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**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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<b>In the Matter of the Application of</b>	)	
	)	<b>APPLICATION NO. B-079276</b>
<b>Kitsap Ferry Company, LLC</b>	)	
	)	
<b>For a Temporary Certificate of Public</b>	)	<b>PROTEST OF PROTESTANT</b>
<b>Convenience and Necessity to Operate</b>	)	<b>INLANDBOATMEN'S UNION OF</b>
<b>Commercial Ferry Service</b>	)	<b>THE PACIFIC</b>
	)	
	)	

**1. Name and address of Protestant:**

Inlandboatmen's Union of the Pacific  
1711 W. Nickerson St. Ste. D.  
Seattle WA 98119  
Phone: 206-284-6001  
Fax: 206-284-5043

**2. Legislation Brought into Issue by this Pleading:**

RCW 80.01.040  
RCW 81.84.010, -.020 and -.070  
RCW Ch. 47.64  
WAC Ch. 480-51

**ORIGINAL**

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3 **3. The Protestant has participated in the following WUTC cases in the last two years:**

4 The Inlandboatmen's Union of the Pacific is participating in the matter of Aqua Express, Inc., application number B-079273, Docket Number TS-040650.

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6 **4. Protest and the Protestant's interest in this proceeding:**

7 The Inlandboatmen's Union of the Pacific ("IBU") represents deckhands, ticket-takers, ticket-sellers and terminal personnel working for the Washington State Ferries ("WSF"). The IBU also represents snack bar and concessionaire workers who are employed by private companies doing business on the Washington State Ferries. Thus, the IBU is a "Ferry employee organization" under RCW 47.46.011(6) and a labor organization under 29 U.S.C. § 152(5).

9 Generally, RCW 81.84.020(1) requires that the Washington Utilities and Transportation Commission ("Commission") may only certify commercial ferry operations based on public convenience and necessity. Specifically, RCW 81.84.020(4) requires that before the Commission issues a certificate to operate as a commercial ferry, "the commission shall consider and give substantial weight to the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service."

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13 In addition, RCW 81.84.070 allows the Commission to issue temporary certificates with or without a hearing. However, the Commission may only issue a temporary certificate "after it finds that the issuance of the temporary certificate is necessary due to an immediate and urgent need and is otherwise consistent with the public interest." *Id.*

14  
15 (a) Urgent and Immediate Need for Passenger-Only Ferry Service Between Bremerton and Seattle Not Shown.

16  
17 On April 29, 2004 Kitsap Ferry Co. ("Kitsap Ferry") applied for and on May 5, 2004 the Commission granted a temporary certificate to run a passenger-only ferry between Bremerton and Seattle. In its application, Kitsap Ferry argued there was an urgent and immediate need for its services and therefore, it should receive a temporary certificate. In support of this assertion, it made the following statement in Section 13 of its application:

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19  
20 Ferry service is a key element Washington State's transportation network and provides a vital link between Kitsap and King Counties.

21  
22 Passenger-only ferry (POF) service between Bremerton and Seattle was deemed necessary by the State of Washington and inaugurated by Washington State Ferries (WSF) in 1986. This service was extremely well received; and during

1 2001 the WSF POF carried 840,079 passengers between Bremerton and Seattle  
2 (an average of approximately 3,231 persons per day).

3 WSF passenger-only service was successfully operated until September of 2003  
4 when funding shortfalls cause the service to be discontinued. Immediately, in  
5 November of 2003, Kitsap Transit, as the local Public Transportation and Benefit  
6 Area (PTBA), tried to initiate its own passenger-only service but failed due to a  
7 lack of support for its public funding (tax) plan.

8 Today, there is an urgent and immediate need for this service. Kitsap Ferry  
9 Company, LLC was formed to serve this need in a safe, reliable and efficient  
10 manner. Kitsap Ferry Company, LLC has reached agreement with Kitsap Transit  
11 (as the local PTBA) to reintroduce this service between Bremerton and Seattle on  
12 a commercial basis.

13 Additionally, Kitsap Ferry offers letters from the Mayor of Bremerton, the Mayor of Port  
14 Orchard, the Bremerton Chamber of Commerce, KPS Health Plans, two members of the  
15 Bremerton Ferry Advisory Committee and State Representative Phil Rockefeller. It also offers a  
16 letter (as required by RCW 81.84.020(5)) from the Kitsap County Board of Commissioners. The  
17 arguments in support of the argument that the Kitsap Ferry proposal fulfills an "immediate and  
18 urgent need" can be summarized as follows:

- 19 1. Current WSF ferry service does not meet passenger demand in terms of the frequency of  
20 runs, the transit time required, or in providing connection opportunities.
- 21 2. Kitsap County failed in its attempt to fund a passenger-only ferry service that could meet  
22 this demand.

