

00001

1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3

4 In the Matter of the                   )Docket No. TS-010714  
Application NO. B-78982 of            )Volume I  
5                                        )Pages 1-18  
Seattle Harbor Tours Limited         )  
6 Partnership                           )  
  )  
7 For a Temporary Certificate of        )  
Public Convenience and                 )  
8 Necessity to Operate Commercial     )  
Ferry Service.                         )  
9 \_\_\_\_\_)

10

11                                        A hearing in the above matter was  
12 held on May 24, 2001, at 9:35 a.m., at 1300 Evergreen  
13 Park Drive Southwest, Olympia, Washington, before  
14 Administrative Law Judge WILLIAM HENDRICKS.

15                                        The parties were present as  
16 follows:

17                                        SEATTLE HARBOR TOURS LIMITED  
PARTNERSHIP, by Gregory J. Kopta, Attorney at Law,  
18 Davis Wright Tremaine, LLP, 1501 Fourth Avenue, Suite  
2600, Seattle, Washington 98101. (Via teleconference  
19 bridge.)

20                                        THE COMMISSION, by Jonathan  
Thompson, Assistant Attorney General, 1400 Evergreen  
21 Park Drive, S.W., P.O. Box 40128, Olympia, Washington  
98504-0128.

22

23

24 Barbara L. Nelson, CSR

25 Court Reporter

00002

1

2

---

INDEX OF EXHIBITS

---

3

4	EXHIBIT:	MARKED:	OFFERED:	ADMITTED:
5	Number 1	9	--	10
6	Number 2	9	--	10
7	Number 3	9	--	10

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

00003

1                   JUDGE HENDRICKS: We'll be on the record.  
2 The hearing will please come to order. My name is  
3 Tre Hendricks, and I'll be presiding over this  
4 hearing today. This is an application for temporary  
5 authority to provide commercial passenger ferry  
6 service in Docket Number TS-010714.

7                   The Washington Utilities and Transportation  
8 Commission has set this matter for hearing on due and  
9 proper notice to all interested parties. This  
10 hearing is being held at the offices of the  
11 Washington Utilities and Transportation Commission in  
12 Olympia, Washington, on May 24th, 2001.

13                   I'll take appearances at this time, and  
14 begin with the Applicant. Please state for the  
15 record your name, who you represent, your address,  
16 telephone number, fax and e-mail.

17                   MR. KOPTA: This is Gregory J. Kopta, of  
18 the law firm Davis, Wright, Tremaine, LLP, on behalf  
19 of the Applicant, Seattle Harbor Tours Limited  
20 Partnership. My address is 2600 Century Square, 1501  
21 Fourth Avenue, Seattle, Washington, 98101-1688. My  
22 telephone number is 206-628-7692. My e-mail address  
23 is gregkopta@dwt.com. The fax number is  
24 206-628-7699.

25                   JUDGE HENDRICKS: Thank you, Mr. Kopta.

00004

1 Mr. Thompson.

2 MR. THOMPSON: This is Jonathan Thompson,  
3 Assistant Attorney General, appearing for Staff. My  
4 address is 1400 South Evergreen Park Drive, S.W.,  
5 Olympia, Washington, 98504. My phone number is  
6 360-664-1225; fax is 360-586-5522; and my e-mail is  
7 jthompso@wutc.wa.gov.

8 JUDGE HENDRICKS: Thank you, Mr. Thompson.  
9 Is there anyone else present who wishes to make an  
10 appearance in this matter? Let the record show that  
11 there was no response. Are there any preliminary  
12 matters before we proceed?

13 MR. THOMPSON: I think there may be,  
14 actually. I don't know if we should go off the  
15 record for this, but there were some notes that I had  
16 from Staff regarding insurance certificates and a  
17 couple of other just housekeeping matters on the  
18 application that I wanted to square away.

