

**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

DOCKET TS-180677

INITIAL ORDER 04

GRANTING COMMERCIAL
FERRY CERTIFICATE SUBJECT
TO TERM AND CONDITIONS

BACKGROUND

- 1 On August 10, 2018, Backcountry Travels LLC (Backcountry or Applicant) filed with the Washington Utilities and Transportation Commission (Commission) an Application for Commercial Ferry Certificate (Application) in accordance with Chapter 81.84 RCW. Backcountry proposes to provide daily roundtrip passenger ferry service from Stehekin, Washington, to Fields Point Landing, Washington, with the exception of Thanksgiving Day, Christmas Day, and several scheduled maintenance days.¹ The Company also proposes that its service will make stops at private docks on demand as long as the docks meet minimum requirements for the boat's access.²
- 2 On October 8, 2018, Lake Chelan Recreation, Inc., (LCRI, or the Incumbent) filed a protest to the Application.³ At the time of the Application, LCRI operated a commercial ferry service on Lake Chelan, providing transportation from Stehekin, Washington, to Chelan, Washington, with several stops in between. LCRI has since transferred its

¹ Courtney, Exh. CCC-1T at 7:22-24.

² Courtney, TR at 80:14 - 81:2.

³ Affected persons who oppose an application for authority to operate may file a protest. WAC 480-07-370(7); WAC 480-51-040. Such a protest, in the context of an application for a commercial ferry certificate, is an objection to issuing a certificate under RCW 81.84.020. *See* Chapter 81.84 RCW; WAC 480-07-370(7); WAC 480-51-040.

certificate with Commission authorization and been succeeded by Discover Lake Chelan LLC (Discover).⁴

- 3 The Commission convened a prehearing conference in this docket at Olympia, Washington on Monday, November 19, 2018, before Administrative Law Judge Andrew J. O’Connell. On November 21, 2018, the Commission entered Order 01, Prehearing Conference Order; Notice of Hearing (Order 01), which set a hearing in this matter for April 22-23, 2019, at 9:30 a.m. at the Commission’s headquarters in Olympia, Washington.
- 4 Matthew S. Hitchcock and Jordan L. Miller, Jeffers Danielson Sonn & Aylward P.S., Wenatchee, Washington, represent Backcountry. Jeff Roberson and Harry Fukano, Assistant Attorneys General, Olympia, Washington, represent the Commission’s regulatory staff (Staff).
- 5 On December 17, 2018, Backcountry filed the direct testimony and exhibits of Mr. Colter C. Courtney, supporting the Application.
- 6 On January 3, 2019, LCRI filed a motion to withdraw its protest. LCRI clarified its motion on January 4, 2019, as a motion to withdraw as a party, withdraw its protest, modify the procedural schedule to allow LCRI to file public comments in lieu of filing testimony and exhibits, and provide an opportunity for the Applicant to respond to any comments.
- 7 On January 10, 2019, the Commission entered Order 02, granting LCRI’s motion, in part, and allowing LCRI to withdraw its protest, withdraw as a party, and allowing its legal counsel to withdraw. As a non-party, LCRI retained the same ability to file public comments in proceedings before the Commission as any other member of the public. Express authorization to file such public comments was, therefore, unnecessary and improper.

⁴ Since the time Backcountry filed its Application, LCRI has received an order from the Commission authorizing the transfer of all rights under its certificate of public convenience and necessity BC-34 to Discover. *See In re Lake Chelan Recreation, Inc. and Discover Lake Chelan LLC*, Docket TS-190146, Order 01 Authorizing Transfer (Apr. 25, 2019). In this Order, the Commission refers to LCRI, or the Incumbent. The Commission is aware, when discussing the current service offered, that as of the date of this Order Discover has succeeded LCRI.