23 See Application, Appendix H.

Finally, Commission staff summarized the facts in support of applicant's statement that there is  
an urgent and immediate need for service between Bremerton and Seattle as:

- The Washington State Ferries (WSF) carried 840,079 passengers on its  
passenger-only ferry service between Bremerton and Seattle in 2001.
- Washington State Ferries discontinued passenger-only ferry service between  
Bremerton and Seattle in September of 2003.
- Kitsap Transit failed in its attempt to re-establish the service under the  
authority of the Public Transportation Benefit Area.
- The applicant has reached an agreement with Kitsap Transit to provide (sic)  
passenger-only ferry.

Letter from Bonnie Allen to Gene Eckhardt, May 5, 2004.

1 Based on this information, the WUTC granted a temporary certificate on May 6, 2004. In its  
2 Final Order Granting Temporary Certificate of Public Convenience and Necessity, the WUTC  
3 fails to adopt specific findings of fact to support a conclusion that there is an urgent and  
4 immediate need. Nor does the WUTC specifically pronounce that it has found an urgent and  
5 immediate need in its grant of the temporary certificate. To the contrary, the WUTC finds only  
6 that (1) Kitsap Ferry properly filed its request, (2) the applicant is fit and able to provide the  
7 service, and (3) in view of the circumstances, the issuance of a temporary certificate is consistent  
8 with the public interest. Docket No. TS-040794, Order No. 01.

9 Kitsap Ferry Co. has failed to make an adequate showing that its services are urgently and  
10 immediately needed and therefore, the WUTC should not have granted the temporary certificate.  
11 The IBU urges the WUTC to reverse its decision regarding its issuance of a temporary  
12 certificate. Such a decision would merely require Kitsap Ferry to proceed through the permanent  
13 certificate process.

14 (b) Granting A Temporary Certificate Is Otherwise Inconsistent With The Public Interest.

15 i. Effect of Kitsap Ferry Service on IBU-Represented WSF Employees

16 In Exhibit C of its application, Kitsap Ferry seeks to compete with WSF by operating on a route  
17 between Bremerton and Seattle during peak commuter hours. Specifically, Kitsap Ferry seeks to  
18 operate eight scheduled runs. Four of these will occur between the hours of 5:20 a.m. and 8:30  
19 a.m. The other four will occur between 2:50 p.m. and 6:00 p.m.

20 Additionally, Kitsap Ferry appears to shadow-price WSF's monthly tariffs. For instance, in  
21 Exhibit B, Kitsap Ferry proposes selling a 20-ticket book for \$100.00 through August 31, 2004  
22 and \$120.00 beginning September 1, 2004. Thus, a person buying a 20-ticket book before  
23 August 31, 2004 will be paying \$5.00 one-way or \$10.00 round-trip. After September 1, 2004, a  
24 person buying a 20-ticket book will pay \$6.00 one-way or \$12.00 round-trip. By comparison,  
25 fares on the Seattle/Bremerton ferries are \$5.70 or \$11.40 round-trip.

26 The IBU's concern is that by operating only during peak times and at slightly lower or roughly  
27 the same prices, Kitsap Ferry will skim the cream off of WSF's business. Should this occur, it  
28 will put the ferry system in even worse financial straits, potentially leading to the canceling of  
29 WSF runs and the loss of jobs. Among the jobs which would be lost, as a result of this  
30 occurrence, would be the jobs currently held by IBU-represented WSF employees.

31 ii. Effect of Kitsap Ferry Service on IBU-Represented WSF Concessionaire  
32 Employees

33 With fewer passengers on the state ferries, there will be less need for the products and services  
34 provided by WSF concessionaires. This, too, will lead to the elimination of existing jobs,  
35 including the jobs held by IBU-represented employees.

1 Indeed, an integral part of Kitsap Ferry's business plan is the revenue it will generate from  
2 "onboard sales" and "miscellaneous sales." For instance, it anticipates concession revenue of  
3 around \$230,000 in the first year. See Exhibit E. The IBU does not believe that Kitsap Ferry  
4 can obtain these results without effectively cutting into the concessions businesses being run by  
5 WSF concessionaires, thus causing the job loss just noted.

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8 iii. Effect of Kitsap Ferry Service on WSF

9 For the reasons just set forth, the Kitsap Ferry service appears very likely to have a very serious  
10 detrimental effect on WSF. It will cause this effect directly, by depriving WSF of both revenue  
11 from ticket sales and WSF's share of profits and/or gross sales made by WSF concessionaires.  
12 The service will also indirectly injure WSF by depriving WSF of vital public support and the  
13 ability to reintroduce passenger-only ferry service in the future.

14 (c) Effect of Kitsap Ferry on Air and Water Quality in this Region

15 The Kitsap Ferry service sought by applicant will involve the operation for extended periods of  
16 time of a large engine-driven vessel. That vessel will generate emissions of pollutants and other  
17 controlled substances to the air of this region. It also will leak and/or generate pollutants and  
18 other controlled substances into Puget Sound.

