

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

In the Matter of Cancellation of	)	DOCKET TS-080087
Certificates of	)	
	)	
DUTCHMAN MARINE, LLC (BC-	)	NOTICE OF INTENT TO CANCEL
126), SEATTLE HARBOR TOURS	)	CERTIFICATES,
LIMITED PARTNERSHIP (BC-124),	)	
AND SEATTLE FERRY SERVICE,	)	NOTICE OF OPPORTUNITY FOR
LLC (BC-123)	)	HEARING
	)	
.....	)	

**I. INTRODUCTION**

1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 81.84.010, hereby provides notice of its intention to cancel certificate No. BC-126, granted to Dutchman Marine, LLC (Dutchman Marine), certificate No. BC-124 granted to Seattle Harbor Tours Limited Partnership (Seattle Harbor Tours), and certificate No. BC-123, granted to Seattle Ferry Service, LLC (Seattle Ferry Service).

2 The certificate holders may request a hearing to contest the factual allegations set out below. If the certificate holders request a hearing, but cannot materially rebut the allegations set out below, the Commission will cancel the authority. If the certificate holders do not request a hearing, the Commission will cancel the certificates by further order or orders.

3 **Procedural Background.** In Dockets TS-001774 and TS-002055 (consolidated) the Commission granted the applications of Dutchman Marine and Seattle Harbor Tours for certificates of public convenience and necessity to provide commercial ferry service on various routes across Lake Washington. The Commission then issued certificate BC-126, to Dutchman Marine, and certificate BC-124, to Seattle Harbor Tours, both on October 19, 2001.

4 The Initial Order in Dockets TS-001774 and TS-002055 (which the Commission adopted as its own) noted that neither Dutchman Marine nor Seattle Harbor Tours was ready to initiate service because neither had obtained, for example, docking

privileges at the various named terminus points, or land use and other approvals necessary to allow the conduct of the proposed businesses in the several jurisdictions the companies proposed to serve.<sup>1</sup> The order noted that “[b]oth applicants, and the other parties [which included the City of Seattle], recognize full development of the suggested routes is both uncertain and will require significant time and effort over several years due to both legal and practical hurdles.”<sup>2</sup> The Commission granted both applicants the authority to provide service on various named routes, including some routes that were overlapping. As to the overlapping routes, the Commission’s order provided that the authority to provide service on these routes would “be perfected by the carrier that first commences service and at that point will become unavailable to the other carrier.”<sup>3</sup> This condition was “intended to spur both applicants to work diligently and aggressively with the appropriate authorities in Seattle and the other jurisdictions [on matters such as docking rights and land use permits] toward the goal of implementing commercial ferry service over multiple routes within the shortest possible time.”<sup>4</sup>

- 5 In Docket TS-002054 the Commission granted the application of Seattle Ferry Service to provide commercial ferry service on Lake Washington between South Lake Union (in Seattle) and Port Quendall (in Renton). The Commission then revised and reissued certificate No. BC-123 to Seattle Ferry Service to include service between Port Quendall and South Lake Union on October 19, 2001. The new certificate also reflected Seattle Ferry Service’s preexisting authority to provide service on Lake Union between Fremont and South Lake Union, as granted in S.B.C. Order No. 563, Docket No. B-78811 and B-78822 (consolidated) (June 29, 2000).

## II. APPLICABLE LAW

- 6 RCW 81.84.010 provides that the holder of a certificate of public convenience and necessity for commercial ferry service must initiate service within five years of obtaining the certificate.
- 7 If a certificate holder has not initiated service to all or any portion of a route described in its certificate, RCW 81.84.010 and WAC 480-51-120(1) require that the certificate holder must report to the Commission every six months after the certificate is granted on the progress toward initiating service on the certificated route. The reports must

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<sup>1</sup> Initial Order at ¶¶ 8, 10 (Sept. 19, 2001).

<sup>2</sup> *Id.* at ¶ 66.

<sup>3</sup> Final Order at ¶ 4 (Oct. 19, 2001).

<sup>4</sup> Initial Order at ¶ 70.

include a statement of progress toward overcoming impediments to initiating service, including the progress of environmental impact, parking, local government land use, docking, and financial considerations, the purchase or lease of a vessel or vessels, hiring of employees, advertising, and the ability to handle proposed traffic.<sup>5</sup>

8 Certificates are subject to cancellation if a certificate holder has not initiated service on the route or routes granted in its certificate during the first five years after obtaining the certificate, and has not submitted timely progress reports to the commission.<sup>6</sup>

9 A certificate holder who has not initiated service on a route or routes granted in its certificate may petition to extend the certificate.<sup>7</sup> However, the certificate holder must petition no later than ninety days prior to the date upon which the five-year period following the issuance of its certificate expires.<sup>8</sup> In addition, the Commission may grant such a petition only if the six-month progress reports indicate there is significant progress toward initiating service.<sup>9</sup>

10 Certificates are also subject to cancellation if a certificate holder files an annual report that shows no revenue in the previous twelve-month period after service has been initiated.<sup>10</sup>

### III. FACTUAL ALLEGATIONS

11 The Commission takes official notice of the following facts, subject to the certificate holders' opportunity for rebuttal:

12 Dutchman Marine failed to file progress reports in April 2002, October 2002, October 2004, April 2005, October 2005, April 2006, and October 2006 as required by RCW 81.84.010 and WAC 480-51-120(1)(a).

