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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of)	
)	APPLICATION NO. B-79341
Pacific Boat Enterprises, LLC d/b/a Mosquito)	
Fleet)	DOCKET NO. TS-042184
)	
For an Extension of Certificate No. BC-125 of)	REQUEST FOR INTERVENTION
Public Convenience and Necessity to Operate)	AND PROTEST OF PROTESTANT
Commercial Ferry Service Between Seattle and)	INLANDBOATMEN'S UNION OF
Southworth.)	THE PACIFIC

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. Statutes and Rules Brought into Issue by this Pleading:

RCW 80.01.040
RCW 81.84.010 – 81.84.030
RCW Ch. 47.64
WAC Ch. 480-51

1

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

3 The Inlandboatmen's Union of the Pacific participated in the matter of Aqua Express, Inc., LLC,
4 application number B-079273, Docket Number TS-040650 and the matter of Kitsap Ferry
5 Company, LLC, application number B-079276, Docket Number TS-040794.

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-
8 sellers and terminal personnel working for the Washington State Ferries ("WSF"). Thus, the
9 IBU is a "Ferry employee organization" under RCW 47.46.011(6).

10 RCW 81.84.020(1) requires that the Washington Utilities and Transportation Commission
11 ("Commission") may only certify commercial ferry operations based on public convenience and
12 necessity. Specifically, RCW 81.84.020(4) requires that before the Commission issues a
13 certificate to operate as a commercial ferry, "the commission shall consider and give substantial
14 weight to the effect of its decisions on public agencies operating, or eligible to operate,
15 passenger-only ferry service." The Commission *In re Application of Aqua Express, LLC, Docket
16 No. TS-040650, Order No. 2 at ¶ 34* (June 2004) held that "the reference to 'public agencies' in
17 RCW 81.84.020(4) can reasonably be read to include the state ferry system."

18 In its application, Pacific Boat Enterprises, LLC (Pacific Boat) seeks to operate on a route
19 between Southworth and Seattle during peak commuter hours. Specifically, it seeks to operate
20 twelve scheduled runs. Six of these will occur between the hours of 6:00 a.m. and 9:00 a.m. The
21 other six will occur between 4:00 p.m. and 7:00 p.m.

22 **(a) Effect of Pacific Boat Service on WSF**

23 Pacific Boat's application projects serving 75,000 to 113,000 passengers per year and generating
\$94,500-\$1,134,000 in revenue. The only reasonable inference that can be drawn from this
information is that Pacific Boat will create and maintain its customer base by drawing customers
from the car ferries currently being operated by WSF and preventing WSF from expanding its
passenger-only service to Southworth.

The number of pedestrians without cars riding on the WSF auto ferries sailing between
Fauntleroy and Southworth increased by over 20% in 2004. Fauntleroy to Vashon foot traffic
was up over 50% as well. This shows that WSF has successfully been serving those seeking a
route to Southworth and by adding passenger-only service WSF could increase its ridership. In
fact, a WSF study shows that direct passenger-only service between Seattle and Southworth
would siphon off 45-50% of the fares on the Seattle to Vashon passenger-only ferry route. WSF

1 estimates that competition on this route will reduce revenues between \$1.3 million to \$1.5
2 million per year.

3 The IBU's concern is that Pacific Boat will skim the cream off WSF's business. Should this
4 occur, it will put the ferry system in even worse financial straits, potentially leading to the
5 canceling of existing WSF runs and preventing needed future growth.

6 WSF estimates that the demand for a Seattle/Southworth passenger-only ferry would support a
7 350-passenger vessel. It also estimates that most of the growth in the South Sound will be in this
8 area over the next ten years. Therefore, it would be economically inefficient and detrimental to
9 WSF for Pacific Boat to operate on this run with capacity for only 149 passengers.

10 Indeed, the Chair of the House Transportation Committee, Ed Murray (D-Seattle) recently
11 communicated his concern to the Commission about prematurely granting this application. Rep.
12 Murray specifically points to a WSF plan that includes passenger-only service between Seattle
13 and Southworth and the real likelihood that this route will be part of the transportation budget
14 enacted this year. The IBU urges the Commission to heed to the Chairman's request to delay any
15 hearings on this matter until after the Legislative Session has been completed.

16 **(b) Financial Viability of Pacific Boat Not Demonstrated**

17 RCW 81.84.020(2) requires that before the Commission issues a certificate to operate as a
18 commercial ferry,

19 [T]he commission shall determine that the applicant has the financial resources to
20 operate the proposed service for at least twelve months, based upon the
21 submission by the applicant of a pro forma financial statement of operations....

