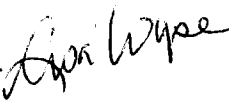


MEMORANDUM

December 15, 2015

TO: Chairman Danner
Commissioner Jones
Commissioner Rendahl
Steve King
Mark Vasconi
Greg Kopta (w/attachments)
Sally Brown (w/attachments)
Danny Kermode

FROM: Lisa Wyse, Records Center 

SUBJECT: James Courtney and Clifford Courtney v. David Danner, chairman and commissioner, Ann Rendahl, commissioner, and Philip Jones, commissioner, in their official capacities as officers and members of the Washington Utilities and Transportation Commission; and Steven King, in his official capacity as executive director of the Washington Utilities and Transportation Commission
(TS-151359)
Petition for Judicial Review
Chelan County Case No. TBD

A Petition for Judicial Review of Agency Action, has been filed in Chelan County Superior Court on December 14, 2015, by Michael E. Bindas, Institute for Justice, representing Petitioners listed above. The petition was received by the Commission on December 14, 2015.

Please note, no attachments were filed with this petition.

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E-FILED
DECEMBER 14, 2015
KIM MORRISON
CHELAN COUNTY CLERK

**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY**

15-2-01015-2

JAMES COURTNEY and CLIFFORD
COURTNEY,

No. _____

Petitioners,

PETITION FOR JUDICIAL REVIEW

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION; DAVID
DANNER, chairman and commissioner, ANN
RENDAHL, commissioner, and PHILIP JONES,
commissioner, in their official capacities as
officers and members of the Washington Utilities
and Transportation Commission; and STEVEN
KING, in his official capacity as executive
director of the Washington Utilities and
Transportation Commission,

Respondents.

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UTIL. AND TRANSP.
COMMISSION

I. INTRODUCTION

1. Pursuant to RCW 34.05.510-.598, James and Clifford Courtney (hereinafter “the Courtneys”) jointly file this Petition for Judicial Review of the Washington Utilities and Transportation Commission’s Declaratory Order No. 01, Docket No. TS-151359, in which the Commission determined that the certificate of public convenience and necessity requirement set forth at RCW 81.84.010(1) and WAC 480-51-025(2) applies to boat transportation on Lake

1 Chelan that is provided solely for customers of specific businesses or a group of businesses.
2 The constitutionality of applying the certificate requirement and corresponding application
3 process to such service is at issue in Courtney v. Danner, 2:11-cv-00401-TOR (E.D. Wash.),¹
4 which the federal courts have abstained from resolving until the Courtneys obtain a decision
5 from the Washington Utilities and Transportation Commission or Washington state courts as to
6 whether the certificate requirement, in fact, applies to such service.
7

8 II. ENGLAND RESERVATION

9 2. Pursuant to England v. Louisiana State Board of Medical Examiners, 375 U.S.
10 411 (1964), the Courtneys hereby:

- 11 (a) apprise this Court of the pendency of Courtney v. Danner, over which the
12 United States District Court for the Eastern District of Washington has
13 exercised Pullman abstention and retained jurisdiction, see Courtney v.
14 Goltz, 736 F.3d 1152, 1162-65 (9th Cir. 2013); Courtney v. Danner, 2:11-
15 cv-00401-LRS (E.D. Wash. Mar. 13, 2014) (order retaining jurisdiction
16 over plaintiffs' second claim and staying case); and
17
18 (b) state their intention, and reserve their right, to return to federal court to
19 litigate their federal Privileges or Immunities Clause claim and any other
20 federal issues in that case after resolution of state proceedings.
21

22 III. PARTIES, REPRESENTATION, AND AGENCY ACTION AT ISSUE

23 3. Petitioner James (Jim) Courtney is a resident of Stehekin, Washington; a brother
24 of Petitioner Clifford Courtney; and a plaintiff in Courtney v. Danner. Jim is a Stehekin-based
25

26
27 ¹ The case, originally captioned Courtney v. Goltz, is now captioned Courtney v. Danner by operation of the rule
28 providing for automatic substitution of government officials set forth at Fed. R. Civ. P. 25(d), Fed. R. App. P.
43(c)(2), and Supreme Ct. R. 35.3.

1 contractor. He is the former owner of Stehekin Air Services and former part-owner of Chelan
2 Airways, both float plane companies. For eighteen years, Jim has tried to provide boat
3 transportation service on Lake Chelan, ranging from a ferry open to the general public to an on-
4 call boat service. Because of the public convenience and necessity requirement, however, Jim
5 has been, and continues to be, prevented from using the lake's navigable waters to provide such
6 services. Jim's full name and mailing address are:

8 James Courtney
9 P.O. Box 296
10 Stehekin, WA 98852

11 4. Petitioner Clifford (Cliff) Courtney is a resident of Stehekin, Washington; a
12 brother of Petitioner Jim Courtney; and a plaintiff in Courtney v. Danner. Cliff and his wife
13 Kerry are the sole members of Stehekin Valley Ranch, LLC, a limited liability company that
14 owns Stehekin Valley Ranch, a rustic ranch with cabins and a lodge house. Like Jim, Cliff has
15 also tried to provide boat transportation services on Lake Chelan, including transportation of
16 customers or patrons of his own and other Stehekin-based businesses. Because of the public
17 convenience and necessity requirement, however, Cliff has been, and continues to be, prevented
18 from using the lake's navigable waters to provide such services. Cliff's full name and mailing
19 address are:

21 Clifford Courtney
22 Stehekin Valley Ranch, LLC
23 P.O. Box 36
24 Stehekin, WA 98852

25 5. The Courtneys are represented by:

26 Michael Bindas, WSBA 31590
27 INSTITUTE FOR JUSTICE
28 10500 N.E. 8th Street, Suite 1760
Bellevue, WA 98004
Telephone: (425) 646-9300

1 Facsimile: (425) 990-6500
2 Email: mbindas@ij.org

3 6. The agency whose action is at issue in this case is the Washington Utilities and
4 Transportation Commission (hereinafter "WUTC"). The WUTC is an agency of the State of
5 Washington, created and empowered under RCW 80.01.010 and .040, and headquartered in
6 Olympia, Washington. It is charged with, among other things, regulating commercial ferry
7 operations. The WUTC's mailing address is:

8
9 Washington Utilities and Transportation Commission
10 1300 S. Evergreen Park Drive S.W.
11 P.O. Box 47250
12 Olympia, WA 98504-7250

13 7. The agency action at issue is the WUTC's Declaratory Order No. 01, Docket No.
14 TS-151359, in which the WUTC determined that the certificate of public convenience and
15 necessity requirement set forth at RCW 81.84.010(1) and WAC 480-51-025(2) applies to boat
16 transportation service on Lake Chelan for customers or patrons of specific businesses or a group
17 of businesses.