- 8 On February 1, 2019, Staff filed the responsive testimonies of Michael Dotson, a transportation specialist in the Commission’s Licensing Services section, and Greg Hammond, a regulatory analyst at the Commission.
- 9 On March 1, 2019, Backcountry filed Mr. Courtney’s rebuttal testimony.
- 10 On March 22, 2019, the Commission issued a Notice Setting a Public Comment Hearing for April 22, 2019, at 9 a.m. in Chelan, Washington, and moving the evidentiary hearing to the same date and location at 1:30 p.m.
- 11 On April 22, 2019, the Commission convened a public comment hearing and an evidentiary hearing before Administrative Law Judge Andrew J. O’Connell. Fifty interested members of the public signed in at the public comment hearing, 30 of whom provided oral comments on whether a certificate should be issued to Backcountry.
- 12 At the evidentiary hearing, the Applicant made available additional witnesses to answer any questions that Mr. Courtney might be unable to satisfy regarding the economic viability and operations of the proposed service. The Commission permitted Mr. Logan Courtney, Operations Manager for Backcountry, and Ms. Marietta Luchini, a certified public accountant and Board Member of the Lake Chelan Chamber of Commerce, to testify because their expertise in relevant areas of interest to the Commission would be helpful in determining whether the public convenience and necessity require issuing the certificate.
- 13 The parties stipulated to the admission of the prefiled testimony and exhibits, as well as certain cross-examination exhibits. The Commission took official notice of the Incumbent’s current tariff.
- 14 On behalf of Staff, Mr. Dotson testified that he processed Backcountry’s Application when it was received by the Commission, that 227 statements of support were submitted in favor of issuing the certificate, and that three statements were submitted in opposition. He stated that “[t]his is the largest number of statements of support for a transportation application that I have seen in this or any industry since I began working in Licensing Services.”⁵ Mr. Dotson further testified that Staff believes “public convenience and necessity require approval of Backcountry Travels’ application for a certificate.”⁶

⁵ Dotson, Exh. MD-1T at 3:8-10.

⁶ Dotson, Exh. MD-1T at 8:2-3; *see also* Dotson, Exh. MD-1T at 7:19 - 8:8.

- 15 Mr. Hammond testified on behalf of Staff that he believes, after review of the Applicant's financial information, the Applicant has the financial resources to operate the proposed service for at least 12 months. He also testified that the ridership and revenue forecasts and the cost of service for the Applicant's proposed operations are reasonable. Mr. Hammond noted that the Applicant submitted a statement of prior experience in the field of commercial ferry operations, which indicated that the Applicant does not have any experience, and that this may factor into the decision-making process of whether to issue the certificate. Mr. Hammond does not believe the law necessarily requires prior experience.
- 16 Ultimately, Staff argues that the public convenience and necessity require that Backcountry's Application be approved, and recommends that the Commission grant the Application subject to the following conditions: (1) Backcountry must file replacement tariff pages conforming with WAC 480-51-080, WAC 480-51-090, and Chapter 480-149 WAC; and, (2) Backcountry must submit proof of insurance coverage as required by WAC 480-51-070 and RCW 81.84.025.

DISCUSSION AND DECISION

- 17 The Commission finds that Backcountry has met the statutory requirements for obtaining a commercial ferry certificate and that it has shown that issuing the certificate is required by the public convenience and necessity for the reasons discussed below. The Commission also determines that the commercial ferry certificate should be granted to Backcountry subject to certain conditions and one term, as explained below.

A. Standard of Review

- 18 This adjudicative proceeding commenced when LCRI protested Backcountry's Application. Under RCW 34.05.422(1)(b), the Commission is required to conduct an adjudicative proceeding when an application for a commercial ferry certificate is protested. The statute permits the Commission to conduct an adjudicative proceeding even when an application for a commercial ferry certificate is not protested.⁷
- 19 The Commission conducted an adjudicative proceeding, here, to independently and thoroughly evaluate whether the Application should be granted.⁸ Accordingly, the

⁷ RCW 34.05.422(1)(a).

⁸ See RCW 34.05.422(1)(a).

Commission determined it was appropriate to continue this adjudicative proceeding even after LCRI withdrew its protest and withdrew as a party. Since then, Staff has testified that it believes Backcountry meets all the statutory requirements for issuing the requested certificate, and that public convenience and necessity requires such issuance.

- 20 Three factors determine whether the Commission should grant an application for a commercial ferry certificate. First, an applicant must meet all fitness requirements contained in statute and rule. Second, public convenience and necessity must require operation of the proposed service.⁹ Third, if the application seeks authority to operate in a territory already served by an existing certificate holder and that existing certificate holder objects to issuing the certificate, the applicant must show that “the existing certificate holder has failed or refused to furnish reasonable and adequate service” or “has failed to provide the service described in its certificate or tariffs after the time allowed to initiate service has elapsed. . . .”¹⁰
- 21 Commission precedent reflects that applicants must meet a high standard when an existing certificate holder protests an application.¹¹ As it relates to Lake Chelan and the history of certificated ferry service on Lake Chelan, applicants have had little success meeting this standard.¹² What sets this case apart from those that came before it, primarily, the lack of a protestant that objects to the Application. Therefore, the Commission need not consider, and the Applicant need not show, whether the existing certificate holder has failed or refused to furnish reasonable and adequate service or has failed to provide the service described in its certificate or tariffs after the time allowed to initiate service has elapsed. Accordingly, the Commission conducts its evaluation with regard to the first and second factors, above, for which the Applicant carries the burden of proof.