22 The Application itself strongly suggests that the Applicant does not have the financial viability to
23 operate the proposed service for at least twelve months, as required by RCW 81.84.020(2).

Pacific Boat anticipates operating of a net loss of \$145,454 in its first year of operation. It
projects income in its second year but this projection is based on the unrealistic assumption that
all of its costs except food, beverage and merchandise costs will stay the same. Thus, Pacific
Boat assumes no increase in the cost of payroll or benefits, no increase in fuel or oil prices, no
increase in maintenance costs, no increase in the cost of supplies, no increase in moorage fees
and no increase in taxes it must pay. Assuming a more realistic across-the-board average cost
increase of 15%, Pacific Boat is left without any profit for the first two years.

Nowhere in its application does Pacific Boat anticipate costs associated with implementation of
the Port of Seattle's security plan. Under its agreement with the Port of Seattle for the use of
Pier 66, Pacific Boat agrees that it must conform to marina security policies of Port of Seattle,

1 which may be increased at times of heightened security. Pacific Boat allocates no money except
2 moorage fees for its obligations to the Port.

3 Finally, since it provides no financial projections beyond year two it is possible that the
4 company's business plan does not project out that far. This raises serious concerns about how
5 committed Pacific Boat is to this venture.

6 Additionally, Pacific Boat has a troubling history of failing to make money from its ferry service
7 and has little experience with an undertaking of this magnitude. Originally, Certificate BC-125
8 was issued for ferry service between Everett and Friday Harbor with flag stops in Rosario and
9 Roche Harbor. In 2003, Pacific Boat sought and received approval from the Commission to
10 amend its schedule to add a sightseeing component to its trips. However, in its 2003 annual
11 report to the Commission, Pacific Boat attributed only \$34,806 in revenue to fares associated
12 with running the ferry service. The remaining \$662,000 was attributable to its more lucrative
13 sightseeing, excursion and associated merchandise business. Altogether, the company
14 experienced \$17,924 in losses in 2003 and only carried 696 passengers that year.¹

15 696 passengers is less than one percent of the number of passengers Pacific Boat projects it will
16 transport in a year in its application. The first year it anticipates 75,600 passengers and in the
17 second year over 113,000. Indeed, without this level of ridership, Pacific Boat has no hope of
18 meeting its revenue projection goals. These soft revenue projections further undermine its
19 application. All of this is even more troubling if Pacific Boat undermines the financial health of
20 the Washington State Ferries and then goes out of business. Clearly, the citizens of Washington
21 would be adversely affected by such a turn of events.

22 **(c) Past Experience is Problematic and Lacking**

23 As discussed above, Pacific Boat has no experience with an undertaking of this magnitude.
Where Pacific Boat has provided ferry service, it has been problematic.

Without filing the necessary paperwork under RCW 81.84.030, Pacific Boat now informs the
Commission that an ownership change occurred subsequent to its filing on July 30, 2003.
Currently, Mr. Michael Bennett owns 50.1 percent of Pacific Boat while Pacific Marine Group,
Inc. owns 49.9%. Pacific Marine is owned entirely by Gregory Dronkert, owner of the Kitsap
Ferry Co., which holds certificate BC-128.

Indeed, both of these gentlemen have promised to provide service in order to obtain a certificate
from the Commission only to later break that promise when it was convenient to do so. For
instance, in 2002, Pacific Boat discontinued service for the entire 2002 season between Everett
and Friday Harbor, with flag stops at Rosario and Roche Harbor because its vessels were
unavailable for lease that season. A company seeking to compete with WSF routes cannot take
its responsibilities so lightly.

¹ Nor does Pacific Boat operate year-round. Instead, it operates from late April through the mid October.

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2 Furthermore, Kitsap Ferry Co., operated by Pacific Marine, has only recently begun its
3 operations and already has cancelled scheduled runs. In Docket TS-041968, it received approval
4 to discontinue its run scheduled for 7:50 a.m. from Seattle to Bremerton. While on its face this is
5 only one run, it amounts to 12.5% of the service Kitsap Ferry sought to provide and therefore, is
6 actually quite significant.