19 The precise amounts and identities of the substances which will be released have not been stated  
20 by applicant, nor is there any evidence in the application that the amounts, identifies, and impacts  
21 of these substances have been evaluated by applicant or by any third party. To the extent that  
22 these substances cause further deterioration in the air and water quality of this region, and do so  
23 needlessly, i.e., by providing a service which is essentially duplicative of the service which is  
now and which will continue to be provided by WSF, that deterioration is a substantial reason for  
this application to be denied.

(d) Effect of Kitsap Ferry on Beach Erosion in this Region

In 1999, property owners in Rich Passage and Port Orchard Bay filed a lawsuit against the state  
for environmental and property damage caused by the passenger-only ferries between Seattle and  
Bremerton. The trial court ordered the state to conduct a study into the plaintiffs' claims. In a  
study released in 2001, a study team commissioned by the State concluded that high-speed  
passenger-only ferries running between Seattle and Bremerton should be slowed to 12 knots in  
the "Point White to Middle Point region." The study also recommended ongoing monitoring.  
After a number of years of litigation, the State finally settled the case for \$4.5 million.

There are two problems with the application here. First, the proposed physical route in Kitsap  
Ferry's Application is not adequately documented in its application. Nor is it clear that Kitsap  
Ferry will be following the 12 knots standard in Rich Passage. Second, it is unclear whether  
Kitsap Ferry's insurance, while it may meet the state's minimum standards, is adequate (both in

1 terms of coverage and amount) to compensate individuals for environmental and property  
2 damage caused by the increased speed of passenger-only ferries.

3 (e) Financial Resources of Kitsap Ferry Are Not Demonstrated

4 In Section 12 of its application, Kitsap Ferry identifies only \$22,500 in cash available to the  
5 business. Another \$4,500 is identified in "accounts payable." Moreover, Kitsap Ferry  
6 anticipates operating of a net loss of \$111,014 in the first year. The Application itself strongly  
7 suggests that the Applicant does not have the financial resources to operate the proposed service.  
8 This is even more troubling if Kitsap Ferry undermines the financial health of the WSF and then  
9 goes out of business. Clearly, the citizens of Washington would be adversely affected by such a  
10 turn of events and therefore, Kitsap Ferry's application is not in the public interest.

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11 **5. The Protester intends to raise the following issues in this proceeding:**

- 12 1. Whether an urgent and immediate need exists to grant Kitsap Ferry a temporary  
13 certificate. RCW 81.84.070.
- 14 2. Whether Kitsap Ferry's temporary certificate is otherwise consistent with the public  
15 interest.

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16 **6. The Protestant requests a hearing regarding the Application and this Protest.**

17 The Inlandboatmen's Union has not decided at this time whether to submit written testimony  
18 or exhibits or to call witnesses, but reserves the right to do so. The Inlandboatmen's Union  
19 intends to cross-examine the witnesses called by other parties and to submit written  
20 argument.


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21 **7. Conclusion: Request to Commission**

22 The Inlandboatmen's Union requests that the Washington Utilities & Transportation  
23 Commission revoke the temporary certificate granted to Kitsap Ferry and grant a hearing  
regarding Application B-079276 so that the issues raised by said Application may be subject to a  
full and open examination and discussion before the Commission makes any determination  
regarding whether a temporary certificate of authority to engage in a commercial ferry operation  
between Bremerton and Seattle should be issued to the Applicant.

1 Respectfully submitted this twentieth day of May 2004.

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4 By:



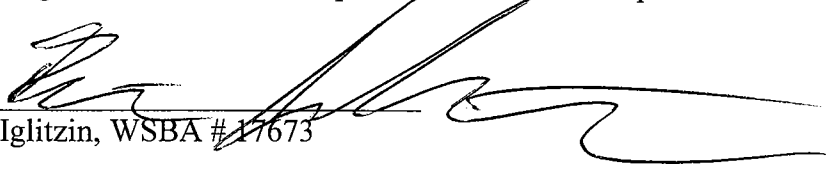
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Seattle, Washington 98119-3971  
(206) 285-2828

*Attorneys for the Inlandboatmen's Union*

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9  
10 STATE OF WASHINGTON )  
11 KING COUNTY ) SS.

12 I, Dmitri Iglitzin, affirm that this petition is true and complete to the best of my knowledge and belief.

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15 Dmitri Iglitzin, WSBA # 17673

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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2004 I caused to be served the original and twelve copies of the foregoing document to the following address via first class mail, postage prepaid to:

Carole Washburn, WUTC Executive Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, WA 98504-7250

I certify that I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via email to:

records@wutc.gov


And an electronic copy via email and first class mail, postage prepaid to:

Sally Johnston  
Assistant Attorney General  
1400 S. Evergreen Park Drive SW  
P.O. Box 40128  
Olympia, WA 98504-0128  
sjohnston@wutc.wa.gov

And a copy sent via email and first class mail, postage prepaid to:

Gregory A. Dronkert  
Kitsap Ferry Company, LLC  
197 Parfitt Way SW, Suite 100  
Bainbridge Island, WA 98110  
gdronkert@pacificmarinegroup.com

Dated this 20<sup>th</sup> day of May, 2004.

  
\_\_\_\_\_  
Judith Krebs