18 **IV. JURISDICTION AND VENUE**

19 8. This Court has jurisdiction pursuant to RCW 34.05.510 & .570.

20 9. Venue is proper in this Court under RCW 34.05.514(1).

21 **V. BACKGROUND AND FACTS**

22 **A. Lake Chelan**

23 10. Lake Chelan is a narrow, approximately 55-mile-long lake in the North
24 Cascades. The city of Chelan lies at its southeast end; the unincorporated community of
25 Stehekin, at its northwest end.
26
27
28

1 11. Stehekin is a popular summer destination that draws Washington residents and
2 visitors from outside the state.

3 12. Stehekin and much of the northwest end of the lake are part of the Lake Chelan
4 National Recreation Area (LCNRA).

5 13. Stehekin and the LCNRA are accessible only by boat, plane, or foot. Lake
6 Chelan thus provides a critical means of access to Stehekin and the LCNRA.

7 14. The lake is a navigable water of the United States and has been designated as
8 such by the United States Army Corps of Engineers.

9
10 **B. Ferry Regulation On Lake Chelan**

11 15. Regulation of ferry service on Lake Chelan began in 1911, when Washington
12 enacted a law addressing ferry safety issues and requiring reasonable fares. The law did not
13 impose significant barriers to entry, and by the early 1920s, at least four ferries competed on the
14 lake.

15
16 16. In 1927, however, the legislature prohibited anyone from offering ferry service
17 without first obtaining a certificate declaring that the “public convenience and necessity” (PCN)
18 required it.

19 17. Today, a PCN certificate is required to “operate any vessel or ferry for the public
20 use for hire between fixed termini or over a regular route upon the waters within this state.”
21 RCW 81.84.010(1); see also WAC 480-51-025(2) (“No certificated commercial ferry shall
22 provide service subject to the regulation of this commission without first having obtained from
23 the commission a certificate declaring that public convenience and necessity require, or will
24 require, that service.”).

1 18. An applicant for a PCN certificate must prove, among other things, that its
2 proposed service is required by the “public convenience and necessity,” that it “has the financial
3 resources to operate the proposed service for at least twelve months,” and, if the territory is
4 already served by a ferry, that the existing certificate holder: “has not objected to the issuance
5 of the certificate as prayed for”; “has failed or refused to furnish reasonable and adequate
6 service”; or “has failed to provide the service described in its certificate.” RCW 81.84.010(1),
7 .020(1)-(2).

9 19. The Washington Utilities and Transportation Commission (“WUTC”) notifies
10 the would-be ferry provider’s competitors—that is, “all persons presently certificated to provide
11 service”—of the application. WAC 480-51-040(1). These existing providers, in turn, may file
12 a protest with the WUTC. *Id.*; see also *id.* 480-07-370(1)(f).

14 20. The WUTC then conducts an adjudicative proceeding, in which any protesting
15 ferry provider may participate as a party. See *id.* §§ 480-07-300(2)(c), -305(3)(g), -340(3).

16 21. The proceeding is akin to a civil lawsuit and involves discovery, motions, an
17 evidentiary hearing, post-hearing briefing, and oral argument. See generally *id.* §§ 480-07-375
18 to -498.

20 22. The applicant bears the burden of proof on every element for a certificate.

21 **C. Consequence Of The PCN Requirement**

22 23. In October 1927, the year the PCN requirement was imposed, the state issued the
23 first—and, to this day, only—certificate for ferry service on Lake Chelan. Since 1929, the
24 certificate has been held by the Lake Chelan Boat Company.

25 24. At least four other applications have been made, but in each instance the Lake
26 Chelan Boat Company protested and the applicant was denied a certificate.
27
28

1 **D. The Courtneys' Efforts To Provide An Alternative Service**

2 25. Jim and Cliff Courtney are fourth-generation residents of Stehekin. They, their
3 siblings, and children have several businesses in the community, including Stehekin Valley
4 Ranch, Stehekin Outfitters, Stehekin Log Cabins, and Stehekin Pastry Company.
5

6 26. Jim, Cliff, and their customers have experienced substantial problems with Lake
7 Chelan's lone ferry.

8 27. Since 1997, Jim and Cliff have initiated four significant efforts to provide an
9 alternative and more convenient service.

10 **i. Application For A Certificate (1997 1998)**

11 28. First, on July 3, 1997, Jim applied for a PCN certificate to provide a Stehekin-
12 based ferry service between points on Lake Chelan.
13

14 29. The incumbent ferry provider, Lake Chelan Boat Company, protested Jim's
15 application on July 28, 1997.

16 30. The WUTC held a two-day evidentiary hearing on the application on March 24
17 and 25, 1998.
18

19 31. Following the evidentiary hearing, as well as post-hearing briefing, an
20 administrative law judge ("ALJ") entered an initial order denying the application on June 22,
21 1998.

22 32. Jim filed a petition for administrative review of the ALJ's initial order on July
23 13, 1998.
24

25 33. On August 3, 1998, the WUTC issued an order affirming the ALJ's order and
26 denying Jim a PCN certificate.
27
28

1 34. Jim incurred approximately \$20,000 in expenses for the failed application
2 process.

3 **ii. Proposed On Call Boat Service (2006 2009)**

4 35. Second, in 2006, Jim pursued a Stehekin-based, on-call boat service that he
5 believed fell within a “charter service” exemption to the PCN requirement.
6

7 36. Because much of the northern end of Lake Chelan is in a national recreation area
8 and many of the docking sites on the lake are federally-owned, Jim applied to the United States
9 Forest Service in November 2006 for a special use permit to use the docking sites in
10 conjunction with his planned on-call service.
11

12 37. Before it would issue the permit, the Forest Service sought to confirm that Jim’s
13 proposed service was, in fact, exempt.

14 38. WUTC staff initially opined that a PCN certificate would not be needed for the
15 proposed on-call boat service but changed their mind after the Lake Chelan Boat Company
16 objected to the proposal.
17

18 39. Several months later, WUTC staff again reversed course, indicating that the
19 proposed service would be exempt from the PCN requirement.

20 40. The Forest Service’s district ranger wrote to the WUTC’s then-executive
21 director, David Danner, to get his opinion. He took the step after receiving the conflicting
22 guidance from WUTC staff and because “the current passenger ferry operation, [t]he Lake
23 Chelan Boat Company, is concerned over a second ferry service on the Lake.”
24

25 41. Mr. Danner, however, declined to provide an opinion and Jim was unable to
26 launch the service.

