determining that public convenience and necessity require approval of
4 Backcountry Travels, LLC (Backcountry) Application. Additionally, the Request sought
5 production of any data and information relied upon to determine that allowing two operators
6 on Lake Chelan is both commercially viable and further that it would not result in diminished
7 levels of service by either or both providers. In response to this Request Backcountry Travels,
8 LLC submits the following.

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11 BACKCOUNTRY TRAVELS, LLC'S RESPONSE TO JUDICIAL
12 REQUEST 2A AND 2B
13 Page 1 of 7
14 4638067

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2 **II PUBLIC CONVENIENCE AND NECESSITY REQUIRE APPROVAL OF**
3 **THE APPLICATION**

4 The evidence submitted in these proceedings support a conclusion that the services
5 sought to be provided by Backcountry are necessary to serve the current need for
6 transportation on Lake Chelan. The starting point for this analysis is the actual input from
7 the members of the public. As pointed out in the testimony submitted by Commission Staff
8 witness Michael Dotson, there were more comments submitted in support of this
9 Application than any other, regardless of industry, in his six years of employment with the
10 Commission. There were only three comments submitted in opposition to the Application.

11 Review of the statements in support establish that the current ferry services on Lake
12 Chelan fail to meet the needs of both visitors to and residents of Lake Chelan and Stehekin.
13 Among the needs that are currently unmet are: services that allow residents of Stehekin to
14 efficiently conduct business outside of their community; services that allow visitors to
15 travel in a safe and cost-effective manner to be able to board the ferry prior to its departure;
16 services that allow departing visitors to return to their homes in a safe and cost-effective
17 manner; services that allow travel by students in Stehekin to attend appointments outside
18 of the community without missing multiple days of schooling; services that conduct “flag
19 stops” that allow persons to access their private property on Lake Chelan; sufficient
20 capacity for all visitors and residents to travel on a given date during certain seasons;
21 services that provide adequate means of transportation in the event of emergency.

22 In addition to the failure of the current service to meet the needs of the public, the
23 comments submitted demonstrate that current services also lack in quality and
24 convenience. Members of the public noted the age of the vessels, lack of amenities, lack
of accessibility for disabled persons and options for travelling with pets that have made

1 travel on the current ferry inconvenient. In addition to these concerns, the above identified
2 failure to meet the needs of the public necessarily create inconvenience in relation to
3 travelling on Lake Chelan and logically have a negative impact on the total number of
4 persons who are able to visit and do business in Stehekin and other areas of the lake.

5 In short, the overwhelming evidence of the public comments provides first hand
6 data from the actual persons who are forced to rely on the current provider that the current
7 ferry services are inadequate. As demonstrated by the direct testimony provided in support
8 of the Application, the services sought to be offered by Backcountry specifically address
9 and will substantially meet all of the public needs that are currently left wanting by the
10 present ferry service.

11 **2 A (i) (ii) COMMERCIAL VIABILITY OF TWO FERRY SERVICES ON**
12 **LAKE CHELAN**

13 The services sought to be provided by Backcountry are unique from and
14 supplemental to those that are offered by the current ferry service. As attested to in the
15 Pre-filed Testimony and accompanying Exhibits, specifically Exhibit No. CCC-2, there
16 has been a significant reduction in the total number of riders on the current ferry service
17 from 2007 through 2017 as compared to the ridership from 1996 through 2006. This
18 reduction in ridership is inconsistent with the growth of the tourism industry in the Lake
19 Chelan Valley as well as the increase in available accommodations and recreational
20 opportunities in Stehekin that have developed since 2007. It is logical to expect that as
21 more persons visit the region, a corresponding increase in utilization of the only public
22 means of exploring the upper Lake Chelan area would have occurred, provided that there
23 was a ferry service that would allow those additional persons to access those areas.

24 There is a ready explanation for why ridership has decreased and that is the fact

1 that during the same time period the level of services offered by the current ferry has been
2 reduced. If there are fewer and fewer options for persons to travel to Stehekin and all points
3 in between one can then understand how ridership has decreased. Backcountry's financial
4 viability is, in part, built upon capturing the patronage of those persons who simply cannot
5 have their needs met by the current services. Backcountry has a ready-made consumer
6 base that exceeds the number of projected riders forecasted in their first year and, as noted
7 below, what they have projected is more than sufficient to render them commercially
8 viable. Just because two ferry services occupy the same body of water does not mean that
9 they cannot provide complimentary services that provide a more convenient set of options
10 to serve a broader spectrum of those members of the public that seek to access this truly
11 unique place in nature.

