

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In the Matter of the Applications of	)	
	)	
DUTCHMAN MARINE, LLC d/b/a	)	DOCKET NO. TS-001774
LAKE WASHINGTON FERRY	)	(consolidated)
SERVICE, for Authority to Provide	)	
Commercial Ferry Service;	)	
	)	
and	)	
	)	
SEATTLE HARBOR TOURS	)	DOCKET NO. TS-002055
LIMITED PARTNERSHIP, for	)	(consolidated)
Authority to Provide Commercial	)	
Ferry Service;	)	FIRST SUPPLEMENTAL ORDER
	)	
	)	INITIAL ORDER GRANTING
.....	)	APPLICATIONS WITH CONDITIONS

*Synopsis: This Initial Order would grant two pending applications for authority to provide commercial ferry service over various routes on Lake Washington between points in Seattle, Renton, Bellevue, Kirkland, and Kenmore.*

- 1     **Proceedings.** This Initial Order concerns two applications for partially overlapping authority to provide commercial ferry service on Lake Washington between various communities on the north, east, and south shores of the lake, and Seattle, on the western shore. The applicants are Dutchman Marine, LLC, d/b/a Lake Washington Ferry Service (Dutchman Marine), and Seattle Harbor Tours Limited Partnership (Seattle Harbor Tours). These applicants contest each others requests for authority.
  
- 2     A third application, by Seattle Ferry Service, LLC, initially was consolidated for hearing with the two subject applications. On June 6, 2001, however, Seattle Ferry Service filed a proposed settlement agreement signed by all parties that would resolve all disputes among the parties related to its application. The Commission severed the Seattle Ferry Service application for separate determination largely on the basis of a paper record. A separate Initial Order, entered today in Docket No.TS-002054, would resolve the matter of Seattle Ferry Service’s application.
  
- 3     **Parties.** Matthew C. Crane, attorney, Seattle, represents Dutchman Marine, LLC. Gregory J. Kopta, attorney, Seattle, represents Seattle Harbor Tours Limited Partnership. David W. Wiley, attorney, Seattle, represents Seattle Ferry Service, LLC (Seattle Ferry Service). Gordon B. Davidson, Assistant City Attorney, Seattle,

represents the City of Seattle (Seattle). Lori M. Riordan, Assistant City Attorney, Bellevue, represents the City of Bellevue (Bellevue). Jonathan C. Thompson, Assistant Attorney General, Olympia, represents the Commission's regulatory staff (Staff).

4 **Initial Decisions.** Subject to further review by the Commission pursuant to WAC 480-09-780, this Initial Order would grant certificates of public convenience and necessity to Dutchman Marine, LLC, and Seattle Harbor Tours Limited Partnership to operate commercial passenger ferry services across Lake Washington on various routes, subject to conditions.

5 Also subject to further review by the Commission pursuant to WAC 480-09-780, a separate Initial Order entered today would grant a certificate of public convenience and necessity to Seattle Ferry Service to operate commercial passenger ferry service over Lake Washington, between South Lake Union and Port Quendall, near Renton.

### MEMORANDUM

#### **I. Procedural History.**

6 The Commission convened a joint prehearing conference in Docket Nos. TS-001774, TS-002054, and TS-002055, in Olympia, Washington, on March 7, 2001. A Prehearing Conference Order, entered on March 14, 2001, granted petitions for intervention by the City of Seattle and the City of Bellevue. The proceedings to consider the applications of Dutchman, Seattle Harbor Tours, and Seattle Ferry Service were consolidated. A settlement agreement among the parties resolved certain disputes concerning allegedly overlapping routes. Dutchman Marine and Seattle Harbor Tours agreed to not dispute the Seattle Ferry Service application. In view of it being uncontested under the terms of the settlement agreement, the Seattle Ferry Service application was severed for separate determination largely on the basis of a paper record.

7 The Commission convened an evidentiary and public comment hearing in all three dockets on June 12, 2001, in Seattle, Washington. Hearing proceedings continued on June 13, 14, and 15, 2001. Although Seattle Ferry Service's application was severed, the hearing provided an opportunity for the applicant to offer evidence in support of its settlement with the other applicants and in support of its application. Dutchman Marine and Seattle Harbor Tours presented operating and shipper witnesses who gave oral testimony and sponsored exhibits pertinent to their applications. Several public comment witnesses were heard and written comments from the public were received as an exhibit. *See Bench Exhibit No. 2.* Briefs were filed on July 20, 2001.

## II. The Applicants' requests for authority.

8     **A. Dutchman Marine, LLC.** Dutchman Marine requests authority to provide service between Seattle and Kirkland, Seattle and Renton, Seattle and Bellevue, and Seattle and Kenmore. Dutchman Marine's goal is to establish a network of interconnecting, or partially interconnecting routes over the long term. Dutchman Marine recognizes that obtaining authority from the Commission is only one approval, among many, that it must obtain to initiate service. The company must, for example obtain docking privileges in each community, and must obtain whatever land use and other approvals are necessary to permit the conduct of its proposed business in the several jurisdictions it proposes to serve. Accordingly, Dutchman Marine asks the Commission to grant the authority it requests broadly enough to permit flexibility in establishing specific termini over a period of years. *TR. 625.*

9     Dutchman Marine intends to implement the services it proposes in phases, initiating individual routes one at a time as the requisite authorities are obtained from the various jurisdictions. Dutchman Marine believes the following primary termini are the most promising prospects over the next five or so years: The Leschi Park dock, in Seattle, to the Marina Park dock, in Kirkland<sup>1</sup>; the Leschi Park dock, in Seattle, to the Southport dock, in Renton; the University of Washington, in Seattle, to the LakePointe development in Kenmore; and the University of Washington, in Seattle, to Meydenbauer Bay, in Bellevue. *See Exhibit Nos. 103, 148; TR. at 111-113.* Dutchman Marine, however, wishes to have sufficient authority to initiate service along alternate routes between Leschi Park and Kenmore; Leschi Park to Meydenbauer Bay or Newport Shores, in Bellevue; the University of Washington and Kirkland; the University of Washington and Southport; and the University of Washington to Newport Shores. *Ex. 148.* Dutchman Marine wishes to have the flexibility to serve the communities from whichever terminals first become available.