⁹ RCW 81.84.010; RCW 81.84.020(2); WAC 480-51-030; WAC 480-51-070.

¹⁰ RCW 81.84.020(1).

¹¹ See e.g. *In re MEI Northwest LLC*, Docket TS-160479, Initial Order 03 (Aug. 21, 2017); *In re Application of James Courtney d/b/a Stehekin Boat Service*, Hearing No. B-78659, S.B.C. Order No. 549, Commission Decision and Order Denying Review, Affirming and Adopting Initial Order (Aug. 04, 1998); *In re Application of Waste Management*, Docket TG-120033, Final Order 10, 10, ¶ 21 (July 10, 2013).

¹² See *In re Application of James Courtney d/b/a Stehekin Boat Service*, Hearing No. B-78659, S.B.C. Order No. 546, Initial Order Denying Application (Jun 22, 1998), and S.B.C. Order No. 549, Commission Decision and Order Denying Review, Affirming and Adopting Initial Order (Aug. 04, 1998).

B. The Company Has Shown It Meets Statutory Requirements

22 RCW 81.84.020(2) requires that the Applicant show: (1) that it has the financial resources to operate the proposed service for at least 12 months, based upon a pro forma financial statement of operations; (2) ridership and revenue forecasts; (3) the cost of service for the proposed operation; (4) an estimate of the costs of the assets to be used in providing the service; (5) a statement of the total assets on hand of the Applicant that will be expended on the proposed operation; and, (6) a statement of prior experience, if any, in such field by the Applicant. The Company has met all of these requirements.

23 After reviewing the Application, the Commission finds that the Company has submitted the documentation required by statute, including ridership and revenue forecasts, the costs of service for its proposed operation, the costs of the assets to be used in providing the service, the total assets on hand that will be expended, and a statement of prior experience. Staff testified that the Company's forecasts, estimates, and supporting documentation are reasonable and sufficient for compliance with the statute.¹³ The Commission received no contrary testimony. Accordingly, the Commission determines that the Company has satisfied each of these factors.

24 The Commission also determines that the Company has shown it has the financial resources to operate the proposed service for at least 12 months. Staff has reviewed the Application, including the Company's pro forma financial statement of operations, and believes that it demonstrates that the Company has the financial resources to operate the proposed service for at least 12 months.¹⁴ We agree. Accordingly, the Commission determines that the Company has shown it has the financial resources to operate the proposed service for at least 12 months.

C. The Company Has Shown Public Convenience and Necessity Require the Proposed Service

25 Before issuing a certificate, the Commission must determine whether the public convenience and necessity requires the proposed service. The applicable legal standard

¹³ Hammond, Exh. GH-1T at 2:15 - 6:16.

¹⁴ Mr. Hammond reviewed the Applicant's financial information, including the Company's balance, sheet pro forma financial statement of operations, total assets on hand, ridership and revenue forecasts, and projected costs of service. Hammond, Exh. GH-1T at 2:15 - 6:8, 7:10-12.

authorizes the Commission to exercise its informed judgment to determine whether the public interest is served.¹⁵ Our analysis thus requires more than simply checking boxes.

26 Staff's evaluation of whether the public convenience and necessity requires the proposed service is far from thorough. Mr. Dotson testified that he reviewed all public comments received prior to February 1, 2019, which included 227 public comments in support and three public comments in opposition. He also testified that he based his opinion that public convenience and necessity requires the service proposed by Backcountry on his review of the public comments.¹⁶ Mr. Dotson noted many consistent themes in the public comments in support: complaints of the current ferry schedule; convenience for travel to and from Stehekin; the need to stay extra days and nights in Chelan, at cost, to conduct business or visit Stehekin; discouragement of off-season travel; issues related to schooling and medical emergencies; lack of access on the ferry for disabled persons and pets; and the difficulty faced by private landowners along Lake Chelan due to the lack of flag stop service at private docks.¹⁷ Staff offered no other basis for recommending that the Commission determine that public convenience and necessity requires the proposed service.