27 **iii. Proposed Service For Patrons Of Courtney Family And Other Businesses**
28 **(2008 2009)**

1
2 42. Third, in 2008, while Jim was trying to launch an on-call service, Cliff wrote to
3 then-director Danner, describing certain other services he might offer and asking whether they
4 would require a certificate.

5 43. Specifically, Cliff sent a letter to Mr. Danner on September 9, 2008, presenting
6 “several scenarios” and asking for “help . . . to understand what leeway we have without
7 applying for another certificate.”
8

9 44. The first scenario Cliff described was one in which “I have chartered . . . [a]
10 vessel for my guests”—for example, persons who “want[] to stay at the ranch [and] go river
11 rafting”—and offer a package with transportation on the chartered boat as one of the guests’
12 options.

13 45. The second scenario Cliff proposed was one in which “I buy the . . . boat and
14 carry my own clients . . . [who] are booked on to one of my packages or in to one of the
15 facilities I manage.”
16

17 46. Mr. Danner responded by letter on November 7, 2008, opining that the services
18 Cliff described would require a certificate and that “the Commission would provide you a
19 certificate to operate a commercial ferry service on Lake Chelan (assuming you provide
20 appropriate financial and other information) only if it determined that Lake Chelan Boat
21 Company was not providing reasonable or adequate service, or if Lake Chelan Boat Company
22 did not object to you operating a competing service. Whether Lake Chelan Boat Company’s
23 Service is not ‘reasonable and adequate’ would be a factual determination for the commission
24 based on an evidentiary record developed in accordance with the Administrative Procedures
25 Act.”
26
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1 47. Cliff sent a follow-up letter to Mr. Danner on November 19, 2008, clarifying and
2 emphasizing that his proposed boat transportation service “will be incidental to a former and
3 much larger engagement of services with our companies.” Explaining that “a vessel is a
4 substantial investment”; that “I would like to nail down how you will rule if a complaint is
5 issued against me when I start service”; and that “I will not be able to obtain dock permits until
6 agencies are satisfied I am complying with WUTC regulations or [am] exempt from them,”
7 Cliff requested “a timely response.”
8

9 48. Mr. Danner responded by letter on February 2, 2009. He reiterated his earlier
10 conclusion that the services Cliff described would require a certificate, stating that it “does not
11 matter whether the transportation you would provide is ‘incidental to’” other businesses because
12 the service would still be “for the public use for hire.” Mr. Danner explained that WUTC staff
13 interprets the term “for the public use for hire” to include “all boat transportation that is offered
14 to the public—even if use of the service is limited to the guests of a particular hotel or resort, or
15 even if the transportation is offered as part of a package of services that includes lodging, a tour,
16 or other services that may constitute the primary business of the entity providing the
17 transportation as an adjunct to its primary business.”
18

19 49. Mr. Danner indicated that the conclusions in his letter reflected “the Commission
20 staff’s opinion” and that a “formal determination by the commissioners could only follow either
21 a petition for a declaratory ruling (in which the existing certificate holder would have to agree to
22 participate) or a ‘classification proceeding’ . . . , which [WUTC] staff could ask the Commission
23 to initiate if you were to initiate service without first applying for a certificate.”
24

25 50. Around the time of this correspondence, Cliff also contacted WUTC staff by
26 telephone to discuss several additional scenarios, including an association or club that would
27
28

1 provide boat service for its own members. In each instance, Cliff was advised that the scenarios
2 he proposed would require a certificate.

3 51. Consequently, Cliff never undertook any of the services described in the
4 scenarios he proposed.

5
6 **iv. Pursuit Of A Legislative Relaxing Of The PCN Requirement (2009 2010)**

7 52. Finally, on February 14, 2009, Cliff sent a letter to Governor Gregoire and to Jim
8 and Cliff's state legislators—Senator Linda Evans Parlette, Representative Mike Armstrong,
9 and Representative Cary Condotta—urging them to eliminate or relax the PCN requirement.

10 53. That spring, the legislature passed, and Governor Gregoire signed into law,
11 Engrossed Senate Bill 5894, which, among other things, directed the WUTC to conduct a study
12 and report on the appropriateness of the regulations governing commercial ferry service on Lake
13 Chelan.
14

15 54. The WUTC published its report, Appropriateness of Rate and Service Regulation
16 of Commercial Ferries Operating on Lake Chelan, in January 2010 and recommended that there
17 be no “changes to the state laws dealing with commercial ferry regulation as it pertains to Lake
18 Chelan.”
19

20 55. The report noted that the WUTC could conceivably “allow some limited
21 competition” on Lake Chelan under the existing regulatory framework “by declining to require
22 a certificate for certain types of boat transportation services that are arguably private rather than
23 for public use”—for example, “a hotel or resort providing transportation services for the
24 exclusive use of its guests, either with its own vehicles or by arranging a ‘private charter.’”
25
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1 56. But the report added that any such interpretation would have to be shown to not
2 “significantly threaten the regulated carrier’s ridership, revenue, and ability to provide reliable
3 and affordable service.”

4 57. The report concluded that it is “unlikely” that such an interpretation “could be
5 relied upon to authorize competing services on Lake Chelan.”

6
7 **E. The Courtneys’ Challenge To The Certificate Requirement And The District
8 Court’s Dismissal**

9 58. On October 19, 2011, Jim and Cliff filed a federal civil rights lawsuit in the
10 United States District Court for the Eastern District of Washington seeking declaratory and
11 injunctive relief against the commissioners and executive director of the WUTC, in their official
12 capacities.

13 59. The Courtneys’ complaint, brought pursuant to 42 U.S.C. § 1983 and 28 U.S.C.
14 §§ 2201-2202, asserted two claims concerning Washington’s PCN requirement: that (1) as
15 applied to the provision of boat transportation service on Lake Chelan that is open to the general
16 public and (2) as applied to the provision of boat transportation service on Lake Chelan for
17 customers or patrons of specific businesses or a group of businesses, the PCN requirement and
18 corresponding application process abridge the “right to use the navigable waters of the United
19 States” that the Supreme Court recognized in the Slaughter House Cases, 83 U.S. (16 Wall.) 36,
20 79 (1873).

21
22 60. The WUTC moved to dismiss the complaint, and the district court granted the
23 motion on April 17, 2012. See *Courtney*, 868 F. Supp. 2d 1143.

24 61. Regarding the Courtneys’ first claim (concerning boat transportation service on
25 Lake Chelan that is open to the general public), the district court held that if the right to use the
26 navigable waters of the United States is protected by the Privileges or Immunities Clause, it
27
28

1 does not encompass the right “to operate a commercial ferry service open to the public on Lake
2 Chelan.” *Courtney v. Goltz*, 868 F. Supp. 2d 1143, 1151 (E.D. Wash. 2012), *aff’d in part* and
3 *vacated in part*, 736 F.3d 1152 (9th Cir. 2013).