10    **B. Seattle Harbor Tours Limited Partnership.** Seattle Harbor Tours requests authority only to serve four specific routes with no alternative termini on the Seattle side of Lake Washington. Specifically, Seattle Harbor Tours, in its application, requests authority to provide two-way commercial passenger ferry service from the University of Washington Marine Service Dock, in Seattle, to Kenmore, Bellevue, and Renton. Like Dutchman Marine, however, Seattle Harbor Tours also requests a degree of flexibility in any authority granted to permit it to take advantage of whatever docking arrangements can be made in Kenmore, Bellevue, and Renton. According to Seattle Harbor Tours' application, the docking facilities in the three east-side communities are "to be determined." *Exhibit No. 201.* Seattle Harbor Tours requested at hearing that its application be deemed to include service between University of Washington to Kirkland, a route for which its affiliate, Argosy,

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<sup>1</sup> Dutchman plans to add a stop at Carillon Point, just to the south of Marina Park once ridership has developed on the Marina Park to Leschi route. *Tr. at p. 113.*

previously was granted authority to serve, but as to which its certificate of public convenience and necessity arguably has expired as a matter of law.

### **III. Applicable Statutes and Rules.**

11 The Commission regulates commercial ferries under Chapter 81.84 RCW. RCW 81.84.010 defines the circumstances under which the legislature has seen fit to require a certificate of public convenience and necessity for operation of a commercial ferry:

(1) No commercial ferry may hereafter operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation . . .

12 The standards to be applied by the Commission in deciding whether, or under what conditions, to issue a certificate are set out in RCW 81.84.020:

(1) Upon the filing of an application the commission shall give reasonable notice to the department, affected cities and counties, and any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission shall have power after hearing, to issue the certificate as prayed for, or to refuse to issue it, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require; but the commission shall not have power to grant a certificate to operate between districts and/or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless such existing certificate holder has failed or refused to furnish reasonable and adequate service or has failed to provide the service described in its certificate or tariffs after the time period allowed to initiate service [five years] has elapsed. . . .

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma financial statement of operations. Issuance of a certificate shall be determined upon, but not limited to, the following factors: ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section shall comply with the provisions of RCW 9A.72.085.

13 The statutes allow an applicant for ferry service five years from the issuance of a certificate to initiate service, and they contemplate the possibility that many of the details of the operation will not have been worked out prior to issuance of the certificate:

(2) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate. The certificate holder shall report to the commission every six months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations. However, if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service.

RCW 81.84.010.

#### **IV. Preliminary Issues.**

14 There are three preliminary issues that must be considered prior to analyzing the record vis-à-vis the central issues of public convenience and necessity and fitness. The preliminary issues are: (A) does the “territory already served by an existing certificate holder” limitation of RCW 81.84.020 bar the Commission from granting any part of either application?; (B) Should Seattle Harbor Tours application be conformed to the evidence, effectively amending the application to include a request for service between Kirkland and Seattle; and (C) Is Seattle Harbor Tours’ failure to produce shipper witnesses on the issue of public convenience and necessity fatal to its application? Staff analyzed the first two questions in detail in its brief. We follow, and take liberally from, Staff’s analysis without further specific attribution in our discussion below.

#### **A. Does the “territory already served by an existing certificate holder” limitation of RCW 81.84.020 bar the Commission from granting any part of either application?**

15 RCW 81.84.020 provides, in part, that:

the commission shall not have power to grant a certificate to operate between districts and/or into any territory . . . already served by an existing certificate holder, unless such existing certificate holder has failed or refused to furnish reasonable and adequate service or has failed to provide the service described

in its certificate or tariffs after the time period allowed to initiate service has elapsed . . .

Thus, as a threshold matter, the Commission must consider whether an applicant proposes to operate between districts and/or into territory already served by an existing certificate holder.

- 16 The only evidence that has been offered of an existing certificate that might bar the Commission from granting any part of the applications at issue in this proceeding is the certificate that was transferred to Argosy L.P. in December of 1995 and which included authority for service between Seattle and Kirkland. *See* Tr. 892-93 Blackman. Based on the analysis below, we find that Argosy L.P.'s existing certificate to provide service between Seattle and Kirkland does not bar the Commission from granting the authority, or some portion of the authority, that Dutchman seeks between Seattle and Kirkland.
- 17 There was a good deal of confusion surrounding this certificate at hearing. Ms. Bonnie Allen of the Commission Staff offered helpful testimony to clarify the record. Staff's review of the Commission's records indicates that a certificate including new authority for service between Kirkland and Seattle was issued to Gray Line Water Sightseeing, Inc. on May 31, 1989. *See Appendix A to Staff Brief*. The authority to provide service between Kirkland and Seattle included in this certificate was transferred, with the requisite Commission approval, to TMT Corporation and John C. Blackman d/b/a Seattle Harbor Tours Limited Partnership on May 17, 1990. *Id.*
- 18 Effective July 25, 1993, the legislature amended the law concerning boat certificates to include the current requirement that service must be initiated within five years of obtaining the certificate. *Washington Laws, 1993 Ch. 427, Sec. 2*. The language added to RCW 81.84.010 in 1993 provides that:
- (2) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate. The certificate holder shall report to the commission every six months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations. However, if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service.
  - (3) The commission shall review certificates in existence as of July 25, 1993, where service is not being provided on all or any portion of the route or routes certificated. Based on progress reports required under subsection (2) of this

section, the commission may grant an extension beyond that provided in subsection (2) of this section. Such additional extension may not exceed a total of two years.

The statute makes no distinction between those who obtained a certificate before 1993 and those who obtained one after 1993 for purposes of the new requirement to initiate service within five years and to file six-month progress reports during that time. *See WAC 480-51-120 (Commission rule concerning failure to initiate service, extensions of time to initiate service, and progress reports)*. All certificate holders were required to file the progress reports. The only difference in treatment is that if an entity had obtained its certificate prior to 1993, and had failed to initiate service within five years of having obtained that certificate, it was eligible not only for extensions of up to three years as provided for in section (2), but also for additional extensions totaling two years, as provided in section (3).