27 The Commission's analysis must include more than a review of the sentiments included in public comments, which are not dispositive of whether public convenience and necessity requires issuing a commercial ferry certificate. For example, Staff did not consider the history of the Commission's regulation of commercial ferry service on Lake Chelan or whether there would be a negative impact to the public from a second operator on Lake Chelan – specifically, whether issuing a second certificate would ultimately put at risk the viability of all commercial ferry service on Lake Chelan. These considerations need not be stated explicitly in statute.¹⁸ Rather, the statute provides that the Commission is not limited only to those factors identified therein, consistent with the understanding that the Commission should utilize its informed and expert judgment in cases like the one presented here. The Commission must, therefore, evaluate whether the public

¹⁵ See RCW 81.84.010; RCW 81.84.020(1); RCW 81.84.020(2); *see contra* Staff, TR at 124:17 - 125:2.

¹⁶ Dotson, Exh. MD-1T at 8:1-11; *see also* Hammond, TR at 116:3-14; Exh. BE-2, Staff's Response to Bench Request No. 2.

¹⁷ Dotson, Exh. MD-1T at 3:18 - 6:16.

¹⁸ RCW 81.84.020(2) states that the Commission's "[i]ssuance of a certificate must be determined upon, but not limited to," the factors identified in statute.

convenience and necessity requires the proposed service by considering factors that are both readily apparent and relevant to the circumstances presented on a case-by-case basis.

- 28 Staff's apparent argument – that considerations regarding any impact on LCRI, as the current certificate holder in the territory, are no longer relevant because LCRI has withdrawn its protest – is imprecise and misses the point.¹⁹ While the Commission need not consider whether LCRI is furnishing reasonable and adequate service because it has withdrawn its protest, the Commission remains charged with determining whether issuing the certificate is required by the public convenience and necessity. The economic impact to ferry service on Lake Chelan, as it concerns the interest of the public in having access to such transportation service, may readily involve some understanding of the economic impact to LCRI. It would not be in the public interest, therefore, for the Commission to approve an overlapping certificate, despite the absence of a protest from the current certificate holder, if approval would put at risk the viability of all commercial ferry service in the territory. Staff did not provide, or attempt to provide, an analysis aimed at answering these questions.
- 29 Even so, we find that the Company has carried its burden to show that the public convenience and necessity requires its proposed service. Backcountry has consistently demonstrated its willingness to provide timely and thoughtful responses, additional expert witnesses, and insightful information to aid the Commission to compile a robust record, support a proper evaluation, and make an informed decision. The Company's efforts have not only evidenced its commitment to the proposed service in this case, but have also demonstrated its ability and willingness to follow Commission directions and rules. Ultimately, the Company's effort accomplishes its obligation to carry the burden to show that the public convenience and necessity requires the proposed service, and establishes the Commission's confidence in the Company's ability to operate under regulation going forward.
- 30 Two factors, set forth and supported by the Company, persuade the Commission that issuing a second certificate on Lake Chelan will benefit, rather than negatively impact, the public interest. First, the Company has presented un rebutted testimony that the region can support a second operator on Lake Chelan. Second, this testimony shows the proposed service would not supplant the incumbent's service, but would supplement or complement it. In both instances, input received through public comments and expert

¹⁹ See Hammond, TR at 118:15 – 119:5.

testimony provided by the Company provided at hearing bolster the Company's analyses, which are unrebutted.

1. The Region Can Support a Second Operator

31 The Company demonstrated that the region can support a second ferry operator. Bench Request No. 2 inquired how the parties had considered 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 (Exh. CCC-5 or 2010 Report). Staff did not consider the 2010 Report.²⁰ The Company did. In response to Bench Request No. 2, the Company explained that it had carefully considered the 2010 Report and believed that the "[p]resent economic circumstances differ drastically from that point in time."²¹

32 The Company provided convincing support for its position. It identified that, at the time of the 2010 Report, the economy in and around Lake Chelan was only "just beginning to recover from the Great Recession of 2008-2009."²² The ridership of the current ferry service, however, has failed to improve with the rest of the economy around Lake Chelan.²³ Exhibit CCC-2, which identifies historical ridership on the current ferry service, and Exhibit CCC-3, which explains the Company's future numbers projections, support the Company's perspective. The Company explains that:

there has been a significant reduction in the total number of riders on the current ferry service from 2007 through 2017 as compared to the ridership from 1996 through 2006. This reduction in ridership is inconsistent with the growth of the tourism industry in the Lake Chelan Valley as well as the increase in available accommodations and recreational opportunities in Stehekin that have developed since 2007.²⁴

²⁰ Exh. BE-2, Staff's Response to Bench Request No. 2.

²¹ Exh. BE-2, Company's Response to Bench Request No. 2 at 6.

