

Docket No. TS-180677 - Vol. I

In re Application of Backcountry Travels LLC

November 19, 2018



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In re Application of) DOCKET NO. TS-180677
)
 BACKCOUNTRY TRAVELS LLC)
)
 For a Certificate of Public)
 Convenience and Necessity to)
 Operate Vessels in Furnishing)
 Passenger Ferry Service)
)

PREHEARING CONFERENCE, VOLUME I

Pages 1-10

ADMINISTRATIVE LAW JUDGE ANDREW O'CONNELL

November 19, 2018

1:44 P.M.

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

Buell Realtime Reporting, LLC
1325 Fourth Avenue, Suite 1840
Seattle, Washington 98101
(206) 287-9066 | Seattle
(253) 235-0111 | Tacoma
(800) 846-6989 | National
www.buellrealtime.com

Page 2

1 A P P E A R A N C E S

2 ADMINISTRATIVE LAW JUDGE:

3 ANDREW O'CONNELL
4 Washington Utilities and
5 Transportation Commission
6 1300 South Evergreen Park Drive SW
7 Olympia, Washington 98504
8 (360) 664-1160

9 FOR COMMISSION STAFF:

10 JEFF ROBERSON
11 HARRY FUKANO
12 Assistant Attorneys General
13 PO Box 40128
14 Olympia, Washington 98504
15 (360) 664-1188
16 jroberso@utc.wa.gov
17 harry.fukano@utc.wa.gov

18 FOR BACKCOUNTRY TRAVELS:

19 MATT HITCHCOCK
20 Jeffers, Danielson, Sonn &
21 Aylward, P.S.
22 2600 Chester Kimm Road
23 Wenatchee, Washington 98801
24 (509) 662-3685
25 matthewh@jdsalaw.com

FOR LAKE CHELAN:

ANDREW RICHARDS
HATHAWAY BURDEN
Garvey Schubert Barer
1191 - 2nd Avenue, Suite 1800
Seattle, Washington 98101
(206) 816-1320
arichards@asblaw.com
hburden@asblaw.com

* * * * *

1 OLYMPIA, WASHINGTON; NOVEMBER 19, 2018

2 1:44 P.M.

3 --o0o--

4 P R O C E E D I N G S

5

6 JUDGE O'CONNELL: Let's be on the record.

7 Good afternoon. We're here today for a prehearing
8 conference regarding an application for commercial ferry
9 certificate for Backcountry Travels LLC, Docket
10 TS-180677.

11 The time is approximately 1:44 p.m. on
12 Monday, November 19, 2018. My name is Andrew O'Connell.
13 I'm an administrative law judge with the Washington
14 Utilities and Transportation Commission. I'll be
15 presiding in this matter. After this hearing, I'll
16 prepare an order outlining the procedure going forward
17 in this case.

18 Now I intend to address the scope of this
19 proceeding and the procedural schedule, but first, I
20 will take appearances. I believe all parties are
21 represented by counsel in this proceeding. Correct me
22 if I am mistaken, but the Commission has received
23 written notices of appearances, so I believe that short
24 appearances are appropriate.

25 Let's begin with Commission Staff.

Page 4

1 MR. ROBERSON: Good afternoon, Your Honor.
2 Jeff Roberson, Assistant Attorney General, for Staff.
3 With me at counsel table is Harry Fukano, who is also an
4 assistant attorney general, appearing for Staff.

5 JUDGE O'CONNELL: Mr. Richards?

6 MR. RICHARDS: Andrew Richards of Garvey
7 Schubert Barer in Seattle for protestant, Lake Chelan
8 Recreation, Inc. On the phone with me is an associate
9 attorney at our office, Hathaway Burden.

10 JUDGE O'CONNELL: Thank you.

11 And for Backcountry Travels?

12 MR. HITCHCOCK: This is Matt Hitchcock
13 appearing on behalf of Backcountry Travels from Jeffers,
14 Danielson in Wenatchee. I am alone on the call. Jordan
15 Miller will also be counsel of record on this matter,
16 but he had a prior engagement.

17 JUDGE O'CONNELL: Okay. Thank you,
18 Mr. Hitchcock.

19 Before I get to the scope of the proceeding,
20 let me ask, are there any petitions for intervention?
21 Hearing nothing, let's proceed.

22 I wanted to address the scope of the
23 proceeding. I think the topic will flow straight into a
24 procedural schedule, so before I begin, let me ask, do
25 the parties have an agreed proposal for a procedural

1 schedule?

2 MR. ROBERSON: Possibly. We have not heard
3 from the applicant as to whether or not the --

4 MR. HITCHCOCK: Yes, I confirmed -- I
5 confirmed with my clients moments ago that the proposed
6 schedule we discussed last Friday is acceptable to
7 Backcountry Travels.

