

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of

AQUA EXPRESS LLC

For Certificate of Public Convenience and  
Necessity to Operate Commercial Ferry Service

DOCKET NO. TS-040650  
APPLICATION NO. B-079273

AQUA EXPRESS LLC'S ANSWER TO  
PETITION ON BEHALF OF  
COMMISSION STAFF FOR  
INTERLOCUTORY REVIEW OF  
ORDER NO. 2

I. INTRODUCTION

1 COMES NOW Applicant Aqua Express LLC (“Aqua Express” or “Applicant”) and for  
joinder in the Petition in support of Commission Staff for Interlocutory Review of Order No. 2  
filed by Washington Utilities and Transportation Commission Staff, submits the following:

II. APPLICABLE STATUTES AND RULES

2 RCW 81.84.020(4); RCW 81.100.020; RCW 81.04.015; WAC 480-07-810; RCW  
36.57.040; RCW 47.60.120(5); RCW 46.60.120.

III. DISCUSSION

3 Aqua Express agrees, as the Petition demonstrates in well-reasoned detail, that  
reference to RCW 81.84.020(4) by the Commission in considering this proposed passenger-  
only ferry service’s overall impact on the ferry system is ultimately inapplicable in this  
application context. Under the “ten-mile” rule of RCW 47.60.120(5), the Legislature exempted  
passenger-only ferry service from consideration when the Commission assesses . . . “the  
overall impact on the ferry system.” RCW 47.60.120(3). To require the Commission to now  
weigh RCW 81.84.020(4) to consider the impact of the proposed passenger-only ferry service

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on the Washington State Ferry System would run contrary to that exclusion and weaken the objective of the 2003 amendments to RCW 81.84.020 which supports the removal of barriers for privately operated passenger-only ferries. Accordingly, Applicant adopts the argument set forth by Staff that harmonizing the two statutory provisions leads to the conclusion that the Commission need not consider the impact of the instant application on the state ferry system.

A. The “Impact” to be weighed upon “Public Agencies” is that of Kitsap Transit herein.

4           Likely, the “public agency” impacts that the Commission is intended to consider under the 2003 legislative session’s enactment of RCW 81.84.020(4), are on transit agencies such as “Kitsap Transit,” as defined by RCW 81.100.020 and RCW 81.104.015. As previously discussed at page 4, Section 8, of Applicant’s Prehearing Brief, a county transportation authority under RCW 36.57.040 is empowered to perform many public agency functions, addressed by RCW 36.57.040(2), including the power to regulate use of transportation properties and facilities, fix rates for those facilities, and contract with other agencies, corporations and private persons. RCW 36.57.040(3) and (5)(a).

5           As indicated in its witness disclosure and prehearing brief, Applicant will present testimony of Kitsap Transit’s Executive Director, Richard Hayes. This is undoubtedly the requisite public agency impact testimony for statutory review by this Commission, not that of the Washington State Ferry System.

B. Interlocutory Review Issue.

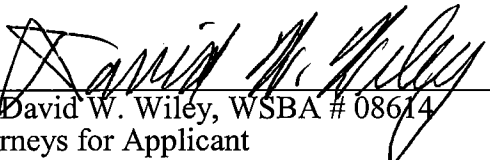
6           Under WAC 480-07-810, a ruling on the necessity of further evidentiary presentation on the impact on the Washington State Ferry System of this private passenger-only ferry application would presumably aid the parties in development of the record in the final days of hearing on July 1 and 19, 2004. While the Applicant has already presented testimony from a

representative of the state ferry system under the expressly reserved alternative theory of consideration noted at pages 2 and 4 of its Prehearing Brief, an order from the Commission granting the interlocutory review sought by the Staff would presumably reduce the remaining issues sought to be presented by the Staff and/or the Protestant, Inlandboatmen's Union, in this action. Applicant Aqua Express LLC therefore concurs with Staff that an Order on Interlocutory Review is entirely appropriate under WAC 480-07-810(2)(c).

7 WHEREFORE, having fully answered the Petition of the Commission Staff for Interlocutory Review, Applicant Aqua Express LLC asks that it be granted.

Respectfully submitted this 24 day of June, 2004.

WILLIAMS, KASTNER & GIBBS PLLC

By   
David W. Wiley, WSBA # 08614  
Attorneys for Applicant

## CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2004, I caused to be served the original and thirteen copies of the foregoing document to the following address via first class mail, postage prepaid to:

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I certify I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via email to: [records@wutc.wa.gov](mailto:records@wutc.wa.gov)

and an electronic copy via email and first class mail, postage prepaid, to:

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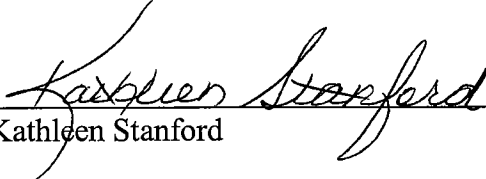
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Dated this 24<sup>th</sup> day of June, 2004.

  
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