- 19 TMT Corporation and John C. Blackman d/b/a Seattle Harbor Tours L.P., which obtained the certificate to provide service between Kirkland and Seattle in 1990, apparently never sought an extension at the five year anniversary after obtaining the certificate from Gray Line. Possibly in error, the Commission granted a transfer of the application from TMT and John Blackman to Argosy L.P. on December 13, 1995, without raising the question as to whether the period for requesting an extension had expired. *See Appendix A to Staff Brief*. Arguably, under the requirement that a certificate holder must either initiate service within five years of obtaining a certificate or seek an extension, the Seattle-Kirkland authority had already expired by May of 1995.
- 20 Even if Argosy had missed its chance by 1995 to seek an extension of time in which to initiate service under its certificate, the most favorable alternative view of the status of this certificate—from Argosy’s point of view—is that the 1995 transfer started the five-year clock of RCW 81.84.010 running anew. But this theory also fails to get Argosy, and its partner Seattle Harbor Tours, to their desired result.
- 21 Mr. John Blackman, on behalf of Argosy and Seattle Harbor Tours, testified that neither Argosy L.P. nor Seattle Harbor Tours has initiated service pursuant to the certificate. *Tr. 891, 894 (Blackman)*. Nor has Argosy filed the requisite progress reports detailing steps made toward initiation of service for at least the last three or four years. *Tr. 927 (stipulation)*. Even under the theory most favorable to Argosy, the five year period for initiation of service expired in December 2000. Argosy has failed to apply for an extension of the five year time period for initiation of service. *Tr. 928 (stipulation)*. Even if the Commission were to conclude it could consider an untimely request for an extension of this certificate from Argosy, it would have no basis on which to grant that extension because of Argosy’s failure to file progress reports as required by statute and Commission rule.

22 Although the authority has not been technically cancelled pursuant to the procedure set out in RCW 81.84.060, at least one of the grounds for cancellation has been established in this case—namely, “[f]ailure of the certificate holder to initiate service by the conclusion of the fifth year after the certificate has been granted or by the conclusion of an extension.” *RCW 81.84.060(1)*. However, cancellation of Argosy’s certificate is not before the Commission in this proceeding because there has been no complaint by an interested party or by the Commission on its own motion as required by the statute. *RCW 81.84.060*.

23 The Commission, however, need not wait for Argosy’s expired authority to be formally cancelled pursuant to RCW 81.84.060 to grant an application to operate the Seattle to Kirkland route Dutchman Marine has applied to serve. RCW 81.84.020 provides that:

the commission shall not have power to grant a certificate to operate between districts and/or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, *unless such existing certificate holder has failed or refused to furnish reasonable and adequate service or has failed to provide the service described in its certificate or tariffs after the time period allowed to initiate service has elapsed. . .*

[emphasis supplied.] Argosy admits that it failed to provide the service described in its certificate. It is apparent from the Commission records that the time period allowed to initiate service has elapsed. As such, the Commission need not consider Argosy’s certificate an impediment to granting another carrier a certificate to operate between Kirkland and Seattle.

**B. Should Seattle Harbor Tours application be conformed to the record, effectively amending the application to include a request for service between Kirkland and the University of Washington in Seattle?**

24 At hearing, Seattle Harbor Tours’ counsel had the following exchange with ALJ Moss:

MR. KOPTA:

\* \* \*

I think it is our intent that to the extent the Commission believes that the certificate has expired and that no further authority has been granted to Argosy for the route between Kirkland and Seattle, that we would as part of this proceeding, as part of this application, be requesting authority from Kirkland to the University of Washington, and we will be narrowing it from Kirkland to Seattle to Kirkland to the University of Washington.

JUDGE MOSS: As a new authority?

MR. KOPTA: As a new authority, I think, because, as Mr. Blackman testified, it's more convenient to have all of the authority held in Seattle Harbor Tours.

\* \* \*

*Tr. 924.* We regard this as a motion by Seattle Harbor Tours to amend its application to include a request for new authority to provide ferry service between Kirkland and the University of Washington. We grant Seattle Harbor Tours' motion for the reasons discussed below.

25 Consistent with WAC 480-09-425(4) and (5),<sup>2</sup> the Commission has previously held that it will allow amendment to an application at any time, provided the amendment has no adverse affect on the interests of persons who are not parties to the proceeding. *Order M. V. G. No. 1451, In re Sure-Way Incineration, Inc., Hearing No. GA-868 (1990)*. However, as a general rule, an amendment that expands the scope of the authority sought must be re-published in the Commission docket. *Id.*

26 Allowing an amendment to include additional authority not included in the original application is ordinarily not done without re-publishing the application to avoid potential prejudice to non-parties. In this case, however, there is cause for an exception. Potentially interested parties have had notice that an applicant—albeit Dutchman Marine, not Seattle Harbor Tours—is seeking authority for commercial ferry service between Seattle and Kirkland. Accordingly, it is reasonable to presume that anyone having an interest in developing the route themselves or in opposing the route on some other ground, would have come forward as a protestant to Dutchman's application, which was consolidated with that of Seattle Harbor Tours at the outset of these proceedings. It appears from the record that all parties put on essentially the same case and engaged in the same cross-examination that they would have presented had it been clear from the outset that Seattle Harbor Tours was seeking new authority between Kirkland and the University of Washington.

**C. Is Seattle Harbor Tours' failure to produce shipper witnesses on the issue of public convenience and necessity fatal to its application?**

27 As discussed in more detail below in section III.A., Dutchman Marine produced four shipper witnesses to support the proposition that the public convenience and

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<sup>2</sup> (4) Liberal construction. The commission will construe pleadings liberally with a view to effect justice among the parties. The commission will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceeding that do not affect the substantial rights of the parties.

(5) Amendments. The commission may allow amendments to the pleadings or other relevant documents at any time upon such terms as may be lawful and just.

necessity require passenger ferry service on Lake Washington. Seattle Harbor Tours called only its operating witness, Mr. Blackman, to testify on this point. Dutchman Marine argues that Seattle Harbor Tours' application must be denied because it failed to produce witnesses other than its operating witness to establish public convenience and necessity. *Dutchman Marine Brief at 9-10.*