4
5 62. The district court likewise dismissed the Courtneys’ second claim (concerning
6 boat transportation service on Lake Chelan for customers or patrons of specific businesses or a
7 group of businesses), concluding that the Courtneys lacked standing to bring the claim, that the
8 claim was unripe, and that, in any event, abstention over the claim under *Railroad Commission*
9 *of Texas v. Pullman Co.*, 312 U.S. 496 (1941), was warranted. *Courtney*, 868 F. Supp. 2d at
10 1151-53.

11 **F. The Ninth Circuit’s Decision**

12
13 63. The Courtneys appealed the district court’s order to the Ninth Circuit, which
14 issued its opinion on December 2, 2013.

15
16 64. The Ninth Circuit affirmed the dismissal of the Courtneys’ first claim,
17 concluding that “the Privileges or Immunities Clause of the Fourteenth Amendment does not
18 protect a right to operate a public ferry on Lake Chelan.” *Courtney v. Goltz*, 736 F.3d 1152,
19 1162 (9th Cir. 2013).

20
21 65. Regarding the Courtneys’ second claim, the Ninth Circuit held that: (1) the
22 Courtneys have standing to litigate the claim; (2) *Pullman* abstention was nevertheless
23 warranted; but (3) the district court erred in dismissing, rather than retaining jurisdiction over,
24 the claim. *Id.* at 1162-65 & n.6.

25
26 66. The Ninth Circuit accordingly remanded the case to the district court with
instructions to retain jurisdiction over the Courtneys’ second claim. See *id.* at 1165.

27 **G. Petition For Certiorari**

1 67. On March 3, 2014, the Courtneys petitioned the United States Supreme Court for
2 certiorari with respect to the Ninth Circuit’s disposition of their first claim only.

3 68. On March 26, 2014, the Supreme Court requested a response to the petition from
4 the WUTC.

5 69. On June 2, 2014, the Supreme Court denied certiorari. See *Courtney v. Danner*,
6 134 S. Ct. 2697 (June 2, 2014).

7
8 **H. Post Petition Proceedings**

9 70. On March 13, 2014, while the Courtneys’ petition for certiorari was pending, the
10 district court issued an order “retain[ing] jurisdiction over [the Courtneys’] second
11 constitutional claim pending an authoritative construction of the phrase ‘for the public use for
12 hire’ by the WUTC or the Washington state courts.” *Courtney v. Danner*, 2:11-cv-00401-LRS
13 (E.D. Wash. Mar. 13, 2014) (order retaining jurisdiction over plaintiffs’ second claim and
14 staying case).

15
16 71. On September 30, 2014, the Courtneys petitioned the WUTC for a declaratory
17 order as to whether the service at issue in their second claim requires a PCN certificate. The
18 petition was assigned Docket No. TS-143612.

19
20 72. On November 20, 2014, the WUTC issued a “Notice That The Commission Will
21 Not Enter A Declaratory Order” (hereinafter “Notice”). According to the Notice, “the Petition
22 lacks sufficient information to enable the Commission to determine whether the Courtneys need
23 a certificate to provide the service they have in mind.”

24
25 73. The Notice, however, “allow[ed] the Courtneys to clarify their request” by
26 submitting another petition for declaratory order. The Notice identified the “operational details”
27 that a new petition should contain. They included information concerning: the ownership of
28

1 the boat service; the business or group of businesses that it would serve; the customers of the
2 businesses it would serve; the reservation system it would use; the routes it would follow and
3 points it would serve; the schedule it would follow; the rates it would charge; and its terms of
4 service and customer policies.

5
6 **I. The Second Petition for a Declaratory Order**

7 74. On June 30, 2015, the Courtneys filed a second petition for declaratory order with
8 the WUTC.

9 75. Because the WUTC had previously explained that it would not issue a
10 declaratory order without details of the boat transportation service proposed to be offered, the
11 Courtneys set forth several specific circumstances in which they would operate and requested a
12 declaration as to the applicability of the PCN requirement in each circumstance.

13
14 **i. Proposed Service No. 1 (Lodging Customers Of Stehekin Valley Ranch)**

15 76. Under the first proposal in the petition for a declaratory order, the boat
16 transportation service would be owned by Cliff Courtney.

17 77. The business served by this service would be Stehekin Valley Ranch, a rustic
18 ranch with cabins and a lodge house owned by Cliff and his wife, Kerry.

19 78. Use of this service would be limited to lodging customers with reservations for
20 Stehekin Valley Ranch. Specifically, it would provide transportation to and from Stehekin
21 solely for persons with a reservation for lodging at Stehekin Valley Ranch.

22 79. Reservations for transportation would be made either: online through
23 webervations.com, which is the online service that Stehekin Valley Ranch currently uses; or by
24 telephone or email through Stehekin Reservations, which is the service Stehekin Valley Ranch
25 currently uses for non-online reservations. By either method, after reserving lodging at
26
27
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1 Stehekin Valley Ranch, customers would have the option of reserving boat transportation to
2 and/or from Stehekin.

3 80. Because the boat transportation service would be owned by Cliff Courtney, it
4 would have access to reservation records for lodging customers of Stehekin Valley Ranch, as
5 well as reservation records for those customers who opted for transportation to and/or from
6 Stehekin. At the time of boarding, customers would be required to provide a copy of their
7 reservation or proof of identification, which boat staff would confirm against existing
8 reservation records.
9

10 81. This service would run solely between the federally-owned dock at Stehekin and
11 either the federally-owned dock at Fields Point Landing (a distance of approximately 34 miles)
12 or the Manson Bay Marina (a distance of approximately 42 miles). It would not serve
13 intermediate points. Docking permits would be obtained from the United States Forest Service,
14 National Park Service, Manson Parks and Recreation District, and/or other agencies, as
15 required.
16

17 82. The service would run from Memorial Day weekend through early October on
18 days when lodging customers are scheduled to arrive at or depart from Stehekin Valley Ranch.
19 On such days, the boat would: depart Stehekin at 10:00 a.m.; arrive at Fields Point or Manson
20 Bay at approximately 12:00 p.m.; depart Fields Point or Manson Bay at 12:30 p.m.; and arrive
21 at Stehekin at approximately 2:30 p.m.
22

23 83. The fare would be approximately \$37.00 one-way or \$74.00 round-trip, per
24 person over 12. Children between the ages of 2 and 12 would be charged half of the full fare.
25 Children below the age of 2 would travel for free.
26
27
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1 84. The proposed vessel was a climate-controlled boat, 50 to 64 feet in length, with
2 twin diesel engines and capable of a 23-knot cruise. It would be insured, inspected, and
3 certified, as required by law.