²² Exh. BE-2, Company's Response to Bench Request No. 2 at 6.

²³ Courtney, Exh. CCC-1T at 5:11-21; Exh. BE-2, Company's Response to Bench Request No. 2 at 6.

²⁴ Exh. BE-2, Company's Response to Bench Request No. 2 at 3; *see* Exh. CCC-2; Exh. CCC-3.

At hearing, Mr. Courtney provided additional explanation that while tourism in and around Chelan has increased over the past 15 years, “Stehekin has [inexplicably] remained flat and actually declined.”²⁵

33 The Company provided further support for its argument, explaining the region’s economics and its ability to support a second ferry operator. At hearing, the Company offered the expert testimony of Ms. Luchini. She testified that Lake Chelan has seen “strong economic vitality in recent years.”²⁶ Coupled with the ridership and projection numbers provided by the Company, this information bolsters the Company’s perspective.

34 Additionally, Ms. Luchini testified that, in her opinion, the existence of a second ferry operator on Lake Chelan would not result in the lack of viability for all ferry service on Lake Chelan.²⁷ She also agreed with Mr. Courtney that an increase in available transportation to Stehekin would result in an increase in ridership, and that this ridership would not, as proposed in public comments against issuing a certificate, be a result of “complete cannibalization” of the existing certificate holder’s business.²⁸

35 Staff also agreed with these points. Mr. Hammond, at hearing, agreed that in this instance an increase to supply of ferry transportation could be met with an increase in demand for that service.²⁹ Additionally, Staff advocated in its closing remarks that the Commission accept Ms. Luchini’s expert opinion that issuing a certificate to a second ferry operator on Lake Chelan would not extinguish the viability of all ferry service, even if some competition were to exist between the operators.³⁰

36 The Company’s testimony and evidence is uncontested and supported by an appropriate record. The Commission therefore accepts and adopts the evidence offered by the Company and determines that the Lake Chelan region can support a second ferry operator.

²⁵ Courtney, TR 87:13-25; *see also* Courtney, Exh. CCC-1T at 5:12-21.

²⁶ Exh. MPL-2; Luchini, TR at 99:18-24.

²⁷ Luchini, TR at 99:18 - 101:15. Few public comments were received that address this concern. *See e.g.* Exh. BE-1, Part 3 at 47-49.

²⁸ Luchini TR at 99:18-24; 99:4-17.

²⁹ Hammond, TR at 115:11 - 116:2.

³⁰ Staff, TR at 125:18 - 126:1.

2. The Proposed Service Will Supplement Current Service

- 37 The Company has shown that the proposed service will supplement the current service. The Company's testimony and thoughtful explanations in support of its Application convince the Commission that the proposed service is not intended to, and will not, supplant the current service, but will instead supplement and complement it.³¹
- 38 Mr. Courtney testified that the proposed service is for yearlong, daily round trip service, which is not currently provided.³² The service will also provide for flag stops on request at private docks that have been verified by the Company as safe and compatible with the needs of its vessel.³³ This service is not currently available. Additionally, the service will be provided on a small, nimble vessel.³⁴ The vessel will have accommodations that will make travelling to Stehekin easier for disabled persons and travelers with pets.³⁵
- 39 The size of the vessel is of note, in particular. The proposed service could provide transportation for up to 32 passengers – a much smaller number than can currently be transported by the Incumbent. The size of the vessel supports the stated intent of the proposed service to supplement the current service and not supplant it.
- 40 Further, the Company provided expert testimony at hearing explaining that the proposed service would not “cannibalize” the current operator.³⁶ Ms. Luchini opined that the availability of more transportation will generate more travelers.³⁷ This is consistent with the Applicant's testimony, agreed to by Staff, that an increased supply of ferry transportation will result in an increased number of travelers.
- 41 The Applicant's argument that its ridership will not solely consist of passengers who would otherwise travel with the Incumbent is bolstered by other economic circumstances around Lake Chelan, as identified by the Applicant. A seaplane service recently ceased operations, resulting in a reduction in travel options to and from Stehekin. The Applicant

³¹ Application at 16; *see also* Courtney, TR at 84:11 - 85:24, 88:15 - 89:7.

³² *See* Courtney, TR at 85:17-24; Time Schedule No. 36, Lake Chelan Boat Company; Exh. CCC-4.

³³ Courtney, TR at 80:14 - 81:2.

³⁴ Courtney, TR at 83:23 – 84:10; Application at 14; *see also* Courtney, Exh. CCC-1T at 10:3-12.

