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4 **BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**
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7 **In the Matter of the Application of**)
8 **DUTCHMAN MARINE, LLC, d/b/a**) **DOCKET NO. TS-001774**
9 **“LAKE WASHINGTON FERRY SERVICE”**) **Post-Hearing Brief of**
10 **For a Certificate of Public Convenience and**) **The City of Seattle, Protestant**
11 **Necessity to Operate Commercial Ferry Service**)

12 **In the Matter of the Application of**)
13 **SEATTLE HARBOR TOURS LIMITED**) **DOCKET NO. TS-002055**
14 **PARTNERSHIP**) **Post-Hearing Brief of**
15 **For a Certificate of Public Convenience and**) **The City of Seattle, Intervenor**
16 **Necessity to Operate Commercial Ferry Service**)

17 **I. SEATTLE SUPPORTS THE DEVELOPMENT OF ALTERNATIVES FOR TRANSPOR-**
18 **TATION ACROSS LAKE WASHINGTON THAT DO NOT INCLUDE CONSTRUC-**
19 **TION OF MORE BRIDGE LANES FOR MOTOR VEHICLES.**

20 Seattle’s Strategic Transportation Plan (Exhibit 110) expresses on page 40, Seattle’s interest in
21 an exploration of options for water-based transit service serving corridors into Seattle from other
22 jurisdictions. Such interest is piqued by the applications submitted to the WUTC by the Applicants in
23 this matter, for both Applicants propose services that would benefit residents and workers in, and
tourists to, Seattle. That benefit has been demonstrated by the submission to the WUTC of “shipper

1 support statements” by various individuals who represent either themselves or a commercial enterprise
2 operating either in Seattle or in a nearby community that would be a landing site for a proposed
3 commercial ferry service. (See, for example, Exhibits 120, 121, 122, 123, 124, 125 and 126 with respect
4 to the Dutchman Marine, LLC Application.)

5 It is a matter of common knowledge that Seattle, in particular, and the Puget Sound region, in
6 general, suffer from extreme traffic congestion problems that rank among the nation’s worst, and that
7 the State, as a whole, is experiencing a transportation facility maintenance and construction funding
8 crisis. These problems have been noted in official regional planning documents. (Exhibit 111, “Draft
9 “Destination 2030, Metropolitan Transportation Plan for the Central Puget Sound Region, pages 16-17).
10 These problems also have been written about repeatedly in the region’s principal newspaper. (See, for
11 example, the lead editorial entitled “Legacy time: Congestion is the No. 1 issue,” Seattle Times, July 16,
12 2001, page B4; and the articles entitled “Legislature returns again today; transportation package in the
13 works” by David Ammons, Seattle Times, July 16, 2001, page B3; and “Viaduct isn’t only troubled
14 bridge,” by Janet I. Tu, Seattle Times, July 5, 2001, page A1.) The administrative law judges are
15 respectfully requested to take judicial notice of the existence of the transportation problems noted in the
16 cited editorial and articles.) The Applicants have proposed possible solutions to part of the traffic
17 congestion problem facing the region. Their representatives admit, and Seattle officials agree, that their
18 proposed operations will not be complete solutions. Seattle officials believe that the providing of
19 additional transportation options for commuters, tourists and other users of the over-stressed regional
20 transportation network can be a means of addressing one aspect of these severe problems, and for that
21 reason are generally supportive of the efforts of the Applicants.

1 **II. SEATTLE SUPPORTS EFFORTS TO PROVIDE MEANS OF TRANSPORTATION**
2 **ACROSS LAKE WASHINGTON OTHER THAN MOTOR VEHICLES ON BRIDGES,**
3 **DESPITE CONCERNS ABOUT THE FINANCIAL ABILITIES OF THE**
4 **APPLICANTS/POTENTIAL OPERATORS.**

5 A commercial ferry service that provides a viable alternative to use of a private motor vehicle or
6 a public transit system running on the very congested highways and bridges of the region will have to
7 offer and deliver consistent, timely, efficient service for a charge that is perceived to be reasonably
8 comparable to the cost of travel by those other means of transportation, as adjusted by additional
9 qualitative benefits perceived by the ferry riders. Consistent service is service that does not suffer from
10 interruptions because of mechanical breakdowns or an inability to operate because of cash flow
11 problems. Timely service is service that allows a rider to get from his/her point of origin to the preferred
12 destination in a time period that is generally comparable to the amount of time that would be spent
13 riding public transit or driving or riding in a private motor vehicle from the same point of departure to
14 the same point of destination. Efficient service is service that allows a rider to travel from his/her point
15 of departure to the preferred destination in relative comfort (while waiting to board the ferry, embarking
16 and disembarking the vessel, actually riding on the ferry, and making transfers between the ferry and
17 other necessary modes of transportation) at a reasonable price (measured both in terms of the fare for
18 passage and the amenities offered by the service).

