

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

In re Application No. B-079273 of)	
	)	DOCKET NO. TS-040650
AQUA EXPRESS, LLC)	
	)	ORDER NO. 01
For a Certificate of Public)	
Convenience and Necessity to	)	PREHEARING CONFERENCE
Provide Commercial Ferry Service	)	ORDER; ESTABLISHING
	)	PROCEDURAL SCHEDULE
	)	NOTICE OF HEARINGS
	)	(To be held on Monday and
	)	Tuesday, June 21-22, 2004 in
	)	Olympia, and Thursday, July 1,
.....	)	2004 in Kingston)

- 1 **NATURE OF PROCEEDING.** Docket No. TS-040650 involves an application by Aqua Express, LLC for a certificate of public convenience and necessity to operate a commercial ferry between Kingston and Seattle, Washington.

- 2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington on Friday, May 21, 2004 before Administrative Law Judge Ann E. Rendahl.

- 3 **APPEARANCES.** David W. Wiley, Williams, Kastner & Gibbs PLLC, Seattle, Washington, represents the Applicant, Aqua Express LLC. Dmitri Iglitzin, Schwerin Campbell Barnard LLP, Seattle, Washington, represents Protestant Inlandboatmen’s Union of the Pacific (IBU). Ronald C. Templeton, General Counsel, Silverdale, Washington, represents Intervenor Kitsap Transit of Washington (Kitsap Transit). Donald T. Trotter, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff). Contact information provided at the conference for the parties’ representatives is attached as Appendix A to this order.

4 **PETITIONS FOR INTERVENTION.** Kitsap Transit of Washington petitioned orally at the prehearing conference for intervenor status, requesting conditional intervenor status if the IBU remains a party to the proceeding following consideration of the applicant's motion to strike the IBU's protest. No party objected to Kitsap Transit's petition for conditional intervention, which was granted.

5 **DISCOVERY.** It does not appear that discovery will be required in this proceeding. If the need for discovery becomes apparent later, any party may request by motion that the Commission allow for discovery pursuant to the Commission's discovery rules, WAC 480-07-400 – 425.

6 **MOTION TO STRIKE OR DISMISS PROTEST.** On May 18, 2004, Aqua Express filed with the Commission a motion to strike the protest filed by the IBU. On May 20, 2004, the IBU submitted to the Commission an electronic copy of its response to the applicant's motion. Commission Staff also filed a response to the motion with the Commission that same day. Oral argument on the motion was heard at the conference, the motion was taken under advisement, and a schedule set for its consideration. The following schedule will govern briefing:

<u>Deadline for</u>	<u>Date</u>
Supplemental Response to the motion, and Response to Commission Staff Response	May 28, 2004
Reply by the applicant	June 2, 2004

7 **PROCEDURAL SCHEDULE.** The parties agreed upon a procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B, and incorporated into the body of this Order by this reference.

- 8 **NOTICE OF PREHEARING CONFERENCE.** The Commission convenes a prehearing conference in this matter, to address any modifications to the procedural schedule following the Commission's decision on the motion to strike the IBU's protest. **The conference will be held on Tuesday, June 8, 2004, at 1:30 p.m. in Room 207 of the Commission's Offices in the Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington.** Persons who cannot attend in person may participate via the Commission's teleconference bridge line **360-664-3846**. Persons desiring to participate via the bridge line must make advance reservations, by calling Kippi Walker at 360-664-1139, no later than 5 p.m. on Monday, June 7, 2004.
- 9 **NOTICE OF HEARING.** The Commission convenes a hearing in this matter to consider the application of Aqua Express LLP for a commercial ferry certificate between Kingston and Seattle, Washington. **A hearing to address the applicant's financial and operational fitness will be held on Monday, June 21, 2004 beginning at 9:30 a.m. in the Main Hearing Room, Second Floor, of the Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington.** The hearing may continue on the afternoon of June 22, 2004, beginning at 1:30 p.m. **A hearing to address the need for the applicant's proposed service will be held on Thursday, July 1, 2004, in Kingston, Washington. Parties will be notified by separate notice of the location and start time of the hearing in Kingston.**
- 10 **NOTICE OF PUBLIC HEARING.** The Commission will convene a hearing to consider the comments of the public concerning the application of Aqua Express LLP for a commercial ferry certificate between Kingston and Seattle, Washington. **A hearing to consider public comment on the applicant's proposed service will be held on Thursday evening, July 1, 2004, in Kingston, Washington. Parties and the public will be notified by separate notice of the location and start time of the public hearing in Kingston.**

- 11 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file with the Commission **an original plus 9** copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 12 All filings must be mailed or delivered to the Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 13 An electronic copy of all filings must be provided by e-mail delivery to <records@wutc.wa.gov>. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).
- 14 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Pursuant to WAC 480-07-145(6), the presiding officer may grant parties a one-day extension of the paper-filing requirement, allowing electronic submission of documents with the Commission on the filing deadline. Parties may only submit documents electronically with the Commission in this proceeding with the permission of the presiding officer. If, at any time during this proceeding, parties are authorized to file documents with the Commission electronically under WAC 480-07-145(6), Parties must submit the document to records@wutc.wa.gov, and file **an original**,

plus 9 paper copies, of the document with the Commission by the following business day.

- 15 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 27th day of May, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET NO. TS-040650**

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Aqua Express LLP	DAVID W. WILEY Williams, Kastner & Gibbs PLLC Two Union Square 601 Union Street – Suite 4100 Seattle, WA 98101-2380	206-233-2895	206-628-6611	dwiley@wkg.com
Inland boatmen's Union of the Pacific	DMITRI IGLITZIN Schwerin Campbell Barnard LLP Mercer Street – Suite 400 Seattle, WA 98119	800-238-4231	206-378-4132	iglitzin@workerlaw.com
Kitsap Transit of Washington	RONALD C. TEMPLETON General Counsel 3212 NW Byron Street Silverdale, WA 98383	360-692-6415	360-692-1257	rctempleton@telebyte.com
Commission Staff	DONALD T. TROTTER Assistant Attorney General 1400 S. Evergreen Park Dr. SW P. O. Box 40128 Olympia, WA 98504-0128	360-664-1189	360-586-5522	dtrotter@wutc.wa.gov
Administrative Law Judge	ANN E. RENDAHL Washington Utilities and Transportation Comm'n 1300 S. Evergreen Park Dr. SW P. O. Box 47250 Olympia, WA 98504-7250	360-664-1144	360-664-2654	arendahl@wutc.wa.gov

APPENDIX B
PROCEDURAL SCHEDULE
DOCKET NO. TS-040650

EVENT	DATE	INTERVAL
Supplemental Response of IBU to Applicant's Motion and Response to Staff Response	Friday, May 28, 2004	—
Reply of Applicant, Aqua Express	Wednesday, June 2, 2004, by Noon	5 days
Order on Motion to Strike Protest	By Monday, June 7, 2004	5 days
Prehearing Conference	Tuesday, June 8, 2004, at 1:30 p.m.	1 day
Prehearing Briefs, Summary Statements of Witnesses and Proposed Exhibits	Wednesday, June 16, 2004	8 days
Hearing re: Financial and Operational Fitness, in Olympia	Monday, June 21, 2004, and from 1:30 – 5:00 p.m. on June 22, 2004, if necessary	5 days
Hearing re: Public Need, Shipper Support, in Kingston	Thursday, July 1, 2004	9 days
Public Comment Hearing, in Kingston	Thursday, July 1, 2004 (Time TBD at Prehearing Conf.)	—
Post-hearing Briefs – only if IBU remains as protestant.	Date TBD	—