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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In Re the Matter of the Application of
AQUA EXPRESS LLC
For Certificate of Public Convenience
and Necessity to Operate Commercial
Ferry Service.

DOCKET NO.: TS-040650
APPLICATION NO. B-079273

PREHEARING BRIEF OF
INTERVENOR KITSAP TRANSIT

COMES NOW Intervenor Kitsap Transit and respectfully submits the following:

IDENTITY OF INTERVENOR/FACTUAL BACKGROUND: Kitsap Transit is a Washington Municipal Corporation formed pursuant to RCW Chap. 36.57A. It operates routed bus service, commuter programs, vans, special access vans, "worker/driver" buses, a "foot ferry" and park and ride lots.

The enabling legislation, Chap. 36.57A, was enacted in 1975, and grants broad powers to a "Public Transportation Benefit Area" (PTBA) to carry out the purpose of the statute. Among those powers is the authority to enter into agreements with local transportation providers, including passenger only ferries, which would allow the local service to continue. In fact, the service

1 within the PTBA cannot be offered without the existence of such an
2 agreement. **RCW 36.57A.100.**

3 The Legislature, in 2003, expanded this power even further, by
4 providing that the WUTC, until March 1, 2005:

5 . . . shall not consider an application for passenger only ferry
6 service serving any county in Puget Sound, unless the public
7 transportation benefit area authority or ferry district serving that
8 county, by resolution, agrees to the application. **RCW**
9 **81.84.020.**

10 Thus, if a "Puget Sound county" wants passenger only ferry service provided
11 by other than the State ferry system, the PTBA must, in some manner, be
12 involved. It can operate the system itself, contract with a private entity to do
13 so, lease a system, or agree to and support an application for WUTC
14 authority. **RCW 81.84.010.**

15 Kitsap Transit's Board of Commissioners has determined that the best
16 way for it to meet its responsibility to the residents of the PTBA relative to a
17 POF system is to agree to, and actively support, the subject application.¹
18 Thus, on April 6, 2004 the Board passed Resolution 04-22 stating that:

19 Kitsap Transit agrees pursuant to RCW 81.84.020(5) to the
20 application of AQUA EXPRESS, LLC to the UTC for the certificate
21 authority listed above.²

22 Thus, Kitsap Transit will appear at hearing in support of the application.

23 **POSITION OF INTERVENOR:** As indicated, Kitsap Transit will appear
24 in support of the application. Its Executive Director, Richard Hayes, will
25 testify that Transit's polls and studies demonstrate a substantial public need
26 for, and support of, this type of service. In fact, Transit initially proposed a
largely publicly funded service, which was defeated by the voters. Mr. Hayes

1 A largely publicly funded POF plan was turned down by voters last year.

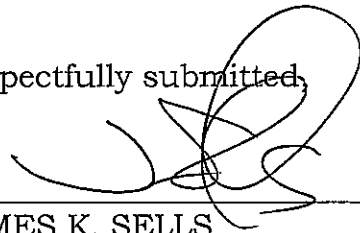
2 The full resolution is attached to the application as an unnumbered exhibit.

1 will testify that Transit's surveys show that the negative vote was against
2 additional taxation, not against the service itself. The logical conclusion is
3 that the service should be created and financed by the private sector, rather
4 than by imposition of a tax.

5 The opposition of the Inlandboatman's Union (IBU) is puzzling to
6 Transit. The proposed service will not compete with state ferry service, rather
7 will compliment it. This seems borne out by the failure of the ferry system
8 itself to protest; in fact, it has filed a letter with the Commission specifically
9 stating that it has no objection to the application.

10 Kitsap Transit urges the Commission to consider the definite need for
11 this service and the seemingly obvious ability of Applicant to provide it, and
12 grant this application.

13 Respectfully submitted,



14 JAMES K. SELLS
15 WSBA No. 6040
16 Attorney for Intervenor
17 RYAN SELLS UPTEGRAFT, INC. P.S.
18 9657 Levin Rd. NW, Suite 240
19 Silverdale, WA 98383
20 (360) 307-8860

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3 CERTIFICATE OF SERVICE

4 I hereby certify that on June 4th, 2004, I caused to be served the
5 original and thirteen (13) copies of the foregoing document to the following
6 address via first class mail, postage prepaid to:

7 Carole Washburn, WUTC Executive Secretary
8 Washington Utilities and Transportation Commission
9 1300 S. Evergreen Park Dr. S.W.
10 P.O. Box 47250
11 Olympia, WA 98504-7250

12 I certify I have also provided to the Washington Utilities and Transportation
13 Commission's Secretary an official electronic file containing the foregoing
14 document via email to: records@wutc.wa.gov

15 I certify I have electronically sent a PDF version of the foregoing document to:

16 David W. Wiley
17 Williams, Kastner & Gibbs, PLLC
18 Attorney for Aqua Express LLC
19 dwiley@wkg.com

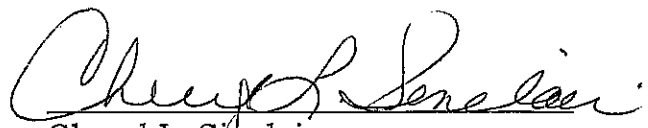
20 Dmitri Iglitzin
21 Schwerin Campbell Barnard LLP
22 Attorneys for Inland Boatmen's Union of the Pacific
23 iglitzin@workerlaw.com

24 Donald T. Trotter
25 Assistant Attorney General
26 WUTC Staff
dtrotter@wutc.wa.gov

The Honorable Ann E. Rendahl
Administrative Law Judge
arendahl@wutc.wa.gov

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

1 DATED and signed at Silverdale, Washington on June 4, 2004.

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3 
4 Cheryl L. Sinclair

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