19 JUDGE HENDRICKS: Are there missing items  
20 or --

21 MR. THOMPSON: Well, I had a note from  
22 Bonnie Allen. She indicated that -- I think she may  
23 have talked with Mr. Kopta about this already, but  
24 the insurance certificate that's contained in the  
25 packet lists, I believe, Argosy Cruises as the

00005

1 insured. And Staff had a concern that it should name  
2 Seattle Harbor Tours as the insured, and also wanted  
3 to make sure that it would list the Commission on  
4 there for purposes of receiving cancellation and  
5 reinstatement notices.

6 JUDGE HENDRICKS: Mr. Kopta, can you  
7 address that? Have you talked about that already  
8 with Mr. Thompson, or is there some resolution?

9 MR. KOPTA: Yes, I actually didn't discuss  
10 it with Mr. Thompson, but I did discuss it with  
11 Bonnie Allen, and she had raised that issue. As she  
12 represented it to me, it wasn't anything that was  
13 going to need to be done as a prerequisite to  
14 granting the certificate, but that was something that  
15 was going to need to be accomplished, and I'm working  
16 with Seattle Harbor Tours to get that insurance  
17 certificate.

18 I guess part of the issue is that while  
19 Seattle Harbor Tours Limited Partnership is the  
20 entity that is requesting the certificate, the  
21 general partner is Argosy, and as a business matter,  
22 often the folks at Argosy sort of treat Argosy as the  
23 entity for all circumstances, so we just need to  
24 clean up the technicalities, if you will, of making  
25 sure that the proper entity name is registered and

00006

1 that the Commission is included on the certificate,  
2 and we will do that.

3 MR. THOMPSON: Okay.

4 JUDGE HENDRICKS: Mr. Thompson, do you  
5 agree that this isn't a prerequisite to going ahead  
6 and approving the application?

7 MR. THOMPSON: Well, yeah, I guess. I  
8 think we could maybe, you know, say as prior to  
9 initiating service the company should present  
10 evidence of an updated or amended insurance coverage,  
11 something like that. I mean, is that what you had in  
12 mind, Mr. Kopta?

13 MR. KOPTA: Well, what we're doing is just  
14 trying to get that in place as soon as we can.  
15 Obviously, we're not going to sit on it and wait. I  
16 will, as soon as we're concluded with this hearing,  
17 place a call to the folks at Seattle Harbor Tours to  
18 make sure that they know that this needs to be done  
19 as soon as possible, and we will provide that, I  
20 assume, within the next week.

21 JUDGE HENDRICKS: Service is scheduled,  
22 assuming that the application is granted, to begin on  
23 -- is it a week from Monday?

24 MR. KOPTA: I believe it's scheduled to  
25 begin on the 26th of this month, Memorial Day

00007

1 weekend, which is actually Saturday.

2 JUDGE HENDRICKS: Do you have any idea what  
3 is entailed in having this information updated on the  
4 certificate of liability insurance?

5 MR. KOPTA: I think all that is entailed is  
6 contacting the insurance company, as well as the  
7 owner of the vessel to coordinate and make sure that  
8 the certificate is updated. I believe that we have  
9 done that on the prior two applications that were  
10 granted by the Commission for this same route, not  
11 last year, but the two years prior to that, and  
12 again, it was the same issue of making sure that the  
13 certificate was properly revised, and that was done  
14 around the time that the service was initiated, so  
15 kind of the same situation we have here.

16 JUDGE HENDRICKS: Okay.

17 MR. THOMPSON: I did have one other issue  
18 that Staff had identified, and that was the tariff  
19 sheets that were provided in the application have the  
20 name Elliott Bay Water Taxi on them, and apparently  
21 that is not a d/b/a that is listed either in the  
22 application or in the Secretary of State's records,  
23 so Staff had asked that that either be -- well, that  
24 that be eliminated from the tariff sheets. That was  
25 the only other thing I had.

00008

1                   MR. KOPTA: Yes, I think that what the  
2 reference here is to the attachment, actually. It  
3 had Elliott Bay Water Taxi daily schedules as a  
4 separate document that was attached to the time  
5 schedule, for example, in the tariff sheet. Although  
6 the tariff sheet itself does say Seattle Harbor Tours  
7 Limited Partnership, to avoid confusion, we'd  
8 certainly substitute a separate page that deletes  
9 that Elliott Bay Water Taxi, that phrase at the top  
10 of the attachment, so that there isn't any concern  
11 with respect to who the entity is that's actually  
12 providing the service.