4 85. Finally, the Courtneys attached proposed terms of service and policies for this
5 service to their petition for a declaratory order.
6

7 **ii. Proposed Service No. 2 (Lodging Customers And Customers Of Other**
8 **Activities Offered At Stehekin Valley Ranch)**

9 86. Under the second proposal in the petition for a declaratory order, the boat
10 transportation service would be owned by Cliff Courtney.

11 87. The business served by this service would be Stehekin Valley Ranch, discussed
12 in paragraph 77, above.

13 88. Use of this service would be limited to: (1) lodging customers with reservations
14 for Stehekin Valley Ranch (the same customers referenced in Proposed Service No. 1, above);
15 and (2) customers with reservations for other activities that the ranch offers. For example, the
16 ranch offers kayaking tours operated by the ranch itself, as well as horseback riding excursions
17 originating at the ranch and operated by Stehekin Outfitters, a company owned by Colter
18 Courtney (Cliff and Kerry's son) and Nancy Davis. On occasion, persons who are not
19 registered lodging customers of the ranch register for such activities. This boat transportation
20 service would provide transportation to and from Stehekin solely for persons with a reservation
21 for: (1) lodging at Stehekin Valley Ranch; or (2) one or more of the other activities offered at
22 the ranch.
23
24

25 89. Reservations for transportation would be made either: online through
26 webervations.com, which is the online service that Stehekin Valley Ranch currently uses for
27 lodging reservations; or by telephone or email through Stehekin Reservations, which is the
28

1 service Stehekin Valley Ranch currently uses for non-online reservations for lodging and other
2 activities. By either method, after reserving lodging or an activity at Stehekin Valley Ranch,
3 customers would have the option of reserving boat transportation to and/or from Stehekin.
4

5 90. Because the boat transportation service would be owned by Cliff Courtney, it
6 would have access to reservation records for customers of lodging or other activities at Stehekin
7 Valley Ranch, as well as reservation records for those customers who opted for transportation to
8 and/or from Stehekin. At the time of boarding, customers would be required to provide a copy
9 of their reservation or proof of identification, which boat staff would confirm against existing
10 reservation records.
11

12 91. This service would run solely between the federally-owned dock at Stehekin and
13 either the federally-owned dock at Fields Point Landing (a distance of approximately 34 miles)
14 or the Manson Bay Marina (a distance of approximately 42 miles). It would not serve
15 intermediate points. Docking permits would be obtained from the United States Forest Service,
16 National Park Service, Manson Parks and Recreation District, and/or other agencies, as
17 required.
18

19 92. The service would run from Memorial Day weekend through early October on
20 days when lodging or activity customers are scheduled to arrive at or depart from Stehekin
21 Valley Ranch. On such days, the boat would: depart Stehekin at 10:00 a.m.; arrive at Fields
22 Point or Manson Bay at approximately 12:00 p.m.; depart Fields Point or Manson Bay at 12:30
23 p.m.; and arrive at Stehekin at approximately 2:30 p.m.
24

25 93. The fare would be approximately \$37.00 one-way or \$74.00 round-trip, per
26 person over 12. Children between the ages of 2 and 12 would be charged half of the full fare.
27 Children below the age of 2 would travel for free.
28

1 94. The proposed vessel was a climate-controlled boat, 50 to 64 feet in length, with
2 twin diesel engines and capable of a 23-knot cruise. It would be insured, inspected, and
3 certified, as required by law.

4 95. Finally, the Courtneys attached proposed terms of service and policies for this
5 service to their petition for a declaratory order.
6

7 **iii. Proposed Service No. 3 (Customers Of Courtney Family Owned Businesses)**

8 96. Under the third proposal in the petition for a declaratory order, the boat
9 transportation service would be owned by Cliff and Jim Courtney.

10 97. The businesses served by this service would be businesses owned by Courtney
11 family members (hereafter, "Courtney-family businesses"), including: Stehekin Valley Ranch,
12 discussed in paragraph 77, above; Stehekin Outfitters, discussed in paragraph 88, above;
13 Stehekin Log Cabins, a lodging business owned by Cragg Courtney (brother of Cliff and Jim)
14 and his wife, Roberta Courtney; and Stehekin Pastry Company, a bakery and restaurant also
15 owned by Cragg and Roberta.
16

17 98. Use of this service would be limited to customers with reservations for activities
18 or services at Courtney-family businesses.
19

20 99. Reservations for transportation would be made either: online through
21 webervations.com, which is the online service that Stehekin Valley Ranch currently uses for
22 lodging reservations; or by telephone or email through Stehekin Reservations, which is the
23 service that Stehekin Valley Ranch, Stehekin Outfitters, Stehekin Log Cabins, and Stehekin
24 Pastry Company currently use for non-online reservations. By either method, after reserving a
25 service or activity at a Courtney-family business (e.g., lodging at Stehekin Valley Ranch or
26 Stehekin Log Cabins; a camping, hiking, or horseback riding trip with Stehekin Outfitters;
27
28

1 breakfast or lunch at Stehekin Pastry Company), customers would have the option of reserving
2 boat transportation to and/or from Stehekin.

3 100. Because the boat transportation service would use the same reservation services
4 that Courtney-family businesses already use for their lodging and other activities, the boat
5 transportation service, with permission of the Courtney-family businesses, would have access to
6 reservation records for customers of the Courtney-family businesses, as well as reservation
7 records for those customers who opted for transportation to and/or from Stehekin. At the time
8 of boarding, customers would be required to provide a copy of their reservation or proof of
9 identification, which boat staff would confirm against existing reservation records.
10

11 101. This service would run between the federally-owned dock at Stehekin and either
12 the federally-owned dock at Fields Point Landing (a distance of approximately 34 miles) or the
13 Manson Bay Marina (a distance of approximately 42 miles). It would also serve other points on
14 Lake Chelan as needed by Courtney-family businesses. For example, it might transport
15 customers of Stehekin Outfitters to other points on the lake in connection with the hiking or
16 camping trips for which the customers have reservations. Stops at such points might be made:
17 (1) as intermediate stops in route between Stehekin and either Fields Point or Manson Bay; or
18 (2) as standalone trips. Docking permits would be obtained from the United States Forest
19 Service, National Park Service, Manson Parks and Recreation District, and/or other agencies, as
20 required.
21

22 102. The service would run from Memorial Day weekend through early October on
23 days when Courtney-family business customers are scheduled to arrive at or depart from
24 Stehekin. On such days, the boat would: depart Stehekin at 10:00 a.m.; arrive at Fields Point or
25 Manson Bay at approximately 12:00 p.m.; depart Fields Point or Manson Bay at 12:30 p.m.; and
26
27
28

1 arrive at Stehekin at approximately 2:30 p.m. Intermediate stops discussed in paragraph 101
2 might be made in route, and standalone trips discussed in paragraph 101 would be made as
3 needed by Courtney-family businesses.