19 A commercial ferry service that fails to deliver consistent, timely, efficient service not only runs
20 the risk of being an economic failure but also of sullyng the waters of Lake Washington and the
21 aspirations of the travelling public for a commercial ferry operation that will provide consistent, timely,
22 efficient service. If either of the Applicant's proposed operations on Lake Washington fails to generate
23 sufficient ridership to allow the operation to remain in business over a long period of time, the marketing
of a commercial ferry operation serving a variety of landing sites/docks on Lake Washington will

1 become that much more difficult: a different operator will have a much harder job converting a driver or
2 passenger from being a highway/bridge user to being a ferry boat rider because a principal potential
3 market of that different operator, namely, former Lake Washington ferry riders, will have already had
4 their hopes for an alternative to sitting for hours in exhaust-filled traffic dashed upon the rocks of a
5 failed commercial ferry service.

6 Both Applicants were requested by the WUTC, through Questions 12 and 16 in the WUTC
7 Commercial Ferry Application Form, to present information to the WUTC regarding how their
8 respective operations would be financed. Question 12 requested a financial statement (presumably one
9 that was current as of the date of the Application) while Question 16 required delivery of a projected
10 statement of the income to be generated and expenses to be incurred during the first year of the proposed
11 operation. Each of the Applicants presented initial information purportedly in response to the
12 application form requirements. (See Exhibits 101 and 201). But the financial information submitted by
13 each of the Applicants was strongly challenged by the other. (See Exhibit 107, pages 3 and 5 for Seattle
14 Harbor Tours Limited Partnership's challenge to the financial resources and viability of Dutchman
15 Marine, LLC; and pages 2-5 of the PROTEST of Dutchman Marine LLC filed with the WUTC on or
16 about February 7, 2001, which notes that the Application submitted by Seattle Harbor Tours Limited
17 Partnership is incomplete in some respects, and presents the same financial data as appeared in a 1999
18 Application to the WUTC in connection with a proposed commercial ferry service on Lake Union in
19 Seattle (thereby implying that the information provided to the WUTC is obsolete and misleading). Each
20 of the Applicants subsequently submitted to the WUTC supplementary or revised information to
21 respond to Questions 12 and 16 (Exhibits 119, 142 and 147 for Dutchman Marine, LLC, and Exhibit
22 202, Attachment C for Seattle Harbor Tours Limited Partnership). That supplementary material was the
23 subject of extensive critical review and analysis that produced, upon oral examination, admissions by

1 witnesses on behalf of both Applicants regarding inaccuracies in the calculations and financial data
2 presented to the WUTC in these proceedings.

3 The public records of the WUTC establish that Seattle Harbor Tours Limited Partnership
4 acquired the right to operate a commercial ferry service from Kirkland to Seattle in 1990, pursuant to
5 WUTC Order S. B. C. No. 469. Those records further document that that right was transferred in 1995,
6 to Argosy, L. P., pursuant to WUTC Order S. B. C. No. 518 (correcting S. B. C. Order No. 417). (The
7 administrative law judges are requested to take judicial notice of the facts evidenced by such records,
8 pursuant to WAC 480-09-750(2)(a).) The WUTC commercial ferry service application form submitted
9 on behalf of Seattle Harbor Tours Limited Partnership in these proceedings (Exhibit 104) indicates that
10 Argosy, L. P. is the principal owner of Seattle Harbor Tours Limited Partnership. From the testimony
11 offered by Mr. Blackmun, the principal witness for Seattle Harbor Tours Limited Partnership, and a
12 person holding a significant interest in Argosy, L. P., an inference can be made that these two firms are
13 operated as a unity and that their structural separation is principally for the purposes of insulating their
14 business affairs from public and governmental inspection. Despite one or the other of these firms having
15 had effective control over the certificate to operate a commercial ferry service from Kirkland to Seattle
16 since 1990, regular service between those two cities has not been offered to the travelling public. The
17 justification offered by Mr. Blackmun is that such service is not financially viable for the certificated
18 ferry operator without one or more forms of public assistance, and that the owners of those businesses
19 have been unwilling to offer such service without the guarantee of an operating profit that would be
20 provided by a public subsidy.

