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UTILITY DIVISION  
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**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Application of**

**Aqua Express, LLC**

**For an Extension of Certificate No. BC-139 of  
Public Convenience and Necessity to Operate  
Commercial Ferry Service, Including Freight,  
Between Seattle and South Kitsap County**

)  
) **APPLICATION NO. B-79352**  
)  
) **DOCKET NO. TS-050127**  
)  
) **REQUEST FOR INTERVENTION AND**  
) **PROTEST OF PROTESTANTS**  
) **INLANDBOATMEN'S UNION OF THE**  
) **PACIFIC, PUGET SOUND REGION AND**  
) **THE INTERNATIONAL ORGANIZATION**  
) **OF MASTERS, MATES & PILOTS,**  
) **PACIFIC MARITIME REGION, UNITED**  
) **INLAND GROUP.**

**1. Names and addresses of Protestants:**

A. Inlandboatmen's Union of the Pacific  
Puget Sound Region  
1711 W. Nickerson St. Ste. D.  
Seattle WA 98119  
Phone: 206-284-6001  
Fax: 206-284-5043

B. International Organization of Masters, Mates & Pilots  
Pacific Maritime Region, United Inland Group  
2333 Third Avenue  
Seattle, WA 98121  
Phone: 206-441-1070  
Fax: 206-443-3752

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**2. Legislation 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. 480-07  
WAC Ch. 480-51

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**3. The Protestants have participated in the following WUTC cases in the last two years:**

- A. The Inlandboatmen’s Union of the Pacific participated in the matter of Aqua Express, LLC, application number B-079273, Docket Number TS-040650 and the matter of Kitsap Ferry Company, application number B-079276, Docket Number TS-040794. The IBU has also recently protested the matter of Pacific Boat Enterprises d/b/a Mosquito Fleet, application number B-079341, Docket Number TS-042184.
- B. To its knowledge, Masters, Mates & Pilots has not participated in any cases before the WUTC in the last two years.
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**4. Protest and the Protestant’s interest in this proceeding:**

The Inlandboatmen’s Union of the Pacific (“IBU”) represents deckhands, ticket-takers, ticket-sellers and terminal personnel working for the Washington State Ferries (“WSF”). The International Organization of Masters, Mates & Pilots, Pacific Maritime Region, United Inland Group (“MMP”) represents licensed deck officers, and operations watch supervisors, working for WSF. Thus, both are “Ferry employee organizations” under RCW 47.46.011(6) and labor organizations under 29 U.S.C. § 152(5) [hereinafter referred to together as “Protestants”].

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

1 In its application, Aqua Express seeks to operate on a route between Seattle and South Kitsap  
2 County during peak commuter hours.<sup>1</sup> Specifically, it seeks to operate ten scheduled runs. Five  
3 of these runs will occur between 5:30 a.m. and 8:50 a.m. and the other five will occur between  
4 4:00 p.m. and 7:20 p.m.

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**(a) Effect of Aqua Express Boat Service on WSF.**

Aqua Express' application projects serving around 102,000 passengers<sup>2</sup> in the first year, generating \$1 million in revenue and thereafter (2007 through 2010) serving between 109,000 and 121,000 passengers a year and generating between \$1.1 million and \$1.28 million for those years. The only reasonable inference that can be drawn from this information is that Aqua Express will create and maintain its customer base by drawing customers from the car ferries currently being operated by WSF and by 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 estimates that competition on this route will reduce revenues between \$1.3 million to \$1.5 million per year.

The Protestants are concerned that Aqua Express will skim the cream off WSF's business. Should this occur, it will put the ferry system in even worse financial straits, potentially leading to the canceling of existing WSF runs and preventing needed future growth.

WSF estimates that the demand for a Seattle/Southworth passenger-only ferry would support a 350-passenger vessel. It also estimates that most of the growth in the South Sound will be in this area over the next ten years. Therefore, it would be economically inefficient and detrimental to WSF for Aqua Express to operate on this run with capacity for only 149 passengers. *See* Application at ¶ 10.<sup>3</sup>

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<sup>1</sup> In its application, Aqua Express intentionally failed to identify the fact that WSF operates on this route. *See* Application at ¶ 14.

<sup>2</sup> While WAC 480-51-030(b) requires a breakdown of projected ridership, Aqua Express has not provided this information. These numbers are established by dividing the projected revenue by an average fare of \$10.24.

<sup>3</sup> Aqua Express also lists a vessel with capacity of 292 but this vessel is currently being used for its Kingston/Seattle service. *See* Application B-79273 at ¶ 10, listing the same vessel. If Aqua Express intends to pull this vessel from that service, it has failed to file the necessary paperwork with the Commission to obtain approval to do so. The existence of a \$150,000 leasing cost in the pro forma financial statement, Exhibit D, reveals that it is the leased vessel "to be determined" that Aqua Express intends to use.

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

7 **(b) Financial Viability of Aqua Express Not Demonstrated**

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

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

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

15 Aqua Express anticipates operating of a net loss of \$12,246 in its first year of operation. It  
16 projects \$26,563 in net income in its second year but this projection is based on the unrealistic  
17 assumption that crew payroll, taxes and benefits will increase at only a rate of 1.3%. It accounts  
18 for no increase in fuel prices. Nor does Aqua Express anticipate any increases in taxes it must  
19 pay. Generally, it assumes a decrease in costs, especially those related to advertising. Assuming  
20 a more realistic across-the-board average cost increase of 10%, Aqua is left with losses all five  
21 years.