13                   JUDGE HENDRICKS: Mr. Kopta, can Seattle  
14 Harbor Tours do these two things by the end of  
15 business tomorrow?

16                   MR. KOPTA: I will endeavor to try and have  
17 them do that, and we will make the best efforts to  
18 have that accomplished.

19                   JUDGE HENDRICKS: Can someone contact the  
20 Commission tomorrow to inform them as to whether or  
21 not that's been completed?

22                   MR. KOPTA: Yes.

23                   JUDGE HENDRICKS: Okay. Well, the  
24 Commission will look for the revised certificate of  
25 inspection or some assurance that the certificate has



00009

1 been revised -- I'm sorry, of insurance has been  
2 revised before the end of business tomorrow, and that  
3 the tariff sheet amendment deleting the name Elliott  
4 Bay Water Taxi is also submitted tomorrow. Are there  
5 any other preliminary matters before we proceed?

6 MR. THOMPSON: No.

7 JUDGE HENDRICKS: We have in the record the  
8 application of Seattle Harbor Tours, and I believe a  
9 letter from a Mr. Rick Walsh of the King County Metro  
10 Transit Division; is that correct?

11 MR. KOPTA: That is correct.

12 JUDGE HENDRICKS: Are there any other  
13 support statements or letters at this point, other  
14 than those? I see we also have the letter from  
15 Washington State Ferries.

16 MR. KOPTA: That's also correct. And those  
17 are the only other third party letters that have been  
18 submitted with respect to this application.

19 JUDGE HENDRICKS: Then I'm going to mark  
20 those predistributed documents for identification as  
21 Exhibit 1 for the application, Exhibit 2 for the  
22 letter from the King County Metro Transit Division,  
23 and Exhibit 3 being the letter from the Washington  
24 State Ferries. Do the parties agree to stipulate to  
25 the receipt of the exhibits?

00010

1 MR. KOPTA: I believe so.  
2 JUDGE HENDRICKS: Mr. Thompson?  
3 MR. THOMPSON: Yes.  
4 JUDGE HENDRICKS: Okay. Those exhibits are  
5 admitted. Mr. Kopta, are you ready to make your  
6 presentation?  
7 MR. KOPTA: Yes.  
8 JUDGE HENDRICKS: Please begin.  
9 MR. KOPTA: Okay. As I indicated earlier,  
10 this is the third time in which Seattle Harbor Tours  
11 Limited Partnership has requested authority from the  
12 Commission to operate a ferry between West Seattle  
13 and downtown Seattle. As with the other applications  
14 that were previously granted by the Commission, this  
15 is a venture in conjunction with King County Metro  
16 Transit in order to determine, in part, the  
17 feasibility of a more permanent route across Elliott  
18 Bay and also to, at least in the short term, mitigate  
19 some traffic congestion problems, and particularly  
20 this year, in light of the earthquake and the damage  
21 to the Alaska Way Viaduct that ordinarily carries  
22 vehicular traffic from West Seattle to downtown  
23 Seattle is of importance and benefit to citizens both  
24 of downtown Seattle and West Seattle to have an  
25 alternate route to be able to come from West Seattle

00011

1 to downtown Seattle and vice versa.

2           And so we believe that this is in the  
3 public interest, as well as presenting an appropriate  
4 application for temporary certificate for authority  
5 to operate a commercial ferry across Elliott Bay.

6           We also have a letter of support from the  
7 Washington State Ferries in terms of their lack of  
8 any concern with operating a commercial ferry within  
9 10 miles of the state ferry routes. They have  
10 indicated that they have no opposition, just as they  
11 had no opposition to the prior applications, and also  
12 -- that's Exhibit 3. Exhibit 2 is a letter from King  
13 County Metro Transit that supports the application  
14 and reinforces the public interest concerns with  
15 respect to operating this commercial ferry venture.  
16 And that would conclude my statement.

