

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

Cancellation of a portion of the Certificate of	)	
Public Convenience and Necessity No.	)	DOCKET NO. TS-090228
BC-101	)	
	)	ORDER CANCELING SCHEDULED
Standing in the name of:	)	PASSENGER SERVICE IN BC-101
	)	CERTIFICATE AND
ARGOSY L.P. d/b/a ARGOSY CRUISES	)	MAINTAINING REGULATION OF
.....	)	THE LAUNCH SERVICE.

- 1 Certificate of Public Convenience and Necessity No. BC-101, stands in the name of Argosy L.P. d/b/a Argosy Cruises (Argosy) that authorizes the following service:

Argosy Cruises (BC-101) provides both scheduled passenger service and launch (ship to shore) service.

**Scheduled passenger Service**

Argosy’s scheduled service consists of a “lock tour,” which departs from Pier 56 in downtown Seattle, travels north in Elliot Bay and crosses through the Hiram Chittenden Locks to Lake Union. Passengers disembark and board a Gray Line of Seattle bus to travel back to Pier 56. This tour takes roughly 2.5 hours to complete.

**Launch Service**

Argosy provides launch service between Pier 56 in Seattle and East, West and North anchorage points located in Elliott Bay and Alki points. Also, between shore and ocean going vessels at anchor in an area bound by Wells Point Williams and Point Vashon on the south. The Washington Utilities and Transportation Commission regulates Launch service under RCW 81.84.010.

- 2 In 1995 the legislature amended RCW 81.84 to require certificates of public convenience and necessity for “excursion service over the waters of this state,” with various exceptions.<sup>1</sup> That legislation contained an expiration date of January 1, 2001. Because the legislature amended RCW 81.84 to require a certificate for excursions, and then repealed that requirement, it is apparent that excursions no longer are required to have a certificate of public convenience and necessity under RCW 81.84.010.
- 3 The definition of an excursion under the now expired statute was “the carriage or conveyance of persons for compensation over the waters of this state from a point of origin

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<sup>1</sup> 1995 Laws of Wash., ch. 361.

and returning to the point of origin with an intermediate stop or stops at which passengers leave the vessel and reboard before the vessel returns to its point of origin.”<sup>2</sup> One could argue that Argosy’s locks tour technically is not an excursion as defined by the expired statute because, after an intermediate stop, Argosy’s passengers return to the point of origin by bus, rather than by the water vessel. The net result, however, is the same: the passengers are delivered back to the tour’s point of origin. The purpose of the service is not transportation between termini or points on a route, but rather a sightseeing tour that returns customers to the point of origin.

- 4 Staff’s review of court decisions interpreting the long-standing statute, RCW 81.84.010 (requiring a certificate for commercial ferry service “between fixed termini or over a regular route”), support the conclusion that when passengers are conveyed by a combination of boat and bus, it is appropriate to focus on the passengers’ origin and destination points instead of focusing only on that portion of the passengers’ journey that is covered solely by boat.<sup>3</sup> By this same reasoning, it is appropriate to view the Argosy tour as an excursion that carries passengers back to their point of origin, rather than “between fixed termini or over a regular route,”<sup>4</sup> for the purpose of “transportation.”<sup>5</sup>
- 5 The Commission does not regulate the rates and services of sightseeing tours. The statutory basis for this exception to the Commission’s economic regulation is that such tours ordinarily are not “between fixed termini or over a regular route.” The policy reason is that a sightseeing tour, to use a term from the era in which the commercial ferry statutes were enacted, is not an industry “affected with the public interest.”<sup>6</sup> The rationale for rate-regulated monopoly service does not exist with regard to a sightseeing tour as it might for a true transportation service.<sup>7</sup>
- 6 The Commission received a request from Argosy to cancel its scheduled service of its certificate because the Commission no longer regulates that service. Argosy will maintain its launch service from ship to shore as a regulated service.

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<sup>2</sup> Laws 1995, ch. 361, sec. 1.

<sup>3</sup> *State Ex Rel. Port Orchard v. Dept. of Public Service*, 186 Wash. 424 (1936).

<sup>4</sup> RCW 81.84.010.

<sup>5</sup> RCW 80.01.040 (“The utilities and transportation commission shall: . . . (2) Regulate in the public interest, as provided by the public service laws, all persons engaging in the *transportation* of persons or property within this state for compensation.” [Emphasis added.]).

<sup>6</sup> See Charles F. Philips, Jr., *The Regulation of Public Utilities*, pp. 93-118 (1993).

<sup>7</sup> *Id.* at 117, (“The public utility status generally has been conferred on an industry that possesses those distinct economic characteristics which indicate that administrative, as opposed to market, regulation can improve the industry’s economic performance. Such activities are closely associated with the processes of transportation and distribution.”)

**ORDER**

- 7 THE COMMISSION ORDERS that the Certificate of Public Convenience and Necessity No. BC-101 standing in the name of Argosy L.P, d/b/a Argosy Cruises, scheduled service is canceled on the grounds that no certificate is required for the service described.
- 8 THE COMMISSION ORDERS the Launch Service remains under regulation in BC-101 certificate of public convenience and necessity RCW 81.84.014.
- 9 THE COMMISSION ORDERS certificate BC-101 to be modified to only reflect Argosy's Launch Service.
- 10 THE COMMISSION ORDERS the scheduled service tariff and time schedule canceled.
- 11 The Commissioners have delegated authority to the Executive Secretary to enter this Order pursuant to RCW 80.01.30 and WAC 480-07-905(7).

DATED at Olympia, Washington, and effective February 23, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER  
Executive Director and Secretary

**NOTICE TO PARTIES:** This is an order delegated to the Executive Secretary for decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least 14 days a listing of all matters delegated to the Executive Secretary for decision. You may seek Commission review of this decision. You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.

The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.

This notice and review process is pursuant to the provisions of RCW 80.01.030 and WAC 480-07-904(2) and (3).