4 103. The fare would be approximately \$37.00 one-way or \$74.00 round-trip between
5 Stehekin and either Fields Point or Manson Bay, per person over 12; children between the ages
6 of 2 and 12 would be charged half of the full fare, and children below the age of 2 would travel
7 for free. Fares for intermediate stops or standalone trips discussed in paragraph 101 would be
8 less and would be calculated based on the distance traveled.

9 104. The proposed vessel was a climate-controlled boat, 50 to 64 feet in length, with
10 twin diesel engines and capable of a 23-knot cruise. It would be insured, inspected, and
11 certified, as required by law.

12 105. Finally, the Courtneys attached proposed terms of service and policies for this
13 service to their petition for a declaratory order.

14 **iv. Proposed Service No. 4 (Customers Of Stehekin Based Businesses)**

15 106. Under the fourth proposal in the petition for a declaratory order, the boat
16 transportation service would be owned by Cliff and Jim Courtney.

17 107. The businesses served by this service would be Stehekin-based businesses
18 (including, but not limited to, Courtney-family businesses) that desire to use the service to
19 provide transportation for their registered customers.

20 108. Use of this service would be limited to customers with reservations for activities
21 or services at the Stehekin-based businesses discussed in paragraph 107, above.

22 109. Participating Stehekin-based businesses would be required to use
23 webervations.com in taking on-line reservations and Stehekin Reservations in taking
24

1 reservations by phone or email. By either method, after making a reservation at a participating
2 Stehekin-based business, customers would have the option of reserving boat transportation to
3 and/or from Stehekin.

4 110. Because the boat transportation service would also use webervations.com and
5 Stehekin Reservations, the boat transportation service, with permission of the participating
6 Stehekin-based businesses, would have access to reservation records for customers of the
7 Stehekin-based businesses, as well as reservation records for those customers who opted for
8 transportation to and/or from Stehekin. At the time of boarding, customers would be required to
9 provide a copy of their reservation or proof of identification, which boat staff would confirm
10 against existing reservation records.

11
12 111. This service would run between the federally-owned dock at Stehekin and either
13 the federally-owned dock at Fields Point Landing (a distance of approximately 34 miles) or the
14 Manson Bay Marina (a distance of approximately 42 miles). It would also serve other points on
15 Lake Chelan as needed by the participating Stehekin-based businesses to provide transportation
16 in connection with the activities or services for which their customers have made reservations.
17 For example, it might transport customers of Stehekin Outfitters to other points on the lake in
18 connection with the hiking or camping trips for which the customers have reservations. Stops at
19 such points might be made: (1) as intermediate stops in route between Stehekin and either Fields
20 Point or Manson Bay; or (2) as standalone trips. Docking permits would be obtained from the
21 United States Forest Service, National Park Service, Manson Parks and Recreation District,
22 and/or other agencies, as required.

23
24 112. The service would run from Memorial Day weekend through early October on
25 days when participating Stehekin-based business customers are scheduled to arrive at or depart
26
27
28

1 from Stehekin. On such days, the boat would: depart Stehekin at 10:00 a.m.; arrive at Fields
2 Point or Manson Bay at approximately 12:00 p.m.; depart Fields Point or Manson Bay at 12:30
3 p.m.; and arrive at Stehekin at approximately 2:30 p.m. Intermediate stops discussed in
4 paragraph 111 might be made in route, and standalone trips discussed in paragraph 111 would
5 be made as needed by the Stehekin-based businesses.
6

7 113. The fare would be approximately \$37.00 one-way or \$74.00 round-trip between
8 Stehekin and either Fields Point or Manson Bay, per person over 12; children between the ages
9 of 2 and 12 would be charged half of the full fare, and children below the age of 2 would travel
10 for free. Fares for intermediate stops or standalone trips discussed in paragraph 111 would be
11 less and would be calculated based on the distance traveled.
12

13 114. The proposed vessel was a climate-controlled boat, 50 to 64 feet in length, with
14 twin diesel engines and capable of a 23-knot cruise. It would be insured, inspected, and
15 certified, as required by law.
16

17 115. Finally, the Courtneys attached proposed terms of service and policies for this
18 service to their petition for a declaratory order.
19

20 **v. Proposed Service No. 5 (Charter By Stehekin Based Travel Company)**

21 116. Under the fifth proposal in the petition for a declaratory order, the boat
22 transportation service would be owned by Cliff and Jim Courtney.
23

24 117. The business served by this service would be a Stehekin-based travel company
25 that organizes travel packages for Stehekin visitors; the travel packages would include lodging,
26 meals, and/or other activities or services with Stehekin-based businesses. The travel company
27 would not be owned by Cliff, Jim, or other Courtney family members.
28

1 118. Use of this service would be limited to customers who have purchased a travel
2 package from the Stehekin-based travel company discussed in paragraph 117, above.

3 119. Customers of the Stehekin-based travel company would purchase packages
4 directly from the company. The company, in turn, would charter transportation for those
5 customers by private charter agreement with the boat transportation service.
6

7 120. The travel company would provide the boat transportation service a manifest of
8 the customers for whom it has chartered transportation. At the time of boarding, customers
9 would be required to provide proof of identification, which boat staff would confirm against the
10 manifest.
11

12 121. This service would run between the federally-owned dock at Stehekin and either
13 the federally-owned dock at Fields Point Landing (a distance of approximately 34 miles) or the
14 Manson Bay Marina (a distance of approximately 42 miles). It would also serve other points on
15 Lake Chelan as needed by the travel company to provide transportation in connection with the
16 packages its customers have purchased. Docking permits would be obtained from the United
17 States Forest Service, National Park Service, Manson Parks and Recreation District, and/or
18 other agencies, as required.
19

20 122. The service would run from Memorial Day weekend through early October on
21 days and at times when the travel company's customers are scheduled to arrive at or depart from
22 Stehekin. Intermediate stops between Stehekin and Fields Point or Manson Bay, as well as
23 standalone trips to other points on Lake Chelan, would be made as needed by the travel
24 company in connection with the travel packages it has sold.
25

26 123. The boat transportation service would charge the travel company approximately
27 \$37.00 one-way or \$74.00 round-trip between Stehekin and either Fields Point or Manson Bay
28

1 for each customer over 12 that it transports; it would charge the travel company half that
2 amount for each child between the ages of 2 and 12 that it transports; it would not charge the
3 travel company for children below the age of 2. The boat transportation service would charge
4 the company for intermediate stops or standalone trips at a lesser amount calculated based on
5 the distance traveled.
6

7 124. The proposed vessel was a climate-controlled boat, 50 to 64 feet in length, with
8 twin diesel engines and capable of a 23-knot cruise. It would be insured, inspected, and
9 certified, as required by law.

