

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

In re Application No. B-079273 of)	DOCKET NO. TS-040650
)	
AQUA EXPRESS, LLC)	ORDER NO. 03
)	
For a Certificate of Public)	PREHEARING CONFERENCE
Convenience and Necessity to)	ORDER; MODIFYING
Provide Commercial Ferry Service)	PROCEDURAL SCHEDULE;
)	NOTICE OF LOCATION OF
)	HEARING AND PUBLIC
)	HEARING
.....)	

1 **NATURE OF PROCEEDING.** Docket No. TS-040650 involves an application by Aqua Express, LLC for a certificate of public convenience and necessity to operate a commercial ferry between Kingston and Seattle, Washington.

2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington on Tuesday, June 8, 2004, before Administrative Law Judge Ann E. Rendahl.

3 **APPEARANCES.** David W. Wiley, Williams, Kastner & Gibbs PLLC, Seattle, Washington, represents the Applicant, Aqua Express LLC. Dmitri Iglitzin, Schwerin Campbell Barnard LLP, Seattle, Washington, represents Protestant Inlandboatmen’s Union of the Pacific (IBU). Ronald C. Templeton, General Counsel, and James K. Sells, Ryan Sells Uptegraft, Inc. P.S., Silverdale, Washington, represent Intervenor Kitsap Transit of Washington (Kitsap Transit). Donald T. Trotter, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff). Contact information provided at the conference for the parties’ representatives is attached as Appendix A to this Order.

4 **CLARIFICATION OF ORDER NO. 02.** On June 7, 2004, the Commission entered Order No. 02, granting in part the Applicant's motion to strike the IBU's protest, and limiting the protest of the IBU. During the conference, Commission Staff requested clarification of the meaning of paragraph 42 of Order No. 02. In paragraph 33 of the Order, the Commission finds that, pursuant to RCW 81.84.020(4), the Commission must address the effect of its decisions on public agencies operating, or eligible to operate, passenger only ferries. In paragraph 42, the Commission limits the IBU's participation to, among other issues, "the impact of the proposed service on the state ferry system."

5 Given the statutory direction to address the effect of the Commission's decisions on public agencies, the IBU's participation is appropriately limited to addressing the effect on public agencies, recognizing that the state ferry system is a part of the public agency that operates the state ferries, *i.e.*, the Department of Transportation. The parties may address the impact on the state ferry system in hearing and should address any distinction between the state ferry system and the public agency, generally, in brief.

6 **PROCEDURAL SCHEDULE.** The parties agreed upon modifications to the procedural schedule during the conference. The Commission adopts these modifications to the procedural schedule, which is attached to this Order as Appendix B, and incorporated into the body of this Order by this reference.

7 **NOTICE OF LOCATION OF HEARING.** The Commission convenes a hearing in this matter to consider the application of Aqua Express LLP for a commercial ferry certificate between Kingston and Seattle, Washington. **A hearing to address the need for the applicant's proposed service will be held on Thursday, July 1, 2004, beginning at 9:30 a.m., in the Commons Room of the Kingston Junior High School, located at 9000 N.E. West Kingston Road, Kingston, Washington.**

- 8 **NOTICE OF LOCATION OF PUBLIC HEARING.** The Commission will convene a hearing to consider the comments of the public concerning the application of Aqua Express LLP for a commercial ferry certificate between Kingston and Seattle, Washington. **A hearing to consider public comment on the applicant's proposed service will be held on Thursday, July 1, 2004, from 1:30 p.m. to 2 p.m. and from 6 to 9 p.m., in the Commons Room of the Kingston Junior High School, located at 9000 N.E. West Kingston Road, Kingston, Washington.**
- 9 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file with the Commission **an original plus 13** copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 10 All filings must be mailed or delivered to the Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 11 An electronic copy of all filings must be provided by e-mail delivery to records@wutc.wa.gov. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).

12 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Pursuant to WAC 480-07-145(6), the presiding officer may grant parties a one-day extension of the paper-filing requirement, allowing electronic submission of documents with the Commission on the filing deadline. Parties may only submit documents electronically with the Commission in this proceeding with the permission of the presiding officer. If, at any time during this proceeding, parties are authorized to file documents with the Commission electronically under WAC 480-07-145(6), Parties must submit the document to records@wutc.wa.gov, and file **an original, plus 13** paper copies, of the document with the Commission by the following business day.

13 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 10th day of June, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET NO. TS-040650**

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Aqua Express LLP	DAVID W. WILEY Williams, Kastner & Gibbs PLLC Two Union Square 601 Union Street - Suite 4100 Seattle, WA 98101-2380	206-233-2895	206-628-6611	dwiley@wkg.com
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Kitsap Transit of Washington	RONALD C. TEMPLETON General Counsel 3212 NW Byron Street Silverdale, WA 98383 JAMES K. SELLS Ryan Sells Uptegraft, Inc. P.S. 9657 Levin Rd. NW, Suite. 240 Silverdale, WA 98383	360-692-6415 360-307-8860	360-692-1257 360-307-8865	rctempleton@telebyte.com jimsells@rsulaw.com
Commission Staff	DONALD T. TROTTER Assistant Attorney General 1400 S. Evergreen Park Dr. SW P. O. Box 40128 Olympia, WA 98504-0128	360-664-1189	360-586-5522	dtrotter@wutc.wa.gov

APPENDIX B
PROCEDURAL SCHEDULE
DOCKET NO. TS-040650

EVENT	DATE	INTERVAL
Supplemental Response of IBU to Applicant's Motion and Response to Staff Response	Friday, May 28, 2004	—
Reply of Applicant, Aqua Express	Wednesday, June 2, 2004, by Noon	5 days
Order on Motion to Strike Protest	By Monday, June 7, 2004	5 days
Prehearing Conference	Tuesday, June 8, 2004, at 1:30 p.m.	1 day
Prehearing Briefs, Summary Statements of Witnesses and Proposed Exhibits	Wednesday, June 16, 2004	8 days
Hearing re: Financial and Operational Fitness, in Olympia	Monday, June 21, 2004, and from 1:30 – 5:00 p.m. on June 22, 2004, if necessary	5 days
Letter identifying shipper support witnesses, and time estimates for July 1, 2004, hearing	June 28, 2004, by 5:00 p.m.	6 days
Hearing re: Public Need, Shipper Support, in Kingston	Thursday, July 1, 2004	3 days
Public Comment Hearing, in Kingston	Thursday, July 1, 2004 from 1:30-2 p.m. and from 6-9 pm.	—
Simultaneous Initial Briefs	July 16, 2004	15 days
Simultaneous Responsive Briefs	July 23, 2004	7 days