21 Based upon the cumulative testimony presented during the course of these proceedings, Seattle
22 officials have concerns about the financial capacity of either of the Applicants to operate any of the
23 proposed commercial ferry services over any extended period of time, particularly without the receipt by

1 the Applicants of a public subsidy. There is no evidence in the record presented during these
2 proceedings that a public subsidy is available or ever will be offered for any of the proposed operations
3 of either Applicant. Information currently available to the public about the State Legislature's efforts to
4 solve the public transportation crises does not suggest that either Applicant should look with any
5 expectations to the State of Washington for financial assistance for their proposed operations. Seattle
6 has no current intention of providing any subsidy or other funding to assist in the commencement or the
7 continuation of any commercial ferry service operated by either or both of the Applicants.

8 If the farebox revenue generated by the commercial ferry services and related business
9 undertakings described by witnesses for the Applicants during these proceedings is not sufficient to
10 maintain any such operation for more than a short period of time, there is a risk that public interest in
11 modes of transportation across Lake Washington other than motor vehicles using roadways across or
12 around the extreme ends of the lake will not be sustained, and may even be significantly reduced from
13 the level of interest that currently exists. Despite that possibility, Seattle officials believe that the
14 region's transportation systems are currently so severely stressed that, regardless of the long-term
15 viability of either of the Applicant's proposed operations, alternative modes of transportation across
16 Lake Washington are needed now. The WUTC should not reject either of the applications or refuse to
17 grant certificates for operations based upon WUTC concerns about the inadequacy of the financial
18 information presented to the WUTC in these proceedings or the short-term or long-term financial
19 viability of either of the Applicants. Seattle officials are as hopeful as the business people providing
20 management expertise and financial support to both Applicants that their respective proposed operations
21 will be successful, and also hope that by the ferry services' commencing operations, so great an interest
22 in ferry use instead of roadway use will be generated that additional, private financial resources will be
23 made available to the Applicants to ensure the success of their respective business operations.

1 Mr. Blackmun described during his testimony the West Seattle Water Taxi service that Seattle
2 Harbor Tours Limited Partnership was contracted to provide on weekdays between Downtown Seattle
3 and West Seattle for several Summer seasons as a demonstration project and that such service has been
4 re-instituted this year for a longer demonstration period. Evidence presented by Seattle Harbor Tours
5 Limited Partnership demonstrates continued interest in the commencement of demonstration projects to
6 test the waters of Lake Washington and the interests of those who must or may want to travel across it to
7 use a mode of transportation other than a private motor vehicle or public transit. Seattle officials believe
8 that even a short-term operation by either or both of the Applicants could serve as a demonstration
9 project and thereby provide more information to public decision-makers regarding what factors
10 influence traffic patterns and mode splits across Lake Washington. Through favorable WUTC action
11 with respect to these applications, commercial ferry service across Lake Washington may, again,
12 become a reality, whether on a long-term or merely for a short-term basis. In either case, the end result
13 is likely to assist, in part, in the reduction of the region's traffic congestion and provide a new
14 transportation resource for the travelling public.

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16 **III. THE WUTC SHOULD OPEN THE MARKETPLACE FOR TRANSPORTATION**
17 **ALTERNATIVES BY CONDITIONALLY CERTIFICATING MULTIPLE**
18 **COMMERCIAL FERRY OPERATIONS TO SERVE PASSENGERS TRAVELLING TO**
19 **AND FROM SEATTLE**

20 This proceeding involves proposed service within the state's most populous area, between the
21 state's largest city and sizable, surrounding suburban cities including the state's fourth largest city.
22 Testimony presented by representatives of the Applicants addressed the question of whether, and the
23 extent to which, one or more of the proposed ferry service routes would actually be in competition with
a ferry operation service route proposed by the other Applicant. Each of the Applicants expressed

1 conclusions regarding the uniqueness of their respective proposed service and the desirability of their
2 proposed landing sites/docks.

3 RCW 81.84.020(1) acknowledges that the duplication of commercial ferry service between two
4 points of service is generally not in the public interest. But that statutory provision also confirms that
5 the WUTC has the authority to condition ostensibly competing applications in a way that eliminates
6 duplication of service while at the same time furthering the public interest. Cases determined since the
7 enactment of legislation codified as RCW 81.84.020(1) establish that competition on even the same
8 routes is allowable: See, for example, State v. Dept. of Public Works, 161 Wash. 622, 297 Pac. 795
9 (1931); and State v. Dept. of Public Works, 165 Wash. 444, 6 P.2d. 55 (1931).