10 125. Finally, the Courtneys attached proposed terms of service and policies for this
11 service to their petition for a declaratory order.
12

13 **J. Proceedings On The Second Petition**

14 126. On July 16, 2015, the Lake Chelan Boat Company—the incumbent PCN
15 certificate holder and only ferry operator on Lake Chelan since 1929—submitted comments in
16 response to the Courtneys’ petition arguing that the Courtneys should not be allowed to operate
17 the services they had proposed in their petition.
18

19 127. On July 16, 2015, Arrow Launch Service, Inc.—another commercial ferry
20 operator and PCN certificate holder not operating on Lake Chelan—submitted comments in
21 response to the Courtneys’ petition arguing that the Courtneys should be required to go through
22 the PCN process.
23

24 128. On July 17, 2015, the WUTC staff, through its counsel, submitted a Statement of
25 Fact and Law in response to the Courtneys’ petition likewise arguing that the WUTC should
26 require a PCN certificate for each of the services the Courtneys had proposed.
27
28

1 129. On July 28, 2015, the WUTC issued a notice stating that it would conduct oral
2 argument on the Courtneys' petition for declaratory order.

3 130. The WUTC conducted the oral argument on October 21, 2015.

4 131. At the beginning of the oral argument, the WUTC explained that the Courtneys'
5 petition was not being handled as an adjudicative proceeding pursuant to WAC 480-07-930(4).
6

7 132. The Courtneys, through their counsel; the WUTC staff, through its counsel; the
8 Lake Chelan Boat Company, through one of its employees; and Arrow Launch Service, Inc.,
9 through its counsel, participated in the oral argument.

10 133. Reiterating arguments they had made in their petition for a declaratory order, the
11 Courtneys asserted that: (1) the plain language of the relevant statute does not require a PCN
12 certificate for their proposals, as providing boat transportation service solely for customers with
13 a preexisting reservation for services or activities at a specific lodging facility or another
14 Courtney-family or Stehekin-based business is not operating that boat "for the public use for
15 hire"; (2) history and case law make clear that such boat transportation service is neither a
16 public ferry nor a common carrier; and (3) the WUTC does not regulate similar transportation
17 services in the non-waterborne context.
18
19

20 **K. The WUTC's Declaratory Order**

21 134. On November 16, 2015, the WUTC issued a declaratory order in response to the
22 Courtneys' petition. See WUTC, In the Matter of the Petition of James and Clifford Courtney
23 for a Declaratory Order on the Applicability of Wash. Rev. Code § 81.84.010(1) and Wash.
24 Admin. Code § 480 51 025(2), Docket TS-151359, Order 01 (Nov. 16, 2016) (hereinafter
25 "Declaratory Order").
26
27
28

1 135. The WUTC’s declaratory order began by explaining that “[t]he sole issue is
2 whether th[e] proposed operations would be ‘for the public use for hire’ as that phrase is used
3 in” RCW 81.84.010(1), in which case they would require a PCN certificate. Declaratory Order
4 at 4 ¶ 10.

5
6 136. The WUTC then noted that “[t]he legislature did not define ‘for the public use
7 for hire,’ and no Washington court has interpreted the meaning of that phrase in RCW
8 81.84.010(1). Nor has the Commission.” Declaratory Order at 4 ¶ 11.

9 137. The WUTC acknowledged that the services proposed by the Courtneys “would
10 be ‘solely for customers with a preexisting reservation for services or activities at a specific
11 lodging facility or other Courtney-family or Stehkein-based business.’” Declaratory Order at 5
12 ¶ 13. Nevertheless, the WUTC concluded that the services would still be “for the public use for
13 hire”—and, thus, require a PCN certificate—because “[a]ny member of the public may reserve
14 lodging or other . . . services or products at these businesses.” Declaratory Order at 5 ¶ 13.

15
16 138. The WUTC acknowledged that, in the auto transportation context, it exempts
17 comparable services to those proposed by the Courtneys. Specifically, it acknowledged that it
18 “excludes from regulation persons operating hotel buses, private carriers who transport
19 passengers as an incidental adjunct to another private business, and transportation of airline
20 flight crews and in-transit passengers between an airport and temporary hotel accommodations.”
21 Declaratory Order at 6 ¶ 15 (citing WAC 480-30-011(g), (i) & (j)). The WUTC nevertheless
22 opined that these exemptions “derive from . . . legislative directive” and that similar directive
23 does not exist in the waterborne context. Declaratory Order at 7 ¶ 17.

24
25
26 139. The WUTC also acknowledged that it “has exempted ‘charter services’ from the
27 commercial ferry [PCN] requirement” and that the legislature did not dictate this exemption.
28

1 Declaratory Order at 8 ¶ 18. The WUTC nevertheless concluded that the fifth service the
2 Courtneys had proposed—under which a Stehekin-based travel company would charter
3 transportation, from the Courtneys, for customers who had purchased packages from the travel
4 company—would not qualify as a “charter service.” According to the WUTC, such an
5 arrangement would still have a “public character.” Declaratory Order at 8 ¶ 20.

7 140. Finally, the WUTC declined to follow various cases from other jurisdictions
8 holding that the provision of boat transportation for one’s own customers is not the operation of
9 a public ferry and does not require a franchise from the state.

10 141. Accordingly, the WUTC concluded that “[e]ach of the five proposed services
11 described in the [Courtneys’] Petition requires the operation of a vessel ‘for the public use for
12 hire’ under RCW 81.84.010(1)” and ordered that “James and Clifford Courtney may not operate
13 any vessel or ferry on Lake Chelan to provide any of the five services they described . . .
14 without first applying for and obtaining from the Commission a certificate declaring that public
15 convenience and necessity require such operation consistent with RCW 81.84.010(1) and WAC
16 480-51-025(2).” Declaratory Order at 11 ¶¶ 25, 27.

19 VI. STANDING FOR JUDICIAL REVIEW

20 142. The Courtneys have standing to obtain judicial review of the WUTC’s
21 Declaratory Order because they are “aggrieved [and] adversely affected by” the Declaratory
22 Order. RCW 34.05.530.