28 Dutchman Marine cites *Canton Storage and Transfer Co., Inc. v. Public Utilities Commission of Ohio*, 647 N.E.2d 136 (Ohio 1995) for the proposition that an applicant may not rely on the testimony of another applicant's witness to show public convenience and necessity. *Canton Storage*, however, does not control this proceeding. Not only is the authority that of a state court in another jurisdiction, the case also is distinguishable on its facts. The Court in *Canton Storage* held that the Ohio Public Utilities Commission's conclusion that it could rely on shipper testimony offered by one applicant to support the grant of authority to another applicant was arbitrary and capricious because all the witnesses in that case limited their testimony to support for a single applicant. In contrast, the witnesses who testified to the public convenience and necessity in this proceeding did not so limit their testimony.<sup>3</sup> Mr. Hamilton, for example, testified that he supported ferry service between Kenmore and Seattle generally, and could not "speak to the Dutchman Marine ferry proposal versus any other ferry proposal." *TR. 222-23.* Mr. Underwood testified that in his opinion a route between Renton and the University of Washington, as proposed by Seattle Harbor Tours would provide the same benefits as a route between Leschi Point and Renton, the primary alternative proposed by Dutchman Marine. All other things being equal, Mr. Underwood testified that he would "absolutely" recommend the Renton to University of Washington route as well as the primary service route proposed by Dutchman Marine. *TR. 348.* Mr. Allen testified on cross-examination that a ferry service offered between Southport, in Renton, and the University of Washington would have the same benefits as those for service between Southport and Leschi Park, in Seattle. *TR. 361.* Finally, Mr. Layzer testified that the City of Seattle, although supportive of the concept of ferry service on Lake Washington, does not support one application or another in this proceeding.<sup>4</sup> *TR. 390.*

29 The shipper support evidence offered in this proceeding is undisputed. It is, in that sense, not materially different from stipulated evidence. The Commission will consider such evidence of need, regardless of which party sponsored the witness offering the testimony. See *In re Pacific Northwest Transportation Services, Inc., et al.*, Order M. V. C. No. 1482 (February 1985).

30 On a related point, Dutchman Marine argues that the Commission should not consider the testimony offered by Seattle Harbor Tours' operating witness, Mr.

<sup>3</sup> Some of the shipper witnesses Dutchman Marine presented testified that that they communicated about ferry service with Mr. Dolson, but they did not testify that their support for commercial ferry service on Lake Washington was limited to the service proposed by Dutchman Marine.

<sup>4</sup> Mr. Layzer is employed by the City of Seattle Strategic Planning Office.

Blackman, on the issue of public convenience and necessity. Dutchman Marine argues that the Commission's policy in ferry applications is to reject the testimony of an applicant's operating witness to establish public convenience and necessity. *Dutchman Marine Brief at 10.*

- 31 Dutchman Marine's argument that the Commission should reject the testimony of an applicant's operating witness on the issue of public convenience and necessity can be traced to a 1984 decision by the Commission. *See In re Richard & Helen Asche, Bremerton-Kitsap Airporter, Inc., d/b/a Bremerton-Kitsap Airporter, Inc., Kitsap-Sea-Tac Airporter, Inc., The Sound Connection, Order M. V. C. No. 1444 (May 1984).* *Richard & Helen Asche*, however, is distinguishable from this case.
- 32 In cases where an applicant presents only the testimony of its operating witness, the primary concern is the reliability and veracity of that witness's testimony. In *Richard & Helen Asche*, the Commission rejected the testimony of the applicant's operating witness because there was no other testimony on the record to support the proposition that the public convenience and necessity required the extension of service that the applicant proposed. *Id.* In this case, by contrast, the totality of evidence lends credibility to the testimony provided by Mr. Blackman. Moreover, Mr. Blackman's demeanor on the stand and his extensive experience in the commercial ferry business in the Puget Sound region lends credibility to his testimony. The concerns underlying the result in *Richard & Helen Asche* simply are not present in this proceeding.
- 33 We note that our analysis of this issue applies with equal force to testimony concerning the public convenience and necessity offered by Mr. Daniel Dolson and Mr. David Dolson, operating witnesses presented by Dutchman Marine. In sum, we find and conclude that the full record in this proceeding, including the testimony by independent shipper support witnesses, and the company witnesses presented both by Dutchman Marine and Seattle Harbor Tours, should be considered in evaluating the issue of public convenience and necessity with respect to both pending applications.

## **V. Substantive Issues.**

### **A. Do the public convenience and necessity require commercial ferry service on Lake Washington?**

- 34 The Commission may grant a certificate to operate commercial passenger ferry service only when it finds that the public convenience and necessity require the service. *RCW 81.84.010(1)*. The required showing generally is established by the testimony of witnesses who would use the service if it were available. *Order S.B.C. No. 524, In re Pacific Cruises Northwest, Inc., App. No. B-78450 (May 1996)*. Persuasive testimony also may be presented by witnesses who are familiar with transportation needs over the routes in question and persons whose employment or business activities gives them special insight into the transportation needs of the

public. Finally, members of the public may appear and offer testimony that bears on the question whether the public convenience and necessity require the proposed service.

35 Dutchman Marine called four independent shipper-support witnesses, John Hamilton, Tony Underwood, Tom Waithe, and Rex Allen. Mr. Hamilton is the president of Presidio Partners, representing LakePointe Development, a planned development project in Kenmore consisting of a large number of commercial offices and between 800 and 1000 residences on the shore of Lake Washington. *TR. 219*. Mr. Hamilton testified that passenger ferry service between Seattle and Kenmore would provide an attractive alternative mode of transportation for the large number of commercial tenants and residents of the development who otherwise would rely exclusively on crowded roads for trips to and from Seattle. Although called by Dutchman in connection with its application, Mr. Hamilton testified that he supported ferry service between Kenmore and Seattle generally, and could not “speak to the Dutchman Marine ferry proposal versus any other ferry proposal.” *TR. 222-23*. He sees such service as a “great complement” to other transportation alternatives.

36 Mr. Underwood manages parking and commuter programs for the Boeing Company in Washington State. The group he manages is in charge of promoting commuter trip reduction programs. *TR. 340*. Mr. Underwood has extensive involvement with various transit agencies and a strong familiarity with transportation needs and alternatives in the Puget Sound area. Mr. Underwood testified that “[t]he more different modes of transportation, the different alternatives you can present to people, the more successful you will be at enticing them at leaving their car home and taking other forms of transportation.” *TR. 342-43*. He believes passenger ferry service would present yet an additional alternative that “would work very well.” *TR. 343*. Among other things, such service, “if priced right and . . . convenient,” could provide significant benefits to Boeing’s approximately 13, 000 employees at its Renton plant, which is located on the shores of Lake Washington. *TR. 343-44*.

37 On cross-examination, Mr. Underwood testified that, in his opinion, a route between Renton and the University of Washington, as proposed by Seattle Harbor Tours would provide the same benefits as a route between Leschi Point and Renton, the primary alternative proposed by Dutchman Marine. All other things being equal, Mr. Underwood testified that he would “absolutely” recommend the Renton to University of Washington route as well as the primary service route proposed by Dutchman Marine. *TR. 348*.

