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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of)	APPLICATION NO. B-79360
)	
Mosquito Fleet, LLC)	DOCKETS NO.
)	TS-050294 AND TS-042184
For an Extension of Certificate No. BC-125 of)	
Public Convenience and Necessity to Operate)	REQUEST FOR INTERVENTION AND
Commercial Ferry Service Between Seattle and)	PROTEST OF PROTESTANT
Southworth and For a Transfer of Authority)	INLANDBOATMEN'S UNION OF THE
From Pacific Boat Enterprises, LLC.)	PACIFIC AND THE INTERNATIONAL
)	ORGANIZATION OF MASTERS,
)	MATES & PILOTS, PACIFIC
)	MARITIME REGION, UNITED INLAND
)	GROUP.

1. Names and addresses of Protestants:

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- B. International Organization of Masters, Mates & Pilots
Pacific Maritime Region, United Inland Group
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Protest of IBU & MMP - 1
APPLICATION NO. B-79360

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ORIGINAL

1 **2. Statutes and Rules Brought into Issue by this Pleading:**

2 RCW 80.01.040

3 RCW 81.84.010 – 81.84.030

4 RCW Ch. 47.64

5 WAC Ch. 480-51

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

7 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 Aqua Express, LLC, Application Number B-79352, Docket Number TS-050127.

8 B. Masters, Mates & Pilots has also recently protested the matter of Aqua Express, LLC, Application Number B-79352, Docket Number TS-050127.

9 **4. Protest and the Protestant's interest in this proceeding:**

10 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"].

11 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, LLC, Docket No. TS-040650, Order No. 2 at ¶ 34* (June 2004) held that "the reference to 'public agencies' in RCW 81.84.020(4) can reasonably be read to include the state ferry system."

12 In its applications, Mosquito Fleet, LLC (Mosquito Fleet) seeks to operate on a route between Southworth and Seattle during peak commuter hours. Specifically, it seeks to operate twelve scheduled runs. Six of these will occur between the hours of 6:00 a.m. and 9:00 a.m. The other six will occur between 4:00 p.m. and 7:00 p.m.

13 Additionally, pursuant to RCW 81.84.030, the Application seeks to transfer ownership from Pacific Boat Enterprises, LLC to Mosquito Fleet, LLC for Certificate No. BC-125. The

1 Certificate was originally under the name of Pacific Boat Enterprises, LLC. The first
2 application, dated December 14, 2004 and filed by Pacific Boat to provide service between
3 Seattle and Southworth, reflected that an ownership change had occurred subsequent to the
4 Company's filing on July 30, 2003. The 2004 filing reflected that Mr. Michael Bennett owned
50.1 percent of Pacific Boat while Pacific Marine Group, Inc. owned 49.9%. Pacific Marine is
owned entirely by Gregory Dronkert, owner of the Kitsap Ferry Co., which holds certificate BC-
128.

5 Another application filed on February 23, 2005 by Mosquito Fleet, LLC (and supplemented on
6 March 8, 2005), listed the ownership of that Company as Mr. Michael Bennett with 24.5%,
7 Pacific Marine Group, Inc. (Mr. Dronkert) with 24.5% and Clipper Navigation, Inc. with 51%.
8 On April 7, 2005, Mosquito Fleet sent a letter to the Commission informing it that the ownership
had changed again. This time the new ownership of Mosquito Fleet is Clipper Navigation with
75% ownership and Pacific Boat Enterprises, LLC, via Mr. Dronkert and not Mr. Bennett, with
25% ownership.

9 The Commission docketed all of these machinations under Docket No. TS-050294.

10 **(a) Effect of Mosquito Fleet Service on WSF**

11 Mosquito Fleet's Application projects serving 75,000 to 113,000 passengers per year and
12 generating \$94,500-\$1,134,000 in revenue. The only reasonable inference that can be drawn
13 from this information is that Mosquito Fleet will create and maintain its customer base by
drawing customers from the car ferries currently being operated by WSF and preventing WSF
from expanding its passenger-only service to Southworth.

14 The number of pedestrians without cars riding on the WSF auto ferries sailing between
15 Fauntleroy and Southworth increased by over 20% in 2004. Fauntleroy to Vashon foot traffic
16 was up over 50% as well. This shows that WSF has successfully been serving those seeking a
17 route to Southworth and by adding passenger-only service WSF could increase its ridership. In
18 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.

19 Protestants' concern is that Mosquito Fleet will skim the cream off WSF's business. Should this
20 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.

21 WSF estimates that the demand for a Seattle/Southworth passenger-only ferry would support a
22 350-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 Mosquito Fleet to operate on this run with capacity for only 149 passengers.

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. Protestants urge the Commission to heed to the Chairman's request to delay
6 any hearings on this matter until after the Legislative Session has been completed.