17           JUDGE HENDRICKS: Mr. Thompson.

18           MR. THOMPSON: Well, Staff's view is that  
19 on the basis of the materials that the Applicant has  
20 submitted and now have been made part of the record,  
21 that the Applicant has demonstrated that there -- as  
22 required by the statute for temporary authority, that  
23 there is an immediate and urgent need for the  
24 proposed service, and that granting the temporary  
25 certificate is consistent with the public interest.

00012

1           Also, on the waiver of the 10-mile rule,  
2 Staff is of the view that the Applicant has shown  
3 that granting the waiver is in the public interest  
4 and, as required by the statute, will aid in reducing  
5 transportation congestion, improving air quality, and  
6 will not have an adverse effect on the Washington  
7 State Ferry System.

8           JUDGE HENDRICKS: Are the parties aware of  
9 any other available service capable of meeting this  
10 immediate and urgent need, Mr. Kopta?

11           MR. KOPTA: There is no other service that  
12 would provide a comparable service to the commercial  
13 ferry service that has been proposed in this  
14 application.

15           MR. THOMPSON: Yeah, I can verify, from  
16 Staff's side, that there is no certificate holder for  
17 this -- for the proposed route.

18           JUDGE HENDRICKS: And Staff is satisfied  
19 with the application, including this certificate  
20 inspection, the evidence of proper insurance, as  
21 we've discussed being amended, and the statements  
22 made by the Metro Transit Division of King County?

23           MR. THOMPSON: Correct. The only thing I  
24 would point out is that the temporary certificate can  
25 only be granted for a maximum of 180 days, and -- I

00013

1 don't know. There's some indication in the  
2 application that they're seeking authority for a  
3 longer period of time than that, but the Commission's  
4 authority is only for 180 days. So if that were to  
5 begin on the 26th, as I think Mr. Kopta indicated,  
6 we'd have to count out from there and figure out what  
7 the maximum period of time would be from that date, I  
8 imagine.

9           JUDGE HENDRICKS: I believe it's the  
10 request of waiver that speaks of -- the request for  
11 waiver -- request for a temporary certificate between  
12 May 26, 2001, and May 31, 2002, which is longer than  
13 the 180 days. Mr. Kopta, how long is Seattle Harbor  
14 Tours requesting that the authority be granted?

15           MR. KOPTA: We had initially requested for  
16 the period that you just referenced. And in my  
17 conversations with Ms. Allen earlier, she had pointed  
18 out that the Commission's authority is limited to 180  
19 days, and that we would need to, if necessary, seek  
20 another certificate at the end of 180 days. I  
21 recognize that that is the limit of the Commission's  
22 authority, so at this point we would ask for the  
23 maximum amount of time that the Commission can grant,  
24 and we will, if it's necessary and we wish to  
25 maintain this service for another six months after

00014

1 the expiration of that period, we could refile  
2 another application to extend that period.

3 JUDGE HENDRICKS: The trial service that's  
4 planned right now, to what extent has Seattle Harbor  
5 Tours, or for how long does Seattle Harbor Tours plan  
6 at this point to offer the trial?

7 MR. KOPTA: Well, at this point, let me  
8 back up a little bit and say historically it has just  
9 been during the summer months, because that's when  
10 the tourist season essentially begins and  
11 necessitates the movement of tourists between West  
12 Seattle and downtown Seattle, as well as relieving  
13 some of the congestion that would otherwise occur.

14 I think what the thinking is this year with  
15 respect to this route is because it has been  
16 relatively successful in the past during the summer,  
17 there is the thought that there would need to be some  
18 exploration of what kind of success this service may  
19 have after the summer has concluded. And so the  
20 trial period was extended to a one-year period to  
21 determine the ridership and popularity and usage of  
22 this kind of service in months other than the summer  
23 months.

24 So at least at this point, the  
25 contemplation is that it would be for a year, but in

00015

1 light of the need to reapply, then there may be some  
2 additional consideration in terms of whether it makes  
3 sense to continue for a year or whether 180 days is  
4 sufficient. So that's why I say it will be incumbent  
5 upon us to approach the Commission toward the end of  
6 the initial six-month period to request an additional  
7 six-month authorization, if that's what is determined  
8 to make sense.