38 Mr. Allen is employed by SECO Development, a real estate development company located in Bellevue. One of SECO’s projects is a mixed-use development adjacent to the Boeing facility in Renton. The project, located on the lakefront, includes 300 residential units, 750,000 square feet of office space, and a 220 room hotel. *TR. 352*. Transportation issues are one of Mr. Allen’s responsibilities in the project

development. Reducing the impacts of automobile traffic generated by SECO's development is among the interests Mr. Allen has in his job. He testified that a passenger ferry service on Lake Washington is among the alternatives that would fit in with SECO's plans. He stated that such an alternative would be "a big benefit" because it could serve both project residents and the 3,000 to 4,000 employees who will work in the commercial spaces. *TR. 355.* Additionally, Mr. Allen testified that a passenger ferry service would promote the significant retail operations planned for the development. *TR. 356.* Mr. Allen stated that he has kept abreast of Dutchman Marine's proposal and he views it with increasing enthusiasm as "a low impact transportation alternative that can serve [SECO's project]." *TR. 360.*

39 Mr. Waith is employed as general manager by Carillon Properties and Woodmark Hotel, near Kirkland. Among other responsibilities, Mr. Waith is involved in efforts to provide alternative modes of transportation for both hotel guests and employees. *TR. 364.* Mr. Waith testified that most of his guests travel to the hotel from the airport and remain for an average stay of three nights. He stated that "an awful lot of them have business in Seattle, so our challenge is always getting them downtown." *TR. 366.* Mr. Waith testified that a passenger ferry service would be a good alternative to travelers who otherwise face congested conditions on Highway 520 and significant expense for other modes of transportation such as "town cars" or taxis. *TR. 367.*

40 Mr. Waith also testified that he is, or recently has been active in the East King County Convention and Visitors Bureau, the Kirkland Downtown on the Lake organization, the Strategic Kirkland Tourism Planning Commission, and the Carillon Point Merchant's Association. He stated that based on discussions with these groups related to the subject of potential passenger ferry service between Seattle and Kirkland, he is "extremely convinced such a service would be a great benefit to the city." *TR. 370.*

41 Dutchman Marine also called to the stand Mr. Jonathan Layzer. Mr. Layzer is employed by the City of Seattle Strategic Planning Office. Among other things, he has significant experience working with transportation issues in the Seattle area and such issues remain within the scope of his responsibility. Mr. Layzer testified with respect to the Transportation Strategic Plan for the City of Seattle, Exhibit No. 110, a document with which he works as part of his job for the city. *TR. 380-81.*

42 Mr. Layzer testified that he is familiar with Dutchman Marine's plans for passenger ferry service on Lake Washington. *TR. 382-83.* He confirmed that the proposed service fits within the policy goals identified in the city's strategic plan. *TR. 383.* He stated further that he sees ferry service as promoting the plan's emphasis on providing alternative forms of transportation to avoid congestion. *TR. 384.* Specifically, Mr. Layzer testified that:

Access to and from the city from points east of the lake is constrained to travel across I-90, SR-520, or around the north and south ends of the lake, and there's a lot of study right now on approaches to improving those transportation corridors . . . [A]ny alternatives to cross the lake would provide an alternative for people who otherwise would be stuck in traffic.

*TR. 384.* Mr. Layzer stated that the city's goal of promoting bicycle travel also would be supported by a passenger ferry service that would transport bicyclists from one side of the lake to the other, an option that currently is very limited. *Id.*

43 Dutchman Marine presented testimony concerning prospective demand for the proposed service by the company's marketing director, Mr. David Dolson. Mr. David Dolson was hired by Dutchman Marine "to help understand . . . whether there was a market and what the service would be for that market . . . ." *TR. 745.* Mr. David Dolson testified that he studied the available transportation plans and studies, and other data concerning the region's transportation issues. He found that "there is a need to help people get across the lake or around the lake, and that the lake was not being used to help solve the problem, that other people had looked at it and had not figured out how to do it . . . ." *TR. 747.* Mr. David Dolson testified that on the basis of his research "we concluded that there was a need for a waterborne pedestrian system that would tie in to a land-based pedestrian system that would give people an alternative to driving alone in their cars and an alternative to roads and such." *TR. 748.*

44 Mr. David Dolson described the "iterative" approach he took to further analysis of the potential market using "macro" and "micro" techniques. *TR. 751.* His macro analysis involved considering the number of individual passenger trips across the two bridges that presently are the primary arteries used by travelers from one side of Lake Washington to the other. He found various government statistics that showed approximately 270,000 vehicle trips per day. Considering multiple passenger vehicles, the number of travelers is approximately 340,000. Although he acknowledged the figure to be somewhat speculative, Mr. David Dolson assumed a passenger ferry service should capture at least one-half of one (0.5) percent of the daily travelers, or 1,750 people, a number that would be adequate to support the proposed service financially. *TR. 752.*

45 On the micro level, Mr. David Dolson conducted ridership and fare surveys. Based on questionnaire responses he concluded that his ridership estimates were reasonable. *TR. 756, 758; see Exhibit Nos. 114, 115.* Mr. David Dolson testified that on both surveys "we had very high favorable results." *TR. 758.* He stated that although the studies were not statistically rigorous, even when discounted the results were favorable. *Id.*

46 Mr. Daniel Dolson, Dutchman Marine's chief operating witness, testified regarding his company's extensive analysis of whether the current or future public convenience and necessity require passenger ferry service on Lake Washington. Generally, he testified that:

What justified the need for passenger ferries on Lake Washington was the growing development along the lake front and the increased congestion crossing or going around the lake, not simply 520 or I-90. We're also looking at going around the north side and the south side of the lake. That's what makes the market a little stronger. In addition, we looked at the private developments on the lake with such massive numbers of people visiting these individual developments. . . [f]or example LakePointe or Southport.