12 The testimony of Commission Staff Member Greg Hammond establishes that
13 Backcountry has sufficient financial resources to provide their proposed services for a 12-
14 month time period as referenced above. Mr. Hammond's testimony goes on to address the
15 concern offered by the current ferry service that Backcountry's projections are inaccurate
16 due to the fact that it did not factor in the Stehekin commuter traffic that is served by the
17 ferry. Mr. Hammond clearly refutes that assertion as a material concern with the
18 application of simple mathematics demonstrating that the stated concern would, even if
19 proven true, account for less than one-half of a percent of Backcountry's projected
20 revenues. The services to be provided are significantly different than those offered by the
21 current ferry service and are oriented to serve a different segment of the public.

22 **III 2B CONSIDERATION OF 2010 REPORT PURSUANT TO ESB 5894**

23 Consideration was given to the 2010 report. Upon careful analysis of the contents
24 it is submitted that the current circumstances surrounding the current Application differ

1 significantly from those present when prior applications have been submitted and denied
2 by the Commission. Previous applications have been denied on the basis that the applicants
3 had inadequate financial abilities, failed to present evidence that public need and
4 convenience required authorization for a second ferry service or evidence that the current
5 provider failed to reasonably and adequately serve the territory in question. None of these
6 issues are applicable to the current Application.

7 Mr. Hammond has testified that Backcountry has demonstrated the financial ability
8 to operate the proposed ferry service. There have been more submissions from members
9 of the public in support of the Application than Mr. Hammond has observed in his 6 years
10 of employment with the Commission. The testimony provided by those supporting
11 statements speak to the failure of the current ferry service to adequately meet the specific
12 needs of those members of the public and the fact that a second ferry service is necessary
13 and would drastically increase the convenience of travel on Lake Chelan.

14 In contrast to previous applicants, Backcountry has identified and provided data
15 that informs and provides credence to the estimated number of passengers. Backcountry
16 has demonstrated that it has adequately addressed concerns regarding insurance,
17 maintenance, safety, storage and docking for its proposed ferry. Backcountry has
18 addressed, to the satisfaction of Mr. Hammond at least, the issue of wages associated with
19 operation of its ferry.

20 Backcountry's application is not one based solely on the principals or laissez faire
21 economics or a disdain for government supported monopolies. Backcountry's proposed
22 services are not dependent on taking customers from the current service provider.
23 Backcountry has instead identified a significant failure in the adequacy and convenience
24 of the current services, substantiated the existence of those failures through public

1 comments and come up with a financially viable means of meeting the public need and
 2 expanding access to Lake Chelan and Stehekin to a broader range of visitors and those
 3 persons who rely on ferry service to operate their businesses. At the time of the 2010
 4 Report the economy was just beginning to recover from the Great Recession of 2008-2009.
 5 Present economic circumstances differ drastically from that point in time. Absent
 6 authorization from the Commission to establish a second ferry service, the Stehekin Valley
 7 will continue to be limited in its ability to benefit from the economic growth that has been
 8 experienced in areas not dependent on inadequate and inconvenient means of
 9 transportation.

10 Backcountry’s proposed services do meet a need for a particular type of service as
 11 presented in the testimony previously submitted to the Court. It is submitted that the weight
 12 of the evidence submitted demonstrates that the incumbent service provider cannot prove
 13 that the proposed services are not economically feasible. Backcountry has come to the
 14 Commission under significantly different circumstances than existed at the time of the
 15 Report and they further submit a proposal that does not contain the flaws and inadequacies
 16 of preceding applicants. It is submitted that Backcountry has met its burden in establishing
 17 that there is a legal and factual basis for granting its Application. As such, the Commission
 18 has a sufficient basis to grant the Application under the relevant statutory guidelines.

19 DATED the 8th day of March, 2019.

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

21
 22 By /s/ Jordan L. Miller
 23 JORDAN L. MILLER, WSBA #38863
 24 MATTHEW S. HITCHCOCK, WSBA # 38863
 Attorneys for Applicant Backcountry Travels, LLC

1 CERTIFICATE OF SERVICE

2 Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of
3 perjury under the laws of the state of Washington, that on the 8th day of March, 2019, the
4 foregoing was delivered to the following persons in the manner indicated:

5 Andrew Richards 6 Hathaway Burden 7 Garvey Schubert Barer, P.C. 8 1191 Second Avenue, Suite 1800 9 Seattle, WA 98101-2939	<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
11 Jeff Roberson 12 Harry Fukano 13 Office of the Attorney General 14 Utilities and Transportation Division 15 1400 S. Evergreen Park Drive SW 16 P.O. Box 40128 17 Olympia, WA 98504-0128	<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

18 /s/ Jerei Bargabus
19 JEREI BARGABUS