10 These proceedings allow the WUTC to fashion a grant of authority that maximizes the travel
11 opportunities made available to the travelling public by recognizing that the passenger-only commercial
12 ferries are significantly different from ferries that transport passengers and motor vehicles, and that
13 frequency of travel opportunities will most effectively simulate the freedom that a driver in a private
14 passenger vehicle has to determine when and what route he/she will take when crossing Lake
15 Washington. The travelling public that must rely upon passenger-only commercial ferries for cross-lake
16 transportation must also assume and suffer a reduction in travel opportunities because they have to
17 accept whatever service is offered by the commercial ferry operator. In contrast, passengers on
18 commercial ferries who drive their motor vehicles on-board have the ability and apparent intention to
19 use those motor vehicles for later travel to potentially distant ultimate destinations. The drive-on
20 commercial ferry users have a much greater flexibility in their travel opportunities when compared to
21 passenger-only ferry users.

22 Because of the obviously reduced travel opportunities available to passenger-only ferry users, a
23 multiplicity of landing sites/docks and service departure times is desirable, for through that flexibility,

1 the time and energy resources expended to accomplish travel across Lake Washington can be reduced.
2 Passengers on the Applicants' service routes who are provided multiple choices in their landing
3 sites/docks and departure times can determine, themselves, which service option will be the most useful
4 for their personal needs. They should be allowed to make that choice themselves, rather than having the
5 WUTC limit their choices by allowing only one of the Applicants to serve any particular landing
6 site/dock.

7 Neither of the Applicants presented to the WUTC evidence that it has secured any authority to
8 pick up or land passengers, or dock a ferry boat, at any of the landing sites/docks mentioned during the
9 testimony. Evidence in the record indicates that the entities owning or controlling the landing
10 sites/docks preferred by the Applicants have a "wait-and-see attitude" about such proposed use and
11 either some willingness to consider and negotiate terms and conditions pertaining to such proposed use
12 (See Exhibits 121 and 136) or, in the case of Bellevue, major concerns about the feasibility of any
13 landing site/dock in that jurisdiction.

14 The Application of Dutchman Marine, LLC, initially identified Madison Park Dock as that
15 firm's preferred landing site/dock in Seattle and two different docks as potential landing sites/docks in
16 Kirkland. That Applicant's representatives subsequently expressed the view that their business attention
17 was now focussed on landing/docking in the vicinity of Leschi Park, a more southerly location that
18 would essentially be at the eastern end of Yesler Avenue projected in a straight line to the shore of Lake
19 Washington. Jonathan Layzer, speaking on behalf of The City of Seattle, testified that representatives of
20 Dutchman Marine, LLC have had extensive conversations with Seattle officials and added that
21 numerous issues would need to be resolved before Seattle would be likely to allow Dutchman Marine,
22 LLC ferry boats to use any part of Leschi Park for the purposes desired by that Applicant, including but
23 not limited to concerns about parking impacts on the neighborhood in the vicinity of Leschi Park and

1 transportation linkages offered by METRO. Similar concerns exist with respect to the “Oceanography
2 Dock” at the University of Washington, the landing site/dock proposed for use by Seattle Harbor Tours
3 Limited Partnership and by Dutchman Marine, LLC for that firm’s Kenmore-Seattle and Bellevue-
4 Seattle services and as an alternative to all of the service proposed by Dutchman Marine, LLC. (See
5 Bench Exhibit 3.)

6 The population base of the communities around Lake Washington is sufficiently large to warrant
7 a WUTC determination that market forces should be allowed to control the destiny of the Applicants and
8 their proposed commercial ferry operations. The evidence presented in these proceedings and of public
9 knowledge clearly demonstrates that there is a need for additional modes of transportation across Lake
10 Washington to overcome the congestion barrier that currently exists on the existing bridges. The
11 Applicants have presented evidence suggesting that they may have the technical and financial capacity
12 to satisfactorily respond to that need. The severity of the transportation crisis in the region warrants a
13 pro-active, supportive response from the WUTC rather than a restrictive one. The WUTC should
14 respond to the needs of travelling public by allowing the travelling public to choose how to spend the
15 assets they allocate for transportation across Lake Washington; the WUTC should not restrict their
16 ability to make such choices by forcing them to remain stalled or slowed in a congested lane of motor
17 vehicle traffic and denying them alternative opportunities to take whatever commercial ferry service
18 may operate between Seattle and Kenmore, Kirkland, Bellevue or Renton.