23 143. Under RCW 34.05.530, “[a] person is aggrieved or adversely affected” when:

- 24 • “The agency action has prejudiced or is likely to prejudice that person;”
- 25 • “That person’s asserted interests are among those that the agency was
26 required to consider when it engaged in the agency action challenged;” and
27

- “A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.”

Here, each criterion is satisfied.

144. The WUTC’s Declaratory Order concerning the applicability of the PCN requirement “has prejudiced,” and will continue to prejudice, the Courtneys. RCW 34.05.530(1). In fact, the WUTC itself determined that “uncertainty” over the applicability of the PCN requirement “adversely affects the Courtneys.” Declaratory Order at 4 ¶ 9. That the WUTC has now ruled that the PCN requirement does, in fact, apply to them only compounds their injury, as they remain unable to provide the boat transportation service at issue in their second federal constitutional claim. Indeed, the Ninth Circuit concluded that the Courtneys have standing to litigate this federal constitutional claim precisely because the “the economic loss the Courtneys have already suffered” and “the threat of a classification proceeding” should they provide the service without a PCN certificate are “sufficiently actual [injury] to confer standing.” Courtney, 736 F.3d at 1162 n.6.

145. The Courtneys’ interests, moreover, are “among those that the agency was required to consider when it” issued the Declaratory Order. RCW 34.05.530(2). The Courtneys, after all, petitioned for the declaratory order, and the ability to petition for a declaratory order is reserved for “interested persons.” WAC 480-07-930(1). Moreover, in determining whether to issue a declaratory order as to whether the PCN requirement applies to the type of service the Courtneys wish to offer, the WUTC was required to consider whether “the adverse effect of uncertainty on the petitioner[s] outweighs any adverse effects on others

1 state.” RCW 81.84.010(1) (emphasis added). Providing boat transportation service solely for
2 customers with a preexisting reservation for services or activities at a specific lodging facility or
3 another Courtney-family or Stehekin-based business is not operating that boat “for the public
4 use for hire.” Nor is providing boat transportation by charter agreement with a travel company
5 solely for customers who have purchased travel packages from that travel company.
6

7 151. Case law and history make clear that such boat transportation service is neither a
8 public ferry nor a common carrier.

9 152. Given the abhorrence of monopolies expressed in Article XII, section 22 of the
10 Washington Constitution, the WUTC may not, in the absence of an express grant of power from
11 the Legislature, confer on the Lake Chelan Boat Company or any other carrier the exclusive
12 right to provide boat transportation service on Lake Chelan for customers or patrons of specific
13 businesses or a group of businesses.
14

15 153. The WUTC does not have statutory authority to require a PCN certificate for the
16 services proposed by the Courtneys.
17

18 154. Accordingly, this Court should set aside the Declaratory Order.
19

20 **Reason 2: The Declaratory Order Is Arbitrary And Capricious**

21 155. Petitioners reallege and incorporate by reference the allegations in paragraphs 1
22 through 154 above.

23 156. The Declaratory Order is arbitrary and capricious.

24 157. The WUTC does not regulate similar transportation services in the non-
25 waterborne context. For example, it does not regulate, as passenger transportation operations:

- 26 • “Persons owning, operating, controlling, or managing . . . hotel buses”;
- 27
28

- 1 • “Private carriers who, in their own vehicles, transport passengers as an
2 incidental adjunct to some other established private business owned or
3 operated by them in good faith”; and
- 4 • “Transporting transient air flight crew or in-transit airline passengers
5 between an airport and temporary hotel accommodations under an
6 arrangement between the airline carrier and the passenger transportation
7 company.”
8

9 WAC 480-30-011(g), (i), (j).

10 158. Even in the waterborne context, the WUTC does not require a PCN certificate
11 for “charter services.” WAC 480-51-022(1); see also id. 480-51-020(14).
12

13 159. It is arbitrary and capricious to require a PCN certificate for the services
14 proposed by the Courtneys but not these analogous services.

15 160. Accordingly, this Court should set aside the Declaratory Order.
16

17 **VIII. RELIEF REQUESTED**

18 161. For the foregoing reasons, the Courtneys respectfully request that this Court: (a)
19 set aside Declaratory Order 01 in WUTC Docket TS-151359; and (b) enter a declaratory
20 judgment order declaring that a certificate of public convenience and necessity is not required to
21 provide boat transportation service on Lake Chelan for customers or patrons of specific
22 businesses or a group of businesses under the circumstances described in paragraphs 76-125,
23 above. See RCW 34.05.574(1) (“In a review under RCW 34.05.570, the court may . . . set aside
24 agency action . . . or enter a declaratory judgment order.”).
25

26 Respectfully submitted this 14th day of December, 2015.

27 s/ Michael E. Bindas
28 Michael E. Bindas

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E-FILED
DECEMBER 14, 2015
KIM MORRISON
CHELAN COUNTY CLERK

**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY**

JAMES COURTNEY and CLIFFORD
COURTNEY,

Petitioners,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION; DAVID
DANNER, chairman and commissioner, ANN
RENDAHL, commissioner, and PHILIP JONES,
commissioner, in their official capacities as
officers and members of the Washington Utilities
and Transportation Commission; and STEVEN
KING, in his official capacity as executive
director of the Washington Utilities and
Transportation Commission,

Respondents.

15-2-01015-2

No. _____

**CERTIFICATE OF FILING AND
SERVICE**

I, Michael E. Bindas, hereby certify that on December 14, 2015, I filed the foregoing
Petition for Judicial Review through the Court's electronic filing system. I further certify that
on December 14, 2015, I caused to be served copies of the foregoing Petition for Judicial
Review by messenger delivery to the following:

Office of Steven King
Executive Director
Washington Utilities and Transportation Commission

1 1300 S. Evergreen Park Drive SW
2 Olympia, WA 98504-7250

3 and via U.S. Mail on the following:

4 Hon. Bob Ferguson
5 Office of the Attorney General of the State of Washington
6 1125 Washington Street SE
7 PO Box 40100
8 Olympia, WA 98504-0100

9 Julian H. Beattie
10 Assistant Attorney General
11 Utilities and Transportation Division
12 1400 S Evergreen Park Dr. SW
13 PO Box 40128
14 Olympia, WA 98504-0128

15 David W. Wiley
16 Williams, Kastner & Gibbs PLLC
17 Two Union Square
18 601 Union Street, Suite 4100
19 Seattle, WA 98101

20 Jack Raines
21 President
22 Lake Chelan Recreation, Inc.
23 d/b/a Lake Chelan Boat Company
24 P.O. Box 186
25 Chelan, WA 98816

26 I declare under penalty of perjury under the laws of the State of Washington that the
27 foregoing is true and correct.

28 Dated this 14th day of December, 2015, in Bellevue, Washington

s/ Michael Bindas