13 Although Dutchman Marine did file progress reports on April 19, 2003; October 17, 2003; and April 17, 2004, those three reports consisted of the same thirteen lines of text. The reports did not indicate any actual progress toward overcoming impediments to initiation of service, such as environmental impact, parking, local

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<sup>5</sup> *Id.*

<sup>6</sup> RCW 81.84.060; WAC 480-51-120(3).

<sup>7</sup> RCW 81.84.010(2).

<sup>8</sup> WAC 480-51-120(4).

<sup>9</sup> RCW 81.84.010(2).

<sup>10</sup> RCW 81.84.060; WAC 480-51-150(1)(d).

government land use, docking, and financial considerations, the purchase or lease of a vessel or vessels, hiring of employees, advertising, or the ability to handle proposed traffic.

- 14 Seattle Harbor Tours failed to file any six month progress reports with regard to the authority granted to it under certificate BC-124 as required by RCW 81.84.010 and WAC 480-51-120(1)(a).
- 15 Seattle Ferry Service failed to file any six month progress reports with regard to the South Lake Union/Port Quendall authority granted to it under certificate BC-123 as required by RCW 81.84.010 and WAC 480-51-120(1)(a) despite the fact that its time schedule on file with the Commission states: "Seattle Ferry Service LLC has not initiated service over the routes named in this tariff (schedule). Seattle Ferry Service acknowledges that progress reports will be filed every six months from the date of the Commission final order (October 19, 2001) as required by WAC 480-51-120 until service is initiated over all authorized routes."<sup>11</sup>
- 16 The five-year period following the granting of Dutchman Marine's and Seattle Harbor Tours' certificates, and Seattle Ferry Service's South Lake Union/Port Quendall authority ended October 19, 2006.
- 17 The deadline by which Dutchman Marine, Seattle Harbor Tours, and Seattle Ferry Service (with respect to its South Lake Union/Port Quendall authority) would have been required to petition for an extension of their certificates (if they had filed progress reports and those reports indicated significant progress toward initiating service) was July 23, 2006.
- 18 Dutchman Marine, Seattle Harbor Tours, and Seattle Ferry Service each filed annual reports with the Commission in May of 2007. All three companies' reports indicated no operating revenue from regulated operations for 2006. Therefore, even if Dutchman Marine or Seattle Harbor Tours had initiated service under their certificates, or Seattle Ferry Service had initiated its South Lake Union/Port Quendall service before October 19, 2006, the certificates would still be subject to cancellation under WAC 480-51-120(4) because each of the certificate holders filed annual reports that show no revenue in a twelve-month period after service has been initiated.
- 19 Seattle Ferry Service's May 2006 annual report shows \$1400 in revenue from its Fremont/South Lake Union service for 2005. However, because Seattle Ferry

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<sup>11</sup> The time schedule was effective 11-05-01 and was never subsequently amended.

Service's annual report filed in May of 2007 shows no revenue for any regulated service for 2006, Seattle Ferry Service's South Lake Union/Fremont route is subject to cancellation under RCW 81.84.060 and WAC 480-51-150(1)(d). Seattle Ferry Service did not seek permission from the Commission for a discontinuance of its South Lake Union/Fremont service as required by WAC 480-51-130. In any case, the Commission will not grant permission for discontinuance of service for a period longer than twelve months. Because certificate B-123 comprises only the South Lake Union/Fremont service and the South Lake Union/Port Quendall service, the entire certificate is subject to cancellation.

- 20 **NOTICE OF OPPORTUNITY FOR HEARING.** Dutchman Marine, LLC, Seattle Harbor Tours Limited Partnership, and Seattle Ferry Service, LLC, may request a hearing to contest the factual allegations set out in this Notice. If any of the certificate holders wish to request a hearing to contest the cancellation of its certificate it must make a written request for a hearing with the Commission by **February 15, 2008**. An original and five (5) paper copies of the request must be directed to the attention of Carole Washburn, Executive Secretary of the Washington Utilities and Transportation Commission and must reference Docket TS-080087.
- 21 If the any of the certificate holders request a hearing, the Commission will schedule a brief adjudicative proceeding under RCW 34.05482 and WAC 480-07-610. If a certificate holder requests a hearing, but cannot materially rebut the allegations set out above, the Commission will cancel the certificates. If the certificate holders do not request a hearing, the certificates will be cancelled by further Commission order.

DATED at Olympia, Washington, and effective January 16, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN  
Executive Secretary