³⁵ Application at 14-15; Courtney, TR at 91:5 - 92:5.

³⁶ Luchini, TR at 99:4-24; *see* Exh. BE-1, Part 3 at 108.

³⁷ *See* Luchini, TR at 99:10-24.

proposes its service, at least in part, will replace the air service, noting that its vessel will be capable of speedy, daily transportation.³⁸

42 Additionally, the Applicant's perspective is supported by a brief review of the Incumbent's rates and those proposed by the Company. The proposed service would charge a higher rate compared to the service provided by the Incumbent. The Incumbent charges \$24 for a one-way non-express trip between Chelan and Stehekin.³⁹ For a one-way express trip between Chelan and Stehekin, the Incumbent charges \$37.⁴⁰ The Applicant proposes to charge \$39 for a one-way trip between Chelan and Stehekin.⁴¹ This indicates that a price-conscious traveler would prefer the current operator's service to the proposed service. To the extent that a traveler chooses to pay the higher rate for the proposed service, that choice must be attributed to factors other than price.

43 No party offered any evidence to rebut the testimony and evidence offered by the Company. The Commission accepts and adopts the evidence offered by the Company and determines that the proposed service will supplement the current service to the benefit of the public.

3. Public Comments

44 In other transportation industries regulated by the Commission, the Commission has determined that it "will not authorize additional competitors solely for the sake of competition. An applicant proposing to fill an unmet need must demonstrate that its service will, in fact, fill that need . . . [and] will likely result in consumer benefits. . . ."⁴² The evidence presented by the Company and already recounted in this Order shows that the proposed service will fill an unmet need for daily ferry service. This is further supported by the public comments submitted by interested persons, which illustrate the direct benefits to the public.

45 The Commission has received a significant number of public comments in this matter. Nearly all of those public comments support issuing a certificate to Backcountry. The

³⁸ Application at 14; *see* Courtney, TR at 77:19 - 78:25.

³⁹ Tariff No. 63, Lake Chelan Boat Company.

⁴⁰ Tariff No. 63, Lake Chelan Boat Company.

⁴¹ Application at 5.

⁴² *In re Application of Waste Management*, Docket TG-120033, Final Order 10, 10, ¶ 21 (July 10, 2013).

Commission considers these public comments and affords them the weight entitled. They indicate, at minimum, a strong desire by the public at and around Lake Chelan and those who travel there for a second ferry service operator on Lake Chelan. Public support and sentiment in favor of the proposed service can, in this case, be tabulated: 227 public comments submitted in support of the Application prior to February 1, 2019; 13 public comments submitted in support of the Application after February 1, 2019; and, 29 public comments in support given in person at the public comment hearing held on April 22, 2019. The Commission has received only a handful of public comments that oppose issuing the requested certificate.⁴³

46 Many of the public comments supporting the Company's Application describe the putative benefits to the public of the proposed service, and several of the points made therein deserve iteration in this Order. First, the public comments highlight the need and desire for the daily ferry service proposed by Backcountry. With the recent closure of the seaplane air service, many residents who live on Lake Chelan are without ready access to emergency or medical transportation. Public comments highlighted that daily ferry service, as proposed in the Application, will greatly enhance the ability of residents and tourists to get to care facilities in a timely manner.⁴⁴ One commenter explained the benefit succinctly: "As a retired EMT and Chelan Co. Mountain Rescue Service member, I recognize the great value to timely transport of accident, illness, and rescue victims. Without floatplane service, the proposed new ferry service would greatly facilitate rapid evacuation of such victims."⁴⁵ Staff reiterated and agreed with these sentiments at hearing.⁴⁶

47 Second, travelers to Lake Chelan from all over the country have responded with public comments regarding the increased convenience the proposed service will add to their travels to Lake Chelan and Stehekin. The proposed service will allow travelers from

⁴³ Three public comments opposing the Application were received prior to February 1, 2019. Since then, LCRI submitted additional public comments. Discover also submitted public comments against issuing the requested certificate. Discover's public comments are mitigated, at least partially, by the public comments in support of issuing the requested certificate by Discover's COO, Reed Courtney. TR at 42:4-16. If not aggregated, the number of public comments expressing opposition to issuing the requested certificate is five. One neutral public comment was received at the public comment hearing in Chelan, Washington, on April 22, 2019.

⁴⁴ See e.g. TR at 20:7-19; TR at 29:21 - 30:24; Exh. BE-1, Part 1 at 13, 42, 51, 92, 114; Exh. BE-1, Part 2 at 25-29, 79, 112; Exh. BE-1, Part 3 at 24, 47-49, 75; Exh. BE-4 at 3.