7
8 **(d) Pacific Boat's Inability to Dock at the Harper Fishing Pier**

9
10 In its application, Pacific Boat represents that it will use the Harper Fishing Pier in South Kitsap
11 County. However, the Port of Bremerton closed this Pier in December 2004. An inspection in
12 late 2004 identified problems in the Pier's structural integrity caused by deterioration of older
13 wooden piles. Subsequent inspections confirmed that it was unsafe for the public to use the Pier.
14 In its announcement closing the dock, the Port of Bremerton said that it was concerned with the
15 ability of the piles to support the Pier's load, as it currently exists. That is, without passenger
16 traffic from Pacific Boat's ferry service. The Port has not determined its next steps yet but will a
17 comprehensive repair before allowing increased use of the facility, which would undoubtedly
18 include time-consuming environmental permitting.

19
20 **(e) Pacific Boat's Failure to Obtain a Resolution from Kitsap Transit in Support of its
21 Application**

22
23 Under RCW 81.84.020(5) the Commission shall not consider an application for passenger-only
24 ferry service serving any county in Puget Sound before March 1, 2005 unless the public
25 transportation benefit area authority or ferry district serving that county, by resolution, agrees to
26 the application. For example, the Commission applied this statutory requirement in *In re*
27 *Application of Aqua Express, LLC, Docket No. TS-040650, Final Order Granting Application at*
28 ¶¶ 43-45 (July 2004)

29
30 Here, Kitsap Transit has failed to enact the required resolution and Pacific Boat's failure to meet
31 this very fundamental statutory requirement bars the Commission from considering the
32 application until this requirement is met. The letter from Kitsap Transit's executive director sent
33 on January 18 simply does not meet the statutory requirement.

34
35 The failure of Kitsap Transit to enact a resolution supporting this application shows that it might
36 not be feasible. Tremendous opposition to using Harper Pier exists in the local community.
37 Even Kitsap Transit concedes that the project is unworkable without a massive expansion of
38 parking in the area. This would include purchasing property on each side of the Pier and a \$1.7
39 million expansion of a local park and ride lot. Even with these promised improvements, it
40 remains unclear whether enough public support can be garnered to allow Kitsap Transit to
41 approve the needed resolution.

1 **(f) Effect of Pacific Boat Service on Air and Water Quality in this Region**

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

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

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

- 14 1. Whether the service sought to be provided by Pacific Boat Enter., LLC. would adversely
15 affect the Washington State Ferries.
- 16 2. Whether Pacific Boat Enter., LLC is financially and/or otherwise able to operate the
17 service proposed.
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18 **6. The Protestant requests a hearing regarding the Application and this Protest.**


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

22 **7. Conclusion; Request to Commission**

23 The Inlandboatmen's Union requests that the Washington Utilities & Transportation
 Commission grant a hearing regarding Application B-79341 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 Pacific Boat's certificate of authority
 to engage in a commercial ferry operation should be expanded to include this route. The IBU

1 also requests that this hearing be held after the 2005 Legislative Session so the full impact on
2 WSF can be ascertained.

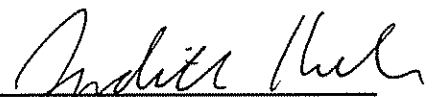
3 Respectfully submitted this twenty-sixth day of January 2005.

4 By: 
5 Judith Krebs, WSBA # 31825
6 SCHWERIN CAMPBELL BARNARD LLP
7 18 West Mercer Street, Suite #400
8 Seattle, Washington 98119-3971
9 (206) 285-2828

Attorneys for the Inlandboatmen's Union

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

13 I, Judith Krebs, affirm that this petition is true and complete to the best of my knowledge and belief.

14 
15 Judith Krebs, WSBA # 31825

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2 CERTIFICATE OF SERVICE

3 I hereby certify that on January 26, 2005 I caused to be served the original and twelve copies of
4 the foregoing document to the following address via first class mail, postage prepaid to:

5 Carole Washburn, WUTC Executive Secretary
6 Washington Utilities and Transportation Commission
7 1300 S. Evergreen Park Drive SW
8 P.O. Box 47250
9 Olympia, WA 98504-7250

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

12 records@wutc.wa.gov

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

14 Sally Johnston
15 Assistant Attorney General
16 1400 S. Evergreen Park Drive SW
17 P.O. Box 40128
18 Olympia, WA 98504-0128
19 sjohnston@wutc.wa.gov

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

21 Michael W. Bennett
22 Pacific Boat Enterprises, LLC d/b/a Mosquito Fleet
23 1724 West Marine View Dr. Ste #140
Everett, WA 98201

Dated this 26th day of January, 2005.

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Judith Krebs