*TR. 121.* Mr. Daniel Dolson testified that he did extensive background research into successful urban ferry systems in other parts of the United States, including New York, Boston, and San Francisco. *TR. 124-25.* This research provided Mr. Dolson a substantial base of information from which to evaluate demographic factors that bear on whether adequate ridership can be developed to support a service such as that he proposes to provide on Lake Washington. Mr. Dolson also investigated the potential viability of passenger ferry service on Lake Washington by reviewing various studies, newspaper articles, and by interviewing private developers, local business owners, residential management personnel, condo associations, and rental agencies. *TR. 134.* Mr. Dolson obtained from the City of Renton and SECO Development "their professional traffic analysis" and "incorporated that information into what we were doing in terms of applying a take rate or an assumed ridership percentage of the total trips." *TR. 138.* Mr. Dolson also contacted various public advocacy groups that have interests in alternative forms of transportation to help determine what market to target in the Lake Washington area. *TR. 148.*

47 Mr. Dolson offered details concerning his contacts with public officials and private developers in the various communities Dutchman Marine proposes to serve. Mr. Dolson sponsored various exhibits including letters of support from such individuals for passenger ferry service between the various communities and Seattle. *Exhibit Nos. 122, 123, 124, 125, and 137.* Mr. Dolson also sponsored Exhibit No. 126, which includes shipper support statements Dutchman Marine obtained from 28 individuals in the communities that would be served.

48 Seattle Harbor Tours called its operating witness, Mr. Blackman, to testify, among other things to his analysis of whether there is a need for passenger ferry service on Lake Washington. Mr. Blackman has been involved in the commercial ferry business in the Puget Sound region for more than a decade and operates a number of successful ferry operations and related services including tour cruises on Lake Washington. *TR. 831-39.* Although he believes it may be several years at the soonest

before such services may be operational, Mr. Blackman testified generally that in his opinion as an expert the public convenience and necessity do require passenger ferry service on Lake Washington on the various routes between Seattle and other communities on Lake Washington that are the subject of Seattle Harbor Tours and Dutchman Marine's applications. *TR. 840-46.* Mr. Blackman testified more specifically with respect to ridership estimates on the routes Seattle Harbor Tours proposes to serve. *TR. 850.* Mr. Blackman estimates 1,200 passenger-trips per day between Kenmore and Seattle, and Bellevue and Seattle. *Exhibit No. 202.* He estimates 900 passenger-trips per day between Renton and Seattle. *Id.* Mr. Blackman's estimates are stated on an annual average basis. *TR. 850.* Finally, on cross-examination, Mr. Blackman testified concerning an independent transportation survey undertaken in early 2000 at the direction of King County by "a highly respected survey company, Public Opinion Strategies. Mr. Blackman testified that this was a telephone survey with a sample of 400 people located in "a broad cross-section of eastside communities, including Kirkland, Bellevue, Renton, and Kenmore. *TR. 877-79.* Mr. Blackman testified "that 57 percent of those surveyed indicated a preference for water taxi service across Lake Washington." *TR. 879.* Mr. Blackman said this figure was used in developing Seattle Harbor Tours' ridership estimates. *TR. 880.*

49 This substantial body of evidence well supports our finding that the public convenience and necessity require passenger ferry service between Seattle and the communities the applicants propose to serve on the northern, eastern, and southern shores of Lake Washington.

**B. Do the applicants satisfy the requirement of financial fitness to provide the services for which they have applied?**

50 Our statutes require that an applicant for authority to provide commercial ferry service must show that it has the financial resources to operate the service it proposes for at least twelve months. *RCW 81.84.020(2); In re the Application of Seattle Ferry Service, LLC d/b/a Seattle Ferry Service, Docket No. B-78811 & B-78822 S.B.C. Order No. 563 (June 2000).* That determination is based in part on the applicant's pro forma financial statement of operations. *Id.* In addition, the statute provides that the Commission must consider the following factors:

Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing service; a statement of the total assets on hand of the Applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in providing commercial ferry service. *RCW 81.84.020(2); see also WAC 480-51-030(1).*

## 1. Dutchman Marine.

- 51 Daniel Dolson, Dutchman Marine's chief operating witness, testified at length concerning the significant amount of study, planning, and effort that has gone into preparing to provide commercial ferry service on Lake Washington. As recounted above in section III.A., Mr. Dolson has studied ferry systems that are operating successfully in other parts of the United States. At his direction, Dutchman Marine has taken ridership and fare surveys. Dutchman Marine has carefully examined costs operation, including vessel charters and acquisition. TR. 116-17, 203-208 (Dolson); Exhibit No. 116. Significantly, Dutchman Marine has hired, or contracted with qualified experts and experienced persons who are well-suited to assist the company in its start-up phase.
- 52 Dutchman Marine carefully evaluated the market and developed ridership and revenue forecasts in support of its application and other financial analyses. *Exhibit Nos. 101, 142, 147, 149*. Dutchman Marine's ferry service consultant, Barry Fuller, reviewed the fare revenue and ridership forecasts and found them reasonable in light of his considerable experience in commercial ferry operations.
- 53 Dutchman Marine has arranged for loans totaling up to \$1.2 million from three individuals. *Exhibit Nos. 139C-141C (loan agreements); 143-45 (redacted loan agreements); TR. 118-120 (Dolson)*. These funds are available and can be drawn on to provide cash for operations as needed. *Id.*
- 54 Dutchman Marine's Chief Financial Officer, Mr. Hibma, testified regarding Dutchman Marine's revenue forecasts for the first 18 months of operation, the cost of service for the operations, and the total assets on hand that will be expended to support the service during its early stages. Mr. Hibma testified that although Dutchman Marine expects to lose money in the first year, the operations are reasonably anticipated to generate more money than a break-even position before the end of the first year. TR. 678, 682. Mr. Dolson confirmed the expectation that the business will lose money in the first year of service. TR. 209. He testified that "I would be unrealistic to expect a profitable year in the first season." TR. 209-210. Mr. Dolson testified further that he is satisfied, based on his discussions with Mr. Hibma, that Dutchman Marine has sufficient cash reserves for the business to lose money in the first year, yet survive financially. TR. 211. Mr. Hibma testified that the company's loan commitments provide sufficient funds to operate the proposed service for at least 12 months. TR. 686-87.
- 55 Mr. Fuller is a ferry system consultant hired by Dutchman Marine to advise the company how to best set up and commence ferry operations on Lake Washington. Mr. Fuller has helped establish and operate successful ferry systems for more than twenty years. TR. 419-29. Mr. Fuller testified that passenger ferry service on Lake Washington is quite feasible and likely to be successful based on demographics,

infrastructure, geography, and the research and analysis conducted by Daniel Dolson. *TR. 434*. Mr. Fuller believes that Dutchman Marine's projected ridership and proposed fares are reasonable, and its service is likely to be successful. *TR.436, 443*.

56 It appears from the body of evidence presented that Dutchman Marine has the financial wherewithal and logistical support to operate the service it proposes for at least twelve months. We find that Dutchman Marine is financially, and otherwise, fit to provide the service for which it has applied.