8 JUDGE O'CONNELL: Okay. Is there a copy of
9 that available?

10 MR. ROBERSON: There is.

11 JUDGE O'CONNELL: Okay. Let me come back to
12 the parties' proposal for procedural schedule, and let
13 me start with the scope of the proceeding.

14 This proceeding started when Lake Chelan
15 Recreation, which owns a certificate to provide
16 commercial ferry service on Lake Chelan, protested in
17 the application for a commercial ferry certificate by
18 Backcountry Travels LLC.

19 The issue as presented in this case, for
20 which I will have to make a decision, regards whether
21 the public convenience and necessity require the
22 operation as proposed by Backcountry Travels, and
23 because there was a protest to the application, whether
24 Lake Chelan Recreation has failed or refused to furnish
25 reasonable and adequate service or has failed to provide

Page 6

1 the service described in its certificate or tariffs. I
2 will also have to determine whether Backcountry Travels
3 has the financial resources to conduct its proposed
4 service.

5 The burden is on Backcountry Travels as to
6 all these determinations. I'm aware that Backcountry
7 Travels has already submitted its application as well as
8 a number of supporting materials.

9 I'd like to address a few more brief matters
10 before we get to the procedural schedule. During the
11 proceedings at the Commission, I'm aware that parties
12 often request that any data requests and responses are
13 shared with every party. I would make this easier on
14 the parties by including such a requirement in the
15 prehearing conference order. Is there any objection to
16 my including that requirement?

17 MR. ROBERSON: None from Staff.

18 JUDGE O'CONNELL: Mr. Richards?

19 MR. RICHARDS: None from Lake Chelan.

20 JUDGE O'CONNELL: And, Mr. Hitchcock?

21 MR. HITCHCOCK: None from Backcountry
22 Travels.

23 JUDGE O'CONNELL: Thank you.

24 Discovery will otherwise be conducted
25 according to the Commission's procedural rules. And I

1 want to point out two things, for electronic filing and
2 electronic service. Filing will be in accordance with
3 the Commission rules. The Commission requires
4 electronic filings of documents for formal filings.
5 Also, the Commission's rules provide for electronic
6 service of documents. The Commission will serve the
7 parties electronically and the parties will serve each
8 other electronically.

9 If any party has not yet designated a lead
10 representative for service, please do so via an email to
11 me as soon as possible. My email is
12 andrew.j.oconnell@utc.wa.gov. Also, if anyone would
13 like to add names and email addresses of other
14 representatives or support staff who should receive
15 electronic courtesy copies, please email that to me as
16 well.

17 I'd like to move on to addressing the
18 procedural schedule that's been proposed by the parties.

19 Mr. Roberson, can you please address the
20 schedule?

21 MR. ROBERSON: Gladly, Your Honor. A month
22 out from today's prehearing conference is
23 December 17th, 2018, that is when the applicant's
24 prefiled testimony would be due; response testimony from
25 the protestant and Staff would be due

Page 8

1 January 14th, 2019; rebuttal and cross-answering
2 testimony would be due February 11th, 2019. That same
3 day, we've built into the procedural schedule a cut-off
4 date for a motion for summary determination, which at
5 least one of the parties is intending on or at least
6 pondering filing.

7 Witness lists, cross-examination estimates,
8 and cross-examination exhibits would be due
9 April 5th, 2019. The parties are not sure about the
10 length of the hearing. Conservatively, we've scheduled
11 it for two days, over April 22nd and 23rd, 2019, and
12 simultaneous post-hearing briefs would be due
13 May 27th, 2019.

14 JUDGE O'CONNELL: Mr. Richards,
15 Mr. Hitchcock, is there anything that you would like to
16 add?

17 MR. RICHARDS: Nothing from Lake Chelan
18 Recreation.

19 MR. HITCHCOCK: Nothing to add for
20 Backcountry Travels.

21 JUDGE O'CONNELL: Okay. Is there anything
22 else that the parties know that we need to discuss
23 today?

24 MR. ROBERSON: Not from Staff's perspective.

25 JUDGE O'CONNELL: Mr. Richards?

1 MR. RICHARDS: Nothing from me.

2 JUDGE O'CONNELL: Mr. Hitchcock?

3 MR. HITCHCOCK: Nothing from me.

4 JUDGE O'CONNELL: Okay. I will issue an
5 order shortly containing the procedural schedule and
6 other guidelines for the disposition of this case, and
7 with nothing else, we are adjourned. Thank you.

8 (Adjourned at 1:51 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.



Tayler Garlinghouse

Tayler Garlinghouse, CCR 3358