

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

In the Matter of Cancellation of)	DOCKET TS-080464
Certificate of)	
)	
SEAN MCNAMARA D/B/A PACIFIC)	ORDER 01
SEA TAXI (BC-130))	
)	INITIAL ORDER CANCELING
)	CERTIFICATE
)	
.....)	

1 **Synopsis.** *This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order would cancel the commercial ferry company certificate of Sean McNamara d/b/a Pacific Sea Taxi for failure meet statutory requirements to initiate service and to file progress reports.*

2 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this proceeding to cancel the certificate of public convenience and necessity to provide passenger-only commercial ferry service by Sean McNamara d/b/a Pacific Sea Taxi (Pacific Sea Taxi), Certificate BC-130, for failure to meet statutory requirements to initiate service and file progress reports.

3 **Background and Procedural History.** On January 10, 2006, in Docket TS-060061, Pacific Sea Taxi filed an application for a certificate of public convenience and necessity to provide passenger-only commercial ferry service between various points on Puget Sound.

4 On January 20, 2006, in Docket TS-060133, Pacific Cruises Northwest, Inc., d/b/a Victoria San Juan Cruises (Pacific Cruises), filed an application seeking authority to transfer to it all rights under commercial ferry Certificate BC-120, held by San Juan Island Shuttle Express, Inc.

5 The Commission published notice of both applications on February 13, 2006. Pacific Cruises and Island Mariner Cruises, Inc., protested Pacific Sea Taxi’s application to

provide commercial ferry service in Docket TS-060061. Pacific Sea Taxi protested the application in Docket TS-060133.

- 6 The Commission conducted a joint prehearing conference in these dockets and encouraged the parties to engage in settlement negotiations. On May 26, 2006, the parties filed a settlement agreement to resolve both dockets, which included a restriction of Pacific Sea Taxi's application to vessels with maximum capacity of 18 passengers. The parties withdrew their respective protests.
- 7 On June 8, 2006, in Docket TS-060061, the Commission approved the settlement agreement and granted Pacific Sea Taxi's application as modified by the agreement.¹ The Commission issued a certificate of public convenience and necessity authorizing Pacific Sea Taxi to provide passenger-only commercial ferry service between Squalicum Harbor and Rosario and Obstruction Pass with flagstops at Eliza Island, Sinclair Island, Cypress Island, Lopez Island, and Blakely Island.
- 8 On March 14, 2008, the Commission notified Pacific Sea Taxi that it intended to cancel the company's certificate of public convenience and necessity for failure to meet certain statutory requirements. The Commission issued a Notice of Intent to Cancel Certificate and Notice of Opportunity for Hearing and set a deadline of April 14, 2008, for Pacific Sea Taxi to contest the factual allegations and request a hearing to contest the cancellation of its certificate. The Commission has not received a response to the notice.
- 9 **Discussion and Decision.** The Notice of Intent to Cancel Certificate informed Pacific Sea Taxi that the Commission was taking this action due to the company's failure to comply with RCW 81.84.010(2) and WAC 480-51-120.
- 10 RCW 81.84.010(2) provides that the holder of a certificate of public convenience and necessity for passenger-only commercial ferry service in Puget Sound must initiate service within 20 months of obtaining the certificate.

¹ See Order 02, TS-060061.

- 11 If a certificate holder has not initiated service to all or any portion of a route described in its certificate, RCW 81.84.010(2) requires that the certificate holder must report to the Commission every six months after the certificate is granted on the progress toward initiating service on the certificated route. RCW 81.84.010(2) and WAC 480-51-120 provide that the reports must include a statement of progress toward overcoming impediments to initiating service, including the progress of environmental impact, parking, local government land use, docking, and financial considerations, the purchase or lease of a vessel or vessels, hiring of employees, advertising, and the ability to handle proposed traffic.
- 12 RCW 81.84.060 provides that certificates are subject to cancellation if a certificate holder for passenger-only ferry service in Puget Sound has not initiated service within 20 months after the certificate has been granted, or for violation of any provision in the chapter.²
- 13 In the Notice of Intent to Cancel, the Commission took official notice of the following facts:
- The 20-month period following the granting of Pacific Sea Taxi’s certificate by the Commission ended February 8, 2008.
 - Pacific Sea Taxi failed to file any six-month progress reports with regard to the authority granted under Certificate BC-130 on December 8, 2006, June 8, 2007, and December 8, 2007, as required by RCW 81.84.010.
 - Pacific Sea Taxi filed an annual report with the Commission in May of 2007. The company’s annual report indicated no operating revenue from regulated operations for 2006. The annual report contained a hand-written note stating that the company had not initiated service.
 - Pacific Sea Taxi’s tariff and time schedule on file with the Commission each state: “NOTE - Service not yet initiated – Company will revise time schedule prior to initiation of service.”³

² RCW 81.84.060(2) and RCW 81.84.060(5).

³ The tariff and the time schedule were effective 10-18-06 and were never subsequently amended.

- 14 These facts, which Pacific Sea Taxi has not rebutted, demonstrate the company's failure to comply with the requirements of RCW 81.84.010(2) and WAC 480-51-120 by failing to initiate service within 20 months of the grant of the certificate, and for failing to file progress reports with the Commission every 6 months. The Commission may cancel certificates for passenger-only ferry service under RCW 81.84.060 for the failure to meet these requirements. The Commission should cancel Pacific Sea Taxi's certificate for passenger-only commercial ferry service.

ORDER

- 15 **THE COMMISSION ORDERS** That the certificate of public convenience and necessity to provide passenger-only commercial ferry service held by Sean McNamara d/b/a Pacific Sea Taxi, Certificate BC-130, is cancelled.

DATED at Olympia, Washington, and effective April 17, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. 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. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry 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 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 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.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and three (3) copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250