## 2. Seattle Harbor Tours.

57 Seattle Harbor Tours presented adequate evidence to demonstrate that it has the financial resources and experience necessary to provide the commercial ferry service it has proposed. Seattle Harbor Tours and Argosy, its general partner, have been in operation since 1949, providing water tours, cruises, charters, and dinner boat excursions in the waters in and around Seattle, including Lake Washington. *TR. at 832-36 (Blackman)*. Argosy operates and maintains 12 vessels, three of which are leased from Seattle Harbor Tours; employs up to 400 people; serves roughly 500,000 passengers per year; and generates over \$10 million in annual revenues with assets approaching \$20 million. *Id. at 837-38 & 898*. In addition, Argosy is very active in the greater Seattle area and other communities that border Lake Washington, participating on numerous boards and receiving prestigious awards and other recognition for its service to these communities. *Id. at 838-40*. Argosy is committed to providing sufficient funding, operational and administrative support, and other resources to enable Seattle Harbor Tours to initiate and provide the proposed commercial ferry service. *E.g., id. at 852-53, 920-21, and 933*. In addition, Seattle Harbor Tours provided specific financial information in its Application, including ridership and revenue forecasts, the value of the assets currently owned by the company, and the estimated costs of providing the proposed service. *Exhibit Nos. 201-02 (Application and Supplemental Responses); TR. at 848-53 (Blackman)*.

58 Seattle Harbor Tours also has substantial experience in maritime operations in general and commercial ferry operations in particular. In addition to access to Argosy's considerable experience, Seattle Harbor Tours has operated a commercial ferry service on Elliott Bay in Seattle during four of the last five summers as a demonstration project with King County and the City of Seattle. *TR. 853-54 and 910-12 (Blackman)*. Not only has Seattle Harbor Tours obtained temporary Certificates from the Commission for this route but King County selected Seattle Harbor Tours from among three competing companies to provide the service this year. *Id. at 855*. The Commission has also granted Seattle Harbor Tours a Certificate to provide commercial ferry service between The University of Washington and South Lake Union. *See, e.g., id. at 845*.

59 We find on the basis of the evidence presented that Seattle Harbor Tours is financially, and otherwise, fit to provide the service for which it has applied.

#### **VI. Waiver of Ten-Mile Restriction.**

60 RCW 47.60.120 prohibits new private ferry crossings within ten miles of a crossing already operated by the Washington State Ferries (WSF). Although the WSF do not operate any routes on Lake Washington, the WSF does operate routes on other bodies of water that are within 10 miles of Lake Washington. The Commission may, however, grant a waiver of the ten-mile restriction if it finds that the waiver is not detrimental to the public interest. *RCW 47.60.120(3)*. When the Commission decides whether to waive the ten-mile restriction, it must consider the impact of the waiver on transportation congestion mitigation, air quality improvement, and the overall impact on the Washington state ferry system. *RCW 47.60.120*.

61 The service proposed by the Applicants will provide an alternative means of transportation that can lessen the number of cars traveling over the Lake Washington bridges. Fewer motor vehicles on the road means less pollution and improved air quality.

62 In addition, the WSF states that the proposed routes will not have a detrimental effect on WSF traffic or revenues. *Exhibit No. 127*. The Commission therefore grants to Dutchman Marine, Seattle Harbor Tours, and Seattle Ferry Service a waiver of the ten-mile restriction for the purposes of furnishing services consistent with the terms of this Order.

#### **VII. Conditions.**

63 As a threshold matter, we reject the argument that our statutes provide for grants of exclusive authority to a single certificate holder with respect to the development and operation of service in a particular territory or even along individual routes. The grant of authority to one applicant does not preclude the simultaneous grant of authority for competing service over the same or a similar route, or a subsequent grant of such authority, on proper grounds. The Commission may grant competing applications for authority to conduct commercial passenger ferry service if it finds that the nature of the service, the level of need, and the applicants' ability to fully meet shippers' needs, are consistent with a grant of authority to more than one carrier. *In re Jack Rood and Jack L. Harmon Jr., d/b/a Arrow Launch Service, Order S. B. C. No. 467; Order S. B. C. No. 468, In re Belairco, Inc., (May 1990)*. Once a certificate has been issued for a particular service, the Commission may grant a subsequent application to provide service in the same territory on a showing that the "existing certificate holder has failed or refused to provide reasonable and adequate service." *RCW 81.84.020(1)*.

64 That said, when competing, or subsequent, applications are considered the Commission must determine, among other things, whether an overlapping service, or service along the same route by a second service provider is financially sustainable in terms of ridership demand and such other factors as may be pertinent. Absent a finding that the public convenience and necessity require (*i.e.*, can sustain) more than one service provider in a particular territory, the Commission should not approve more than one application to provide service.<sup>5</sup> That is, the Commission must consider whether granting authority to more than one service provider would result in ruinous competition.

65 In like vein, however, the Commission also considers the potential benefits of competition in the case of contemporaneous applications for overlapping territories, or for subsequent applications to serve in a territory, or over a route already served.

66 In this case, it is abundantly clear that the public convenience and necessity require commercial ferry service on Lake Washington over a variety of routes. The City of Seattle, in its post-hearing brief, develops this point with particular persuasive force. *City of Seattle Brief, passim*. It also appears that the two applicants are financially and otherwise fit to provide such service, or at least to initiate service and support it financially for more than 12 months. Both applicants, and the other parties, recognize full development of the suggested routes is both uncertain and will require significant time and effort over several years due to both legal and practical hurdles.

67 The record in this proceeding supports granting the authorities requested in a fashion that will promote healthy competition in the development of commercial ferry services on Lake Washington while protecting against ruinous competition. To best ensure that both goals are met, it is necessary to condition the grant of such authorities. The Commission must simultaneously provide both applicants the flexibility they need to develop specific routes as various landside approvals are obtained, yet guard against allowing more than one operator to serve any particular route.

68 Accordingly, we grant authority to the applicants, as follows:

Dutchman Marine for routes between:

1. The Leschi Park dock, in Seattle, and the Marina Park dock, in Kirkland;
2. The Leschi Park dock, in Seattle, and the Southport dock, in Renton;
3. The University of Washington, in Seattle, and the LakePointe development, in Kenmore;
4. The University of Washington, in Seattle, and Meydenbauer Bay, in Bellevue;

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<sup>5</sup> In the case of subsequent applications, the Commission also must consider whether the existing service provider is meeting the public's needs to the Commission's satisfaction. RCW 8.84.020(1).