9 JUDGE HENDRICKS: Thank you. Another  
10 question, and this is actually regarding the waiver,  
11 if I could just switch gears. The letter from  
12 Washington State Ferries, from Mr. McCarthy,  
13 indicates that their understanding was that the  
14 service would begin May 28th. And I don't know if  
15 that's -- I want to ask the parties if that's a  
16 problem insofar as Washington State Ferris not  
17 raising objections in this. Mr. Thompson.

18 MR. THOMPSON: I'm not concerned, from  
19 Staff's point of view, about the discrepancy of two  
20 days at the outset. That does raise a point, though,  
21 that I thought about. I guess the evidence, you  
22 know, on the basis of the letter from Mr. McCarthy of  
23 the Washington State Ferries, he says, We understand  
24 that the company will be offering this service until  
25 December 31st, 2001. There is authority to grant a

00016

1 waiver for, I guess, five years under the statute,  
2 but it seems to me that the waiver should probably  
3 just be granted, you know, consistent with the  
4 temporary authority. Also because the Ferry System  
5 is -- you know, it's possible, I imagine, that they  
6 could have -- you know, that they may be planning  
7 service, you know, at some point beyond December  
8 31st, 2001. I don't know if that's the case, but the  
9 evidence they were presented was that there would be  
10 service until that date. And so in fairness to them,  
11 I don't know that they really considered whether they  
12 would agree with the waiver for a full five years, if  
13 that's what's being sought. Maybe that's not even  
14 what the Applicant's seeking, but those are just some  
15 thoughts.

16 JUDGE HENDRICKS: In the past, the  
17 Commission has granted the waiver consistent with the  
18 amount of time for which the temporary authority is  
19 granted. And I believe that's just in case  
20 circumstances change with regard to the service or a  
21 future application that might impact a Commission,  
22 the Commission's decision on the waiver.

23 MR. KOPTA: That is what we are requesting.  
24 Certainly in the past applications and certificates  
25 that have been granted for this route to Seattle



00017

1 Harbor Tours, that was what the Commission granted,  
2 and it was our understanding that that was the limit  
3 of the waiver that we were requesting. So I don't  
4 see that that should be an issue at this point,  
5 although I appreciate the Commission Staff raising  
6 that concern and clarifying on the record that we are  
7 requesting only a waiver for the terms for which the  
8 certificate would be applicable, rather than five  
9 years, as the statute authorizes.

10 JUDGE HENDRICKS: Is there anything else to  
11 come before the Commission today?

12 MR. KOPTA: Nothing from the point of view  
13 of the Applicants.

14 MR. THOMPSON: Nothing from Staff.

15 JUDGE HENDRICKS: Then the Commission will  
16 expect to see tomorrow or have notice of a change to  
17 the certificate of insurance to add or replace  
18 Seattle Harbor Tours as the insured on the  
19 certificate and to list the Commission also on the  
20 certificate. And we'll need to receive that before  
21 -- I'm going to set a deadline of noon tomorrow for  
22 the certificate of insurance and the tariff sheets.

23 MR. KOPTA: We will do our best to comply  
24 with that deadline and we'll contact the Commission  
25 if there's any problem with meeting that deadline.

00018

1                   JUDGE HENDRICKS: Thank you, Mr. Kopta.  
2 And the other matter I'd like to address is whether  
3 or not the parties would like to waive the initial  
4 order and move directly to a Commission decision in  
5 this matter.

6                   MR. KOPTA: We would be willing to so  
7 waive.

8                   JUDGE HENDRICKS: Mr. Thompson.

9                   MR. THOMPSON: As would Staff.

10                  JUDGE HENDRICKS: Is there anything else,  
11 then, to come before the Commission at this time?  
12 Hearing nothing, this proceeding is adjourned. Thank  
13 you.

14                  MR. KOPTA: Thank you, Your Honor.  
15                  (Proceedings adjourned at 10:01 a.m.)

16  
17  
18  
19  
20  
21  
22  
23  
24  
25