22 Nowhere in its application does Aqua Express anticipate costs associated with implementation of  
23 the Port of Seattle's security plan. Under its agreement with the Port of Seattle for the use of  
Piers 54-57, Aqua Express agrees that it must conform to marina security policies of Port of  
Seattle, which may be increased at times of heightened security. Aqua Express allocates no  
money except moorage fees for its obligations to the Port.

On January 18, 2005, Aqua Express began ferry service between Kingston and Seattle.<sup>4</sup> Its  
proposed losses in Application B-79273 for this route topped nearly \$150,000 for the first year  
and another \$90,000 for the second year. Thus, the current application and its attendant financial  
losses further jeopardizes the financial viability of Aqua Express' existing route. All of this is  
even more troubling if Aqua Express undermines the financial health of the Washington State  
Ferries and then abandons the Kingston/Seattle or the currently proposed route. Clearly, the  
citizens of Washington would be adversely affected by such a turn of events.

<sup>4</sup> Aqua Express originally intended to begin Kingston/Seattle operations on September 13, 2004. It changed the start date to  
December 2004 and ultimately wound up beginning service on January 18, 2005.

1           (c)     **Aqua Express' Inability to Dock at the Harper Fishing Pier or the WSF Terminal**

2           In its application, Aqua Express fails to identify a dock it will use in South Kitsap County. This  
3           failure is also fatal to its application since it is required to do so in order to obtain a certificate for  
4           the route. See Application, ¶ 5 and Exhibit A. Exhibit A shows possible ports on the South  
5           Kitsap side in both Southworth and Harper but neither of these are available.

6           The Port of Bremerton closed the Harper Fishing Pier in December 2004. An inspection in late  
7           2004 identified problems in the Pier's structural integrity caused by deterioration of older  
8           wooden piles. Subsequent inspections confirmed that it was unsafe for the public to use the Pier.  
9           In its announcement closing the dock, the Port of Bremerton said that it was concerned with the  
10          ability of the piles to support the Pier's load, as it currently exists. That is, without passenger  
11          traffic from Aqua Express' ferry service. The Port has not determined its next steps yet but will  
12          a comprehensive repair before allowing increased use of the facility, which would undoubtedly  
13          include time-consuming environmental permitting. Nor will Aqua Express be able to use the  
14          WSF Terminal since the state has said it cannot accommodate private use of that terminal.

15          (d)     **Aqua Express' Failure to Obtain a Resolution from Kitsap Transit in Support of its**  
16          **Application**

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

23          Here, Kitsap Transit has failed to enact the required resolution and Aqua Express' failure to meet  
24          this very fundamental statutory requirement bars the Commission from considering the  
25          application until this requirement is met.

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

33          (e)     **Effect of Aqua Express Service on Air and Water Quality in this Region**

34          The service sought by applicant will involve the operation for extended periods of time of a large  
35          engine-driven vessel. That vessel will generate emissions of pollutants and other controlled

1 substances to the air of this region. It also will leak and/or generate pollutants and other  
2 controlled substances into Puget Sound.

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

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

- 8 1. Whether the service sought to be provided by Aqua Express, LLC would adversely affect  
9 the Washington State Ferries.
- 10 2. Whether Aqua Express, LLC is financially and/or otherwise able to operate the service  
11 proposed.

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12 **6. The Protestant requests a hearing regarding the Application and this Protest.**

13 Protestants have not decided at this time whether to submit written testimony or exhibits or to  
14 call witnesses, but reserves the right to do so. Protestants intend to cross-examine the  
15 witnesses called by other parties and to submit written argument.

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

17 Protestants request that the Washington Utilities & Transportation Commission grant a hearing  
18 regarding Application B-79352 so that the issues raised by said Application may be subject to a  
19 full and open examination and discussion before the Commission makes any determination  
20 regarding whether Aqua Express' certificate of authority to engage in a commercial ferry  
21 operation should be expanded to include this route. Protestants also request that this hearing be  
22 held after the 2005 Legislative Session so the full impact on WSF can be ascertained. Finally,  
23 pursuant to WAC 480-07-320, Protestants request this proceeding be consolidated with  
Application No. B-79341, Docket No. TS-042184.

1 Respectfully submitted this 24<sup>th</sup> day of February 2005.

2 By: Judith Krebs

3 Judith Krebs, WSBA # 31825  
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8 *Attorneys for the IBU*

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14 (206) 682-3840  
15 *Attorneys for MMP*

16 STATE OF WASHINGTON )  
17 ) SS.  
18 KING COUNTY )

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

20 Judith Krebs  
21 Judith Krebs, WSBA # 31825

22 2/24/05  
23 Date

24 I, Steven N. Ross, affirm that this petition is true and complete to the best of my knowledge and belief.

25 Steven N. Ross  
26 Steven N. Ross, WSBA # 10929

27 2/24/05  
28 Date

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 24/2005 I caused to be served the original and twelve copies of the foregoing document to the following address via first class mail, postage prepaid to:

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

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

records@wutc.wa.gov

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

Sally Johnston  
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Dated this 24<sup>th</sup> day of February, 2005.

  
Carol Marsall