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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**In 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**

**PROTESTANT INLANDBOATMEN'S
UNION OF THE PACIFIC'S PRE-
HEARING BRIEF**

1. The Inlandboatmen's Union of the Pacific ("IBU") respectfully submits this Prehearing Brief regarding what Aqua Express LLC needs to prove to the Washington Utilities and Transportation Commission ("WUTC" or "Commission") in order for it to issue a commercial ferry certificate. First, Aqua Express must demonstrate the need for the service it seeks to provide under RCW 81.84.010. Second, Aqua Express needs to prove that its service will not adversely effect the Washington State Ferries. Third, Aqua Express must show that it has the financial resources to operate the proposed service for at least twelve months, as required by RCW 81.84.020(2).

I. FACTS

2. On April 8, 2004, Aqua Express LLC ("Aqua Express) filed a commercial ferry application with the Commission seeking to provide passenger-only ferry service between Seattle and

1 Kingston. Application, Exhibit A. Aqua Express would operate during peak commuter hours.
2 Specifically, it seeks to operate ten scheduled runs. Five of these will occur between the hours of 5:30
3 a.m. and 9:30 a.m. The other five will occur between 4:00 p.m. and 8:00 p.m. Application, Exhibit C.
4 It proposes charging one-way fares of \$5.25 and round-trip fares of \$10.50. Application, Exhibit B.
5 Additionally, Aqua Express projects serving 284,050 passengers per year and generating nearly \$1.6
6 million in revenue in the first year alone. Application, Section 16.

7 3. Finally, Section 12 of the Aqua Express application contains an extremely limited
8 financial statement identifying only \$6,000 in assets. According to the application, these assets are from
9 “professional fees (estimated capitalized start-up costs).” The nature of this small amount of assets is
10 unclear. Moreover, Aqua Express anticipates operating of a net loss of \$149,868 in year one, \$90,154 in
11 year two and \$3,907 in year three.

12 4. The IBU filed a protest to the application on May 6, 2004. Aqua Express and WUTC
13 Staff Counsel objected to the IBU’s participation in the case. On June 7, 2003, Administrative Law
14 Judge Ann Rendahl allowed the IBU to intervene to address the impact of the proposed service on the
15 state ferry system, the need for the proposed service, and the applicant’s financial fitness. Order No. 2,
16 at p. 12.

17 II. ARGUMENT

18 A. Aqua Express Must Prove that the Public Needs the Service it Proposes to Provide.

19 5. RCW 81.84.010 requires that those seeking to provide commercial ferry services in the
20 State of Washington must obtain a certificate from the Washington Utilities and Transportation
21 Commission “declaring that public convenience and necessity require” such a service. In Section 13 of
22 its application, Aqua Express represents that there is an unfilled need to provide passenger only ferry

1 service between Seattle and Kitsap County. However, the application fails to acknowledge the existence
2 of WSF ferries that currently transport car-less passengers between Kitsap County and Seattle, or to
3 explain why that ferry service is inadequate to meet the needs of car-less passengers. To meet its
4 burden, Aqua Express must put forward actual evidence that a substantial percentage of the population
5 not currently using the WSF ferries would use a passenger-only ferry between Seattle and Kingston.

6 **B. Aqua Express Must Prove that its Service Will Not Negatively Impact WSF.**

7 6. RCW 81.84.020(4) requires that before the Commission issues a certificate to operate as
8 a commercial ferry, “the commission shall consider and give substantial weight to the effect of its
9 decisions on public agencies operating, or eligible to operate, passenger-only ferry service.”

10 7. For instance, Aqua Express must establish how it arrived at its proposed tariffs. Aqua
11 Express’ application appears to shadow-price WSF tariffs. It proposes one-way fares of \$5.25 and
12 round-trip fares of \$10.50. Application, Exhibit B. By comparison, one-way peak fares on the
13 Seattle/Bainbridge and Seattle/Bremerton ferries are \$5.70. Additionally, in Section 16 of the Aqua
14 Express application projects serving 284,050 passengers per year and generating nearly \$1.6 million in
15 revenue in the first year alone. The only reasonable inference which can be drawn from this information
16 is that Aqua Express will create and maintain its customer base by drawing customers from the car
17 ferries currently being operated by WSF.

18 8. The IBU’s concern is that by operating only during peak times and at slightly lower
19 prices, Aqua Express will skim the cream off of WSF’s business. Should this occur, it will put the ferry
20 system in even worse financial straits, potentially leading to the further cancellation of WSF runs. Aqua
21 Express needs to establish how it service will not deprive WSF of both revenue from ticket sales and
22

1 WSF's share of profits and/or gross sales made by WSF concessionaires. It also needs to show how it
2 will not deprive WSF of the ability to reintroduce passenger-only ferry service in the future.

3 **C. Aqua Express Must Prove that it has the Financial Resources to Run a Passenger-Only Ferry.**

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

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

9 Here, Section 12 of the Aqua Express application contains an extremely limited financial
10 statement identifying only \$6,000 in assets. According to the application, these assets are from
11 "professional fees (estimated capitalized start-up costs)." The nature of this small amount of assets is
12 unclear.

13 10. Moreover, Aqua Express anticipates operating of a net loss of \$149,868 in year one,
14 \$90,154 in year two and \$3,907 in year three. The Application itself strongly suggests that the
15 Applicant does not have the financial resources to operate the proposed service for at least twelve
16 months, as required by RCW 81.84.020(2). This is even more troubling if Aqua Express undermines the
17 financial health of the Washington State Ferries and then goes out of business. Clearly, the citizens of
18 Washington would be adversely affected by such a turn of events.

19 11. Aqua Express must put on evidence showing that it has sufficient financial resources and
20 can withstand the operating losses it projects. Moreover, it must show that its financial projections are
21 accurate, including putting on evidence regarding how these financial projections were developed.

22 **III. IBU'S ANTICIPATED PARTICIPATION AT HEARING**

23 12. As stated in its Protest, the IBU intends to cross-examine witnesses called by other
parties and to submit written argument and/or motions. The IBU reserves the right to call witnesses

Inlandboatmen's Union of the Pacific's
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1 and/or offer exhibits in response to Aqua Express' direct testimony and the cross-examination of its
2 witnesses.

3 DATED this 16th day of June, 2004.

4 
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*Attorneys for the Inlandboatmen's
Union of the Pacific*

1 CERTIFICATE OF SERVICE

2 I hereby certify that on June 16, 2004 I caused to be served the original and thirteen copies of the
3 foregoing document to the following address via first class mail, postage prepaid to:

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

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

9 records@wutc.wa.gov

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

11 Ann E. Rendahl
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Dated this 16th day of June 2004.



Judith Krebs