7 **(b) Financial Viability of Mosquito Fleet 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 Mosquito Fleet anticipates operating of a net loss of \$145,454 in its first year of operation. It
16 projects income in its second year but this projection is based on the unrealistic assumption that
17 all of its costs except food, beverage and merchandise costs will stay the same. Thus, Mosquito
18 Fleet assumes no increase in the cost of payroll or benefits, no increase in fuel or oil prices, no
19 increase in maintenance costs, no increase in the cost of supplies, no increase in moorage fees
20 and no increase in taxes it must pay. Assuming a more realistic across-the-board average cost
21 increase of 15%, Mosquito Fleet is left without any profit for the first two years.

22 Nowhere in its application does Mosquito Fleet anticipate costs associated with implementation
23 of the Port of Seattle's security plan. Under its agreement with the Port of Seattle for the use of
Pier 66, Mosquito Fleet agrees that it must conform to marina security policies of Port of Seattle,
which may be increased at times of heightened security. Mosquito Fleet allocates no money
except moorage fees for its obligations to the Port.

Finally, since it provides no financial projections beyond year two it is possible that the
company's business plan does not project out that far. This raises serious concerns about how
committed Mosquito Fleet is to this venture.

These soft revenue projections further undermine its application. All of this is even more
troubling if Mosquito Fleet undermines the financial health of the Washington State Ferries and
then goes out of business. Clearly, the citizens of Washington would be adversely affected by
such a turn of events

(c) Past Experience is Problematic and Lacking

1 The new owners of Mosquito Fleet are Clipper Navigation and Pacific Boat Enterprises, LLC.
2 Mr. Dronkert now represents Pacific Boat Enterprises, LLC (where before he represented the
ownership interest of Pacific Marine Group).

3 **1. DRONKERT, PACIFIC BOAT, PACIFIC MARINE AND KITSAP FERRY:**

4 Mr. Gregory Dronkert does business as Pacific Boat Enterprises, Pacific Marine and Kitsap
5 Ferry Co. Kitsap Ferry, which is operated by Pacific Marine, has only recently begun its
6 operations and already has cancelled scheduled runs. In Docket TS-041968, it received approval
7 to discontinue its run scheduled for 7:50 a.m. from Seattle to Bremerton. While on its face this is
8 only one run, it amounts to 12.5% of the service Kitsap Ferry sought to provide and therefore, is
9 actually quite significant.

10 Pacific Boat d/b/a Mosquito Fleet also has a troubling history of failing to make money from its
11 ferry service and has little experience with an undertaking of this magnitude. Originally,
12 Certificate BC-125 was issued for ferry service between Everett and Friday Harbor with flag
13 stops in Rosario and Roche Harbor.

14 In 2002, Pacific Boat discontinued service for the entire 2002 season between Everett and Friday
15 Harbor, with flag stops at Rosario and Roche Harbor because its vessels were unavailable for
16 lease that season. A company seeking to compete with WSF routes cannot take its
17 responsibilities so lightly.

18 In 2003, Mosquito Fleet sought and received approval from the Commission to amend its
19 schedule to add a sightseeing component to its trips. However, in its 2003 annual report to the
20 Commission, Mosquito Fleet attributed only \$34,806 in revenue to fares associated with running
21 the ferry service. The remaining \$662,000 was attributable to its more lucrative sightseeing,
22 excursion and associated merchandise business. Altogether, the company experienced \$17,924
23 in losses in 2003 and only carried 696 passengers that year.¹

On April 5, 2005, Pacific Boat d/b/a Mosquito Fleet requested authority to withdraw service
from Roche Harbor and Rosario per Certificate BC-125. In other words, ferry service would no
longer be provided to these locations under this Certificate.

2. CLIPPER NAVIGATION, INC.

In the instant Application by Mosquito Fleet, Clipper Navigation represents 75% ownership of
Mosquito Fleet. Clipper Navigation is also listed in Application B-79352, Docket No. TS-
050127 as owning 25% of Aqua Express, LLC. Aqua Express's Application is for the same
Seattle/Southworth service sought by Mosquito Fleet.

¹ Nor did Pacific Boat operate year-round. Instead, it operated from late April through the mid October.

1 Aqua Express has also had problems with its service. On January 18, 2005, Aqua Express began
2 ferry service between Kingston and Seattle. Aqua Express originally intended to begin
3 Kingston/Seattle operations on September 13, 2004. It changed the start date to December 2004
4 and ultimately wound up beginning service on January 18, 2005.

5 Its proposed losses in Application B-79273 for the Kingston/Seattle route topped nearly
6 \$150,000 for the first year and another \$90,000 for the second year. Thus, taking on the
7 Seattle/Southworth route further jeopardizes the financial viability of Aqua Express' existing
8 Seattle/Kingston route. All of this is even more troubling if Aqua Express undermines the
9 financial health of the Washington State Ferries and then abandons the Kingston/Seattle or the
10 Seattle/Southworth Route. Clearly, the citizens of Washington would be adversely affected by
11 such a turn of events.

