

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of

DOCKET TS-180677

BACKCOUNTRY TRAVELS LLC

ORDER 05

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

GRANTING MOTION; AMENDING  
ORDER 04

**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 proposed 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.<sup>1</sup> The Company also proposed that its service make stops at private docks on demand as long as the docks meet minimum requirements for the boat's access.<sup>2</sup>
- 2 On April 22, 2019, the Commission convened a public comment hearing and an evidentiary hearing before Administrative Law Judge Andrew J. O'Connell.
- 3 On May 23, 2019, the Commission issued Initial Order 04, Granting Commercial Ferry Certificate Subject to Term and Conditions (Order 04). In Order 04, the Commission determined that a commercial ferry certificate should be issued 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 terms and

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<sup>1</sup> Courtney, Exh. CCC-1T at 7:22-24.

<sup>2</sup> Courtney, TR at 80:14 - 81:2.

conditions that the Commission found to be required by the public convenience and necessity. As relevant here, Order 04's terms and conditions included the following requirement:

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 Lake Chelan, must file in this docket a detailed report within 30 months of the date that Backcountry commences service.<sup>3</sup>

- 4 On June 16, 2021, Commission staff (Staff) filed a Petition to Amend Order 04 and the supporting declaration of Mike Young, requesting that the Commission amend the above condition to allow Staff until January 1, 2024, to file with the Commission its detailed report on the economic sustainability of ferry service on Lake Chelan for purposes of evaluating the impacts of two commercial ferry service operators (Petition).

### DISCUSSION AND DECISION

- 5 We grant Staff's Petition and amend Order 04 should as described below.

- 6 As a threshold matter, the Commission may only grant a petition to amend an order after the affected public service company and all other parties have been provided notice and an opportunity to respond either in writing or at a hearing, consistent with due process.<sup>4</sup> Here, we find that due process requirements related to Staff's Petition have been satisfied. The certificate of service filed with the Commission by Staff indicates that Backcountry was duly served with a copy and notified of the Petition on the same date it was filed with the Commission. Additionally, Staff attests that it has conferred with Backcountry, the affected company, and that Backcountry does not object to the Petition. Further, while the Commission could conduct a hearing on such a petition in the absence of a party's stated desire, the Commission concludes it is unnecessary in this instance because Staff included sufficient evidentiary detail and persuasive argument upon which the Commission may render a decision. Last, no party has filed a response to the

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<sup>3</sup> Order 04 at 16-17, ¶ 55.

<sup>4</sup> WAC 480-07-875.

Petition.<sup>5</sup> Under these circumstances, we determine that the Commission’s due process requirements have been met.

7 We find that amending Order 04 as requested by Staff is in the public interest and is consistent with the intent of Order 04. In Order 04, the Commission expressed its interest in the economic impacts, both positive and negative, that might be realized after Backcountry began operating a second commercial ferry service on Lake Chelan. We reasoned that a single 12-month period would not be satisfactorily informative because both ferry services would have operated concurrently for only a single season of high-patronage. Accordingly, the Commission determined that Staff’s investigation and report should be based upon at least 24 months of data, and thus required Staff’s report to be filed within 30 months of the date Backcountry commenced service. Since Order 04 was issued, circumstances have changed dramatically due to the ongoing COVID-19 public health crisis, but the Commission’s interest in the economics of the ferry service on Lake Chelan and the need for valuable and pertinent data upon which to base an evaluation remains.

8 Backcountry commenced operations in May 2019.<sup>6</sup> On February 29, 2020, Governor Inslee declared a state of emergency in Washington due to COVID-19.<sup>7</sup> On March 23, 2020, Governor Inslee issued a “Stay Home – Stay Healthy” order.<sup>8</sup> Also in March 2020, the Company notified the Commission that its boat was out of service and in need of repairs, following which the Company suspended operations due to the need for repairs and the impact of the COVID-19 pandemic.<sup>9</sup> In May 2021, the Company notified the Commission that its boat had been repaired and that it would resume operations in June 2021.<sup>10</sup>

9 Currently, Staff’s report must be filed by November 2021 (30 months after Backcountry’s commencement of service), according to Order 04. Due to the Company’s

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<sup>5</sup> See WAC 480-07-370(4)(b).

<sup>6</sup> Declaration of Young at 1, ¶ 5. A 30-month deadline for submission of Staff’s report would require a due date of November 2021.

<sup>7</sup> Proclamation by Governor Jay Inslee, No. 20-05, at 2 (Feb. 29, 2020).

<sup>8</sup> Proclamation by Governor Jay Inslee, No. 20-25 “Stay Home – Stay Healthy,” at 1 (Mar. 23, 2020).

<sup>9</sup> Declaration of Young at 1, ¶ 6.

<sup>10</sup> *Id.* at 1, ¶ 7.

unforeseen service disruption, that report would be based on only 16 months of data, at most, without accounting for the months of preparation we expect Staff would need to evaluate the data and compile its report. Requiring Staff to file a report based on 16 months of data would be inconsistent with the Commission's needs and the intent of Order 04. Additionally, it is unknown what impact the COVID-19 pandemic will have on the economics of the ferry service on Lake Chelan, but the character of the data collected by Staff since March 2020 will likely differ from the data theretofore collected. Therefore, including at least 24 months of data since Backcountry's resumption of service in May 2021, as Staff's Petition requests, is consistent with the Commission's needs. In light of these circumstances, we find that extending the due date for Staff's report to January 1, 2024, would allow Staff to collect a sufficient amount, and quality, of data for a meaningful analysis. Accordingly, we determine that Staff's Petition should be granted as requested and Order 04 should be amended to require Staff to file its detailed report with the Commission in this docket by January 1, 2024.

**ORDER**

THE COMMISSION ORDERS:

- 10 (1) Commission staff's petition to amend Order 04 in this docket is GRANTED.
- 11 (2) Order 04 is amended to require Commission staff to conduct an investigation into the economic sustainability of ferry service on Lake Chelan for purposes of evaluating the impacts of two commercial ferry service operators on Lake Chelan and file in this docket a detailed report by January 1, 2024.

DATED at Olympia, Washington, and effective July 14, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*  
ANDREW J. O'CONNELL  
Administrative Law Judge