⁴⁵ Exh. BE-1, Part 2 at 79.

⁴⁶ Staff, TR at 125:2-7.

Washington, Oregon, and even eastern states such as Virginia and Pennsylvania, to visit more often and arrange their plans to include more time at their destination (Stehekin) and less time in transit waiting for transportation.⁴⁷ One commenter noted, directly, that

We want to go to Stehekin. . . . We choose not to waste a day of our vacation spending the night in Chelan to catch the ferry the next morning either. Sometimes rooms are not even available. Schedule returning from Stehekin gets us home too late. So we vacation elsewhere.⁴⁸

- 48 Last, the proposed service is expected to bring additional economic growth to the Stehekin area as well as the Lake Chelan region. Many public comments concurred with evidence offered by Backcountry; namely, that it is perplexing that the Stehekin area has not shared in the current economic boon of the Lake Chelan region in light of previous times of economic growth, the current economic revival in Chelan, and that the proposed service could be expected to revitalize the economy in Stehekin and around Lake Chelan.⁴⁹ These comments were sponsored not only by residents, but also by business owners. The positive economic impact expected by the community, therefore, is consistent with the perspective supported by Backcountry's testimony and exhibits.
- 49 These public comments bolster Backcountry and Staff's testimony and exhibits in support of the Application. The Commission, accordingly, determines that the proposed service will provide particular benefits to the public.
- 50 The Company has met all statutory requirements for issuing a commercial ferry certificate. It has shown that it has the financial fitness and resources necessary to operate the service for at least 12 months and that the public convenience and necessity requires the proposed service. Accordingly, the Commission determines that the Company should

⁴⁷ See e.g. TR at 31:17 - 32:4; TR at 38:16-23; TR at 55:4-18; Exh. BE-1, Part 1 at 1, 9-11, 16, 20-21, 26, 49, 55, 57-58, 67-68, 70, 84, 98, 104; Exh. BE-1, Part 2 at 6-8, 17-18, 21, 31, 45, 51, 54, 60, 68, 72-73, 88-90, 97, 112; Exh. BE-1, Part 3 at 4, 10, 12, 42-49, 54, 64-65, 83; Exh. BE-4 at 30-31.

⁴⁸ Exh. BE-1, Part 2 at 97.

⁴⁹ See e.g. TR at 19:9-19; TR at 28:11 - 32:20; TR at 48:22 - 50:1; TR at 36:20 - 38:9; TR at 38:16 - 39:9; TR at 53:17 - 55:1; Exh. BE-1, Part 1 at 41, 102; Exh. BE-1, Part 2 at 4, 13-14, 34-35, 43, 59, 81; Exh. BE-1, Part 3 at 13, 47-50, 69.

be issued a commercial ferry certificate, subject to the term and conditions explained below.

D. Term and Conditions of Issuance

- 51 RCW 81.84.020(1) permits the Commission to attach “any terms and conditions as in its judgment the public convenience and necessity may require” to the issuance of a commercial ferry certificate. Certain conditions are required by the public convenience and necessity in this instance, as explained below.
- 52 Staff recommends that the Commission require Backcountry, as a condition to issuing its commercial ferry certificate, to file replacement tariff pages that conform with WAC 480-51-080, WAC 480-51-090, and Chapter 480-149 WAC, and submit proof of insurance coverage required by WAC 480-51-070 and RCW 81.84.025. The Commission agrees with Staff. While it is fair to allow the Company the opportunity to correct these administrative errors, it is necessary that the Company comport its tariff pages to Commission rules and show proof of insurance coverage for its vessel. The Company may work collaboratively with Staff to ensure its filing complies with these statutes and rules.
- 53 From the record compiled in this case, the Commission determines that additional conditions and one term are required. Backcountry has yet to secure permission for docking facilities in Stehekin, Washington, and Fields Point Landing, Washington. It is necessary that the Commission confirm the Company’s acquisition of appropriate docking facilities. Until the Company has attained appropriate docking facilities, the Company should be required to provide periodic, brief status reports on its progress toward attaining appropriate docking facilities.
- 54 While the Company has provided un rebutted evidence that its proposed service will benefit the public interest, will not result in the lack of ferry service on Lake Chelan, and will be a supplement to the current ferry service, the Commission remains interested in the economic impacts, both positive and negative, that may be evidenced in the years after Backcountry’s proposed service commences. The Commission determines it is appropriate, therefore, to attach a term requiring Staff to conduct an investigation into the economic sustainability of ferry service after Backcountry commences service for the purpose of evaluating the impacts of two commercial ferry service operators on Lake Chelan. A single 12-month period would likely be uninformative because both operators will have been in service concurrently for only a single season of high-patronage. The

