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argosycruises.com

February 11, 2009

Washington Utilities and Transportation Commission
ATTN: Dave Danner, Executive Secretary
1300 S. Evergreen Dr. SW
PO Box 47250
Olympia, WA 98504

Re: WUTC Certificate BC-101

Dear Mr. Danner:

Based on the legislative history outlined in a letter dated 01/09/09 by Eugene K. Eckhardt, as well as requests from the WUTC staff:

Argosy LP is “voluntarily” requesting cancelation that portion of certificate BC-101 that relates to a scheduled service that is called “Locks Tour”. Argosy operates the service as a sightseeing tour that takes customers on a round trip by boat and bus. As such, we understand that we do not require a certificate of public convenience and necessity for commercial ferry service in order to provide this service.

Since this understanding is being provided by the WUTC staff, as well as the outlined legislative history, we are requesting the following:

1. If at some future date the WUTC’s staff or regulations change that require our “Locks Tour” to be regulated, we hope that already having the WUTC certificate for a number of years will help perfect our future place for this run.
2. BC-101 has a launch service as part of the certificate. We are NOT canceling the launch service.
3. This request is being given “voluntarily” giving up the “sightseeing tour” portion of BC-101 as instructed by the WUTC staff.

Sincerely,

Kevin Clark
CEO
Argosy LP



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

January 9, 2009

Kevin H. Moore
CFO
Argosy LP
1101 Alaskan Way
Pier 55 Suite #201
Seattle, WA 98101

Dear Mr. Moore

The staff of the Washington Utilities and Transportation Commission has concluded that the authority described in Argosy Cruises' certificate of public convenience (BC-101) for passenger service between Leschi Park and Elliott Bay (the basis for Argosy's "locks tour") may not be required by law. We would like to discuss with you whether the Argosy would agree to join staff in requesting an order from the Commission "deregulating" Argosy's locks tour.

If the Commission agrees that Argosy does not need or qualify for a certificate covering the locks tour, Argosy would be relieved of economic regulation of the locks tour service including: filing a tariff, demonstrating that the tariffed rates are cost-justified, filing annual reports for the service, and paying regulatory fees based on income from the service. On the other hand, the company would also sacrifice its claim of exclusivity to that route against would-be competitors. However, we believe that claim of exclusivity may not stand up to legal challenge in any event.

In 1995 the legislature amended RCW 81.84 to require certificates of public convenience and necessity for "excursion service over the waters of this state," with various exceptions. 1995 Laws of Wash., ch. 361. That legislation contained an expiration date of January 1, 2001. Because the legislature amended RCW 81.84 to require a certificate for excursions, and then repealed that requirement, it is apparent that excursions no longer are required to have a certificate of public convenience and necessity under RCW 81.84.010.

The definition of an excursion under the now expired statute was "the carriage or conveyance of persons for compensation over the waters of this state from a point of origin and returning to the point of origin with an intermediate stop or stops at which passengers leave the vessel and reboard before the vessel returns to its point of origin." Laws 1995, ch. 361, sec. 1. One could argue that Argosy's locks tour technically is not an excursion as defined by the expired statute because, after an intermediate stop, Argosy's passengers return to the point of origin is by bus, rather than by the water vessel. The net result, however, is the same: the passengers are delivered back to the tour's point of origin. The purpose of the service is not transportation



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between termini or points on a route, but rather a sightseeing tour that returns customers to the point of origin.

Our review of court decisions interpreting the long-standing statute, RCW 81.84.010 (requiring a certificate for commercial ferry service "between fixed termini or over a regular route"), support the conclusion that when passengers are conveyed by a combination of boat and bus, it is appropriate to focus on the passengers' origin and destination points instead of focusing only on that portion of the passengers' journey that is covered solely by boat. *See, State Ex Rel. Port Orchard v. Dept. of Public Service*, 186 Wash. 424 (1936). By this same reasoning, it is appropriate to view the Argosy tour as an excursion that carries passengers back to their point of origin, rather than "between fixed termini or over a regular route," RCW 81.84.010, for the purpose of "transportation," *see* RCW 80.01.040 ("The utilities and transportation commission shall: . . . (2) Regulate in the public interest, as provided by the public service laws, all persons engaging in the *transportation* of persons or property within this state for compensation.").

The Commission does not regulate the rates and services of sightseeing tours. The statutory basis for this exception to the commission's economic regulation is that such tours ordinarily are not "between fixed termini or over a regular route." The policy reason is that a sightseeing tour, to use a term from the era in which the commercial ferry statutes were enacted, is not an industry "affected with the public interest." *See* Charles F. Philips, Jr., *The Regulation of Public Utilities*, pp. 93-118 (1993). The rationale for rate-regulated monopoly service does not exist with regard to a sightseeing tour as it might for a true transportation service. *See Id.* at 117, ("The public utility status generally has been conferred on an industry that possesses those distinct economic characteristics which indicate that administrative, as opposed to market, regulation can improve the industry's economic performance. Such activities are closely associated with the processes of transportation and distribution.")

Again, we would like to discuss with you whether Argosy would be willing to join the Commission staff in seeking a Commission order declaring the locks tour portion of Argosy's commercial ferry certificate exempt from regulation.

If you have any questions, please contact Penny Ingram at (360) 664-1242. We look forward to hearing from you.

Sincerely,



Eugene K. Eckhardt
Assistant Director of Water and Transportation