12 **(d) Mosquito Fleet's Inability to Dock at the Harper Fishing Pier**

13 In its application, Mosquito Fleet represents that it will use the Harper Fishing Pier in South
14 Kitsap County. However, the Port of Bremerton closed this Pier in December 2004. An
15 inspection in late 2004 identified problems in the Pier's structural integrity caused by
16 deterioration of older wooden piles. Subsequent inspections confirmed that it was unsafe for the
17 public to use the Pier. In its announcement closing the dock, the Port of Bremerton said that it
18 was concerned with the ability of the piles to support the Pier's load, as it currently exists. That
19 is, without passenger traffic from Mosquito Fleet's ferry service. The Port has not determined its
20 next steps yet but will a comprehensive repair before allowing increased use of the facility,
21 which would undoubtedly include time-consuming environmental permitting.

22 **(e) Mosquito Fleet's Failure to Obtain a Resolution from Kitsap Transit in Support of its
23 Application**

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

Here, Kitsap Transit has failed to enact the required resolution and Mosquito Fleet's failure to
meet this very fundamental statutory requirement bars the Commission from considering the
application until this requirement is met. The letter from Kitsap Transit's executive director sent
on January 18 simply does not meet the statutory requirement.

The failure of Kitsap Transit to enact a resolution supporting this application shows that it might
not be feasible. Tremendous opposition to using Harper Pier exists in the local community.
Even Kitsap Transit concedes that the project is unworkable without a massive expansion of
parking in the area. This would include purchasing property on each side of the Pier and a \$1.7

1 million expansion of a local park and ride lot. Even with these promised improvements, it
2 remains unclear whether enough public support can be garnered to allow Kitsap Transit to
approve the needed resolution.

3 **(f) Effect of Mosquito Fleet Service on Air and Water Quality in this Region**

4 The service sought by applicant will involve the operation for extended periods of time of a large
5 engine-driven vessel. That vessel will generate emissions of pollutants and other controlled
6 substances to the air of this region. It also will leak and/or generate pollutants and other
controlled substances into Puget Sound.

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

11
12 **5. The Protestants intend to raise the following issues in this proceeding:**

- 13 1. Whether the service sought to be provided by Mosquito Fleet, LLC. would adversely
14 affect the Washington State Ferries.
15 2. Whether Mosquito Fleet, LLC is financially and/or otherwise able to operate the service
16 proposed.

17 **6. The Protestants requests a hearing regarding the Application and this Protest.**

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

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

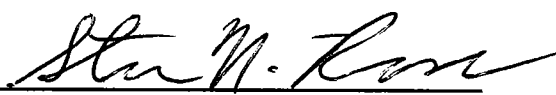
21 Protestants request that the Washington Utilities & Transportation Commission grant a hearing
22 regarding Application B-79360 so that the issues raised by said Application may be subject to a
23 full and open examination and discussion before the Commission makes any determination

1 regarding whether Mosquito Fleet's certificate of authority to engage in a commercial ferry
2 operation should be expanded to include this route. Protestants also request that this hearing be
3 held after the 2005 Legislative Session so the full impact on WSF can be ascertained. Finally,
4 pursuant to WAC 480-07-320, Protestants request this proceeding be consolidated with
5 Application No. B-79352, Docket No. TS-050127.

6 Respectfully submitted this twelfth day of April 2005.

7 By: 

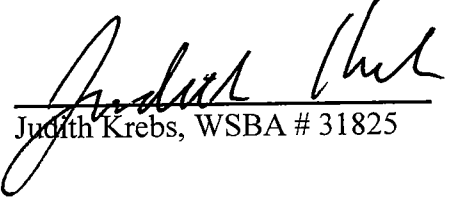
8 Judith Krebs, WSBA # 31825
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STATE OF WASHINGTON)
)
KING COUNTY) SS.

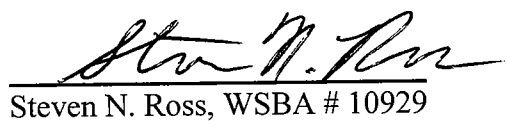
I, Judith Krebs, affirm that this petition is true and complete to the best of my knowledge and belief.



Judith Krebs, WSBA # 31825

4/12/05
Date

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



Steven N. Ross, WSBA # 10929

4/12/05
Date

1 CERTIFICATE OF SERVICE

2 I hereby certify that on April 12, 2005 I caused to be served the original and twelve 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 Sally Johnston
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12 1400 S. Evergreen Park Drive SW
P.O. Box 40128
13 Olympia, WA 98504-0128
sjohnston@wutc.wa.gov

14 And a copy sent via first class mail, postage prepaid to:

15 Darryl E. Bryan
16 Clipper Navigation, Inc./Mosquito Fleet, LLC.
2701 Alaskan Way, Pier 69
17 Seattle, WA 98121-1199

18 Dated this 12th day of April, 2005.

19
20 
21 Judith Krebs
22