Commission is interested in evaluating the economic sustainability of the ferry services with at least 24 months of data. Staff is required, therefore, to file in this docket a detailed report of its analysis within 30 months of the date Backcountry commences service. Because this term is largely out of the Company's control, issuing its certificate will not be contingent on the prior fulfillment of this term. As is the expectation and requirement of any company subject to Commission regulation, Backcountry will cooperate with the needs of Staff in its investigation.⁵⁰

55 The Commission determines, therefore, that it is appropriate to attach the following term and conditions to the commercial ferry certificate we issue in this case:

- (1) Backcountry must file in this docket replacement tariff pages conforming with Commission rules WAC 480-51-080, WAC 480-51-090, and Chapter 480-149 WAC within 30 days of the effective date of this Order or, if the Company is to commence service prior to 30 days after the effective date of this order, at least 7 days prior to commencement of service;
- (2) Backcountry must file in this docket proof of insurance coverage required by WAC 480-51-070 and RCW 81.84.025 within 60 days of the effective date of this Order or, if the Company is to commence service prior to 60 days after the effective date of this order, at least 7 days prior to commencement of service;
- (3) Backcountry must file in this docket a brief report updating the status of acquiring appropriate docking facilities in Stehekin, Washington, and at Fields Point Landing, Washington, every 6 months from the effective date of this Order until such docking facilities have been attained;
- (4) Backcountry must file in this docket documentation regarding the attainment of appropriate docking facilities in Stehekin, Washington, and at Fields Point Landing, Washington, within 30 days such facilities are attained or, if the Company is to commence service prior to 30 days after attainment of such facilities, at least 7 days prior to commencement of service; and
- (5) Staff must conduct an investigation into the economic sustainability of ferry service on Lake Chelan 24 months after Backcountry commences service and, for purposes of evaluating the impacts of two commercial ferry service operators on

⁵⁰ See RCW 81.04.070.

Lake Chelan, must file in this docket a detailed report within 30 months of the date that Backcountry commences service.

FINDINGS AND CONCLUSIONS

- 56 (1) The Commission is an agency of the State of Washington vested by statute with authority to regulate commercial ferries.
- 57 (2) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 58 (3) LCRI, as succeeded by Discover,⁵¹ holds a certificate of public convenience and necessity to provide commercial ferry service in the geographic locations in which Backcountry has applied to provide service, but the Application is not protested because LCRI withdrew its protest.
- 59 (4) Backcountry need not show, and the Commission need not determine, that LCRI, as succeed by Discover, has failed or refused to furnish reasonable and adequate commercial ferry service.
- 60 (5) Backcountry has shown that it meets all statutory requirements, including that it has the financial resources to operate the commercial ferry service described in the Application for at least 12 months, and is otherwise fit, willing, and able to provide that service.
- 61 (6) Backcountry has shown that public convenience and necessity requires that the Commission issue the requested certificate.
- 62 (7) Backcountry has demonstrated particular benefits to the public from its proposed service.
- 63 (8) The Commission should issue a commercial ferry certificate to Backcountry to operate a daily round-trip service between Stehekin, Washington, and Fields Point Landing, Washington, on Lake Chelan as requested in its Application, subject to the term and conditions set out in Paragraph 55.

⁵¹ *Supra* n. 4; see *In re Lake Chelan Recreation, Inc. and Discover Lake Chelan LLC*, Docket TS-190146, Order 01 Authorizing Transfer (Apr. 25, 2019).

- 64 (9) The public convenience and necessity requires the Commission to attach the term and conditions set out in Paragraph 55 to the issuance of Backcountry's commercial ferry certificate.

ORDER

THE COMMISSION ORDERS:

- 65 Backcountry Travels LLC's application for a commercial ferry certificate to operate a daily round-trip service between Stehekin, Washington, and Fields Point Landing, Washington, on Lake Chelan as requested in its application is GRANTED, subject to the term and conditions set out in Paragraph 55.

DATED at Olympia, Washington, and effective May 23, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANDREW J. O'CONNELL
Administrative Law Judge

NOTICE TO 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)(a) 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*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(2)(c)(ii) states that any party may file a *Response* 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.

RCW 80.01.060(3) 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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).