19 The WUTC should also recognize that the travelling public is smart enough to make choices, and
20 that when given choices, they, themselves, can and will determine the relative cost efficiency and
21 benefits of travelling between one or more landing sites/docks in Seattle and in the four cities identified
22 in the Applications as suburban service points by choosing one service provider’s route over the other.
23 That choice should be left up to the travelling public and should not be micro-managed by the WUTC

1 through the specification of only a single landing site for service between the proposed service points.
2 Each of the landing sites/docks that have been identified in the applications is within the planning and
3 development control of the municipality in which it is located or consists of property that is actually
4 owned by such municipality. The municipalities to and from which service is proposed by the
5 Applicants legally must be involved by the Applicants in their respective implementation efforts because
6 their commercial ferry operations cannot be started without at least their acquisition of various
7 municipal land use development permits and other authorizations. Because these municipalities have
8 the legal ability to manage their own property and to respond more directly to the interests of the
9 travelling public within their respective communities, those municipalities should be allowed to deal
10 directly with the Applicants and their desires to locate a landing site/dock within those communities.

11 **IV. SEATTLE’S CONTROL OVER ITS OWN PROPERTY AND PROPOSED LANDING**
12 **SITES WITHIN ITS JURISDICTION SHOULD BE RECOGNIZED BY THE WUTC.**

13 The WUTC has limited authority with respect to the applications submitted by Seattle Harbor
14 Tours Limited Partnership and Dutchman Marine, LLC for permission to operate a commercial ferry
15 service on Lake Washington between Seattle and Kenmore, Kirkland, Bellevue and Renton. The
16 WUTC’s issuance pursuant to RCW Ch. 81.84 and WAC Ch. 480-51 of a certificate to either or both
17 Applicants to operate such a service cannot obligate Seattle, in any way, to make Seattle-owned land
18 available to either or both of the Applicants for use as a landing site dock, or to otherwise facilitate the
19 constructing, financing, or maintaining of any docking or related facility or the normal operations of
20 either of the proposed commercial ferry services. If Seattle chooses to construct, finance, or otherwise
21 provide docking or related facilities for commercial ferry service within Seattle, Seattle has the authority
22 to make such facilities available for use by either or both of the Applicants on terms and conditions that
23

1 Seattle determines are reasonable under the circumstances or are otherwise agreed upon by Seattle and
2 the Applicants, which terms and conditions may be different from those that are applied to the general
3 public and other commercial users.

4 **V. CONCLUSION; SEATTLE REQUESTS REGARDING THE CONTENT OF ANY**
5 **WUTC CERTIFICATE GRANTING AUTHORITY FOR ANY CROSS-LAKE**
6 **WASHINGTON COMMERCIAL FERRY OPERATION SERVING SEATTLE.**

6 For the reasons noted herein, Seattle respectfully requests the following of the WUTC:

7 1. A determination that a need for passenger-only commercial ferry service between Seattle
8 and Kenmore, Kirkland, Bellevue and Renton has been sufficiently demonstrated by both Applicants
9 and that as a consequence, their respective applications for a certificate to operate a commercial ferry
10 service across Lake Washington should be granted;

11 2. That each such certificate allow service to "Seattle," generally, and that to avoid
12 unnecessary restrictions on the travel opportunities of the riders on passenger-only ferries, no particular
13 landing site/dock be identified in such authorization, thereby allowing the Applicant/operator the
14 flexibility it may need to respond in the best and most rapid way that Applicant/operator can, to the
15 perceived and evident transportation desires of its customers; and

16 3. That any certificate that is issued as a consequence of these proceedings include a
17 declaration that the entity receiving such authorization is not entitled, by or under such order, to use any
18 Seattle-owned property including but not limited to any dock, wharf, landing site, pier or park, in
19 connection with such operation without separate authorization from Seattle, and an acknowledgment
20 that Seattle retains exclusive control over all Seattle-owned property, regardless of any decision,
21 certificate, order, authorization or grant by the WUTC in response to any application filed with the
22 WUTC by either Applicant; and
23

1 **CERTIFICATE OF MAILING AND TRANSMISSION**

2 I hereby certify that I have this day served the foregoing document upon the
3 Washington Utilities & Transportation Commission’s secretary by depositing the original and
4 three copies of the foregoing Post-Hearing Brief of The City of Seattle, into the United States
5 Postal Service, postage prepaid, addressed as indicated below, and have similarly served the
6 same upon all parties of record in this proceeding by simultaneously depositing a copy of the
7 foregoing document into the United States Postal Service, postage prepaid, addressed as
8 indicated below. I simultaneously sent to each of the recipients identified below a copy of the
9 foregoing document using the facsimile coping machine numbers and electronic mail system
10 addresses as authorized by WAC 480-09-120(2)(b).

11 Dated at Seattle, Washington, this twentieth day of July, 2001.

12 _____
13 Marissa Johnson

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17 To the WUTC:

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