5. The Leschi Park dock, in Seattle and the LakePointe development, in Kenmore;
6. The Leschi Park dock, in Seattle, and Meydenbauer Bay, in Bellevue;
7. The Leschi Park dock, in Seattle, and Newport Shores, in Bellevue;
8. The University of Washington, in Seattle, and the Marina Park dock, in Kirkland;
9. The University of Washington, in Seattle, and the Southport dock, in Renton; and
10. The University of Washington, in Seattle, and Newport Shores, in Bellevue.

Seattle Harbor Tours:

1. The University of Washington, in Seattle, and Kenmore
2. The University of Washington, in Seattle, and Kirkland
3. The University of Washington, in Seattle, and Bellevue
4. The University of Washington, in Seattle, and Renton

69

Several of the routes authorized do overlap. We identify these, as follows:

1. The University of Washington, in Seattle, and the LakePointe development, in Kenmore (Dutchman Marine), overlaps with The University of Washington, in Seattle, and Kenmore (Seattle Harbor Tours)
2. The University of Washington, in Seattle, and Meydenbauer Bay, in Bellevue (Dutchman Marine), overlaps with The University of Washington, in Seattle, and Bellevue (Seattle Harbor Tours).
3. The University of Washington, in Seattle, and the Marina Park dock, in Kirkland (Dutchman Marine), overlaps with The University of Washington, in Seattle, and Kirkland (Seattle Harbor Tours);
4. The University of Washington, in Seattle, and the Southport dock, in Renton (Dutchman Marine), overlaps with The University of Washington, in Seattle, and Renton (Seattle Harbor Tours); and
5. The University of Washington, in Seattle, and Newport Shores, in Bellevue (Dutchman Marine), overlaps with The University of Washington, in Seattle, and Bellevue (Seattle Harbor Tours).

70

Our grants of authority as to these overlapping routes are conditioned by requiring that to the extent one operator or the other obtains such additional authority as is required to initiate service (*e.g.*, docking rights, land use permits) and actually initiates service, that route is thereafter not available to the other operator unless additional authority is sought from the Commission and is supported by a showing that the existing operator has failed or refused to furnish reasonable and adequate service. This condition is intended to spur both applicants to work diligently and aggressively with the appropriate authorities in Seattle and the other jurisdictions toward the goal of implementing commercial ferry service over multiple routes within

the shortest possible time. At the same time, this condition will prevent ruinous competition by limiting service on any particular route (*i.e.*, between the same two termini) to one service provider, at least initially and for some reasonable period of time, if not indefinitely.

71 We note that the authority granted, as conditioned, does not include a route between South Lake Union, and Port Quendall, at Renton. Authority to provide service over that route is granted today via a separate Initial Order entered in Docket No. TS-002054.

### **FINDINGS OF FACT**

72 Having discussed above all matters material to this decision, and having stated general findings and conclusions, we now make the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions are incorporated by this reference.

- 73 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.
- 74 (2) The public convenience and necessity require commercial ferry service on Lake Washington between the various points described in Dutchman Marine's application, as discussed in the body of this Initial Order.
- 75 (3) The public convenience and necessity require commercial ferry service on Lake Washington between the various points described in Seattle Harbor Tours' application, as discussed in the body of this Initial Order.
- 76 (4) Dutchman Marine is financially and otherwise fit to provide the service for which it has applied for a period of at least 12 months.
- 77 (5) Seattle Harbor Tours is financially and otherwise fit to provide the service for which it has applied for a period of at least 12 months.
- 78 (6) Various routes proposed by Dutchman Marine and Seattle Harbor Tours overlap, as specified in paragraph 68 of this Initial Order. Although the public convenience and necessity require service over these routes, the record does not demonstrate that there is adequate potential demand to support more than a single service over any given route.

- 79 (7) There presently is no commercial ferry service in operation on any of the routes that are the subject matter of these applications.

**CONCLUSIONS OF LAW**

80 Having discussed above in detail all matters material to this decision, and having stated general findings and conclusions, we now make the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions are incorporated by this reference.

- 81 (1) The Washington Utilities and Transportation has jurisdiction over the parties and the subject matter of their applications. Chapter 81.84 RCW.
- 82 (2) Dutchman Marine should be authorized to provide commercial ferry service on Lake Washington in the territory, and over the routes described in the body of, and conditioned by, this Initial Order. RCW 81.84.020.
- 83 (3) Seattle Harbor Tours should be authorized to provide commercial ferry service on Lake Washington in the territory, and over the routes described in the body of, and conditioned by, this Initial Order. RCW 81.84.020.

**ORDER**

84 IT IS ORDERED That an appropriate certificate of public convenience and necessity be issued to Dutchman Marine, LLC, d/b/a Lake Washington Ferry Service, granting authority consistent with that outlined in paragraph 67 of this Initial Order, conditioned as specified in paragraphs 69 and 70 of this Initial Order, and otherwise consistent with the body of this Initial Order.

85 IT IS FURTHER ORDERED That an appropriate certificate of public convenience and necessity be issued to Seattle Harbor Tours Limited Partnership, granting authority consistent with that outlined in paragraph 67 of this Initial Order, conditioned as specified in paragraphs 69 and 70 of this Initial Order, and otherwise consistent with the body of this Initial Order.

DATED at Olympia, Washington, and effective this 19<sup>th</sup> day of September, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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DENNIS J. MOSS  
Administrative Law Judge

**NOTICE TO PARTIES:**

**This is an Initial Order. The action proposed in this Initial Order is not effective until entry of a final order by the Utilities and Transportation Commission. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below.**

**WAC 480-09-780(2) provides that any party to this proceeding has twenty (20) days after the service date of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-09-780(3). WAC 480-09-780(4) states that an *Answer* to any Petition for review may be filed by any party within ten (10) days after service of the Petition.**

**WAC 480-09-820(2) provides that before entry of a Final Order any party may file a *Petition To Reopen* a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition To Reopen will be accepted for filing absent express notice by the Commission calling for such Answer.**

**One copy of any Petition or Answer filed must be served on each party of record, with proof of service as required by WAC 480-09-120(2). An original and three copies of any Petition or Answer must be filed by mail delivery, or by hand delivery, to:**

**Office of the Secretary  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive, S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250**