GOVERNMENT OF THE VIRGIN ISLANDS
OF THE UNITED STATES

Public Services Commission

IN RE:

V.I. SeaTrans Ferry Franchise Rate Investigation and Promulgation of Rules and Regulations Pursuant to Act No. 6918	)))))	**PSC DOCKET NO. 572** **ORDER NO. 38/2008**

ORDER

WHEREAS, on May 10, 2007, the Legislature of the Virgin Islands enacted Act Number 6918 (hereinafter "the Act"), granting an exclusive franchise to Aquatic Management, LLC d/b/a V. I. SeaTrans (hereinafter "V. I. SeaTrans") to provide ferry services between St. Croix and St. Thomas and St. Thomas and St. Croix;

WHEREAS, the Act placed V. I. SeaTrans under the jurisdiction of the Public Services Commission (hereinafter "PSC" or "the Commission") of issues related to the adherence to the terms of the franchise agreement including passenger schedules, passenger and commuter fees, variances from franchise terms and maintenance of the vessels and the equipment;

WHEREAS, the Commission after deliberation and review appointed Natalie Nelson Tang How, Esq. as Hearing Examiner to preside over the rate investigation;

WHEREAS, the Commission after deliberation and review appointed Richard W. Moore, Ph.D. as Technical Consultant for the rate investigation; and

WHEREAS, on May 9, 2008, the Commission met in regular session on St. Croix, Virgin Islands; and

WHEREAS, the aforementioned Hearing Examiner submitted her Final Report to the Commission and recommended that V.I. SeaTrans' petition for approval of passenger rates and fees be granted (see attached); and

WHEREAS, upon deliberation and consideration, the Commission voted to adopt the recommendations of its Hearing Examiner; and

NOW THEREFORE, it is hereby **ORDERED** that the Hearing Examiner's recommendations be **ADOPTED**.

SO ORDERED.

For the Commission

Dated: 06/18, 2008

Joseph B. Boschulte
Chair

GOVERNMENT OF THE UNITED STATES
VIRGIN ISLANDS

PUBLIC SERVICES COMMISSION

IN RE:	) **PSC DOCKET NO. 572**
	)
APPLICATION OF AQUATIC MANAGEMENT, LLC	)
D/B/A V.I. SEATRANS FOR APPROVAL	)
OF PASSENGER FARES, CARGO RATES AND FEES	)
	)
	)

REVISED
REPORT OF HEARING EXAMINER

INTRODUCTION

On or about May 10, 2007, the V.I. Legislature enacted Act No. 6918 which granted the operation of a public marine passenger ferry transportation service for round trip travel between St. Croix and St. Thomas, exclusively to Aquatic Management, LLC, d/b/a/ V.I. SeaTrans (hereinafter designated as "V.I. SeaTrans" or "Petitioner").

Pursuant to Act No. 6918, The V.I. Legislature designated The V.I. Public Service Commission (hereinafter "PSC" and/or "Commission") to regulate the administration of the franchise as it relates to compliance with the terms and conditions, including passenger and commuter rates, schedules and fees.

On or about May 14, 2007 the PSC convened in regular session and opened Docket No. 572 to regulate V.I. SeaTrans pursuant to the mandate of Act. No. 6918. The Commission adopted temporary rules and regulations for V.I. Sea Trans based upon existing franchisees, to wit, Varlack Ventures and Transportation Services, Inc. In its May 14, 2007 Order, The Commission extended the period for promulgating permanent rules and regulations for V.I. SeaTrans for a term not to exceed ninety (90) days from the June 11, 2007 date provided for in Act 6918.

On or about June 21, 2007, The Commission met in regular session at its office located in St. Thomas, U.S. Virgin Islands. On even date, The Commission entered an Order requiring V.I. SeaTrans to submit its acceptance of the franchise within thirty (30) days of the enactment of Act No. 6918. The PSC further ordered that V.I. SeaTrans adopt a schedule of fees and regulations relative to the new franchise. On or about July 24, 2007, V.I. SeaTrans filed with PSC an application for approval of its passenger and cargo fees and rates, and the supporting documents (hereinafter "Application") included the following:

- An application with an attached copy of correspondence dated July 7, 2007 from V.I. SeaTrans to President of the V.I. Legislature, Hon. Usie R. Richards regarding annual subsidy for V.I. SeaTrans;
- A copy of Aquatic Management, LLC's projected income statement;
- A copy of V.I. SeaTrans operating schedule and Carnival schedule;
- A copy of V.I. SeaTrans rates;
- A copy of V.I. SeaTrans Frequent Traveler Program; and
- A summary of V.I. SeaTrans Transportation Services, Inc.

During the Commission's meeting held on or about the 16th day of October, 2007, at its office in St. Thomas, U.S. Virgin Islands, The Commission appointed Natalie Nelson Tang How, Esq. as the designated Hearing Examiner to address any and all matters pertaining to V. I. SeaTrans under Docket No. 572 and to submit any proposals that warrant further consideration by the Commission. The designated Hearing Examiner has a date certain in which to report findings and recommendations to the Commission. In order to examine the application of V.I. SeaTrans, the Commission selected Richard Moore, PH.D. as technical consultant to assist the Hearing Examiner in accomplishing the task.

SCOPE OF THE PROCEEDING

The basis for V.I. SeaTrans' request has been disseminated to the Technical Consultant for review and feedback. In an effort to expedite a prompt resolution of the issues presented in this docket and to allow the interested parties a fair opportunity to express their views on the matter, the Hearing Examiner established a Notice of Scope and Schedule that concluded with a final report and recommendation to the Commission for its consideration. As designated by the PSC, the Hearing Examiner, sets the guidelines and procedure to examine the application of the V.I. SeaTrans and any and all requests made by interested parties in their presentations. In fairness to all parties, the Hearing Examiner has set forth a schedule that would allow adequate opportunity for all interested parties to compile and proffer evidence and oral arguments on the issues before the Commission. The schedule sets forth the events and dates as proposed by the designated Hearing Examiner to comply with the applicable rules and regulations set forth in 30 V.I.R.R. §§ 11-31 and 11-42. Accordingly, there exists no plausible reason for the waiving of these rules.

PROCEDURAL SCHEDULE

Pursuant to the criteria set forth in 30 V.I.C. § 2, the Commission will examine the proposed passenger and cargo rates and fees of V.I. SeaTrans to determine whether same are reasonable, fair, just and administered pursuant to the mandates of 30 V.I.C. § 2. The Hearing Examiner has resolved to ensure that the issues to be addressed are fully and thoroughly examined in a fair and non discriminatory manner. The Hearing Examiner has set forth a schedule that will culminate in the Final Report and Recommendation. It is anticipated that this course of proceeding will allow for a complete record of evidence that would be comprehensive and reflective of an accurate presentation of the issues to be addressed.

The Hearing Examiner will consider the application under Docket No. 572 in its entirety, including any and all attached exhibits or other evidence timely submitted in support thereof. The respective parties shall identify any and all portions of the application that should be construed as evidence and identify any witnesses and/or supporting testimony.

Pursuant to the Notice of Scope and Schedule, The Consultant, Richard Moore, Ph.D. issued interrogatories on behalf of the PSC on or about November 27, 2007 and V.I SeaTrans submitted its responses. PSC filed direct testimony on or about February 3, 2008.

ORDER OF THE HEARING

On or about February 8, 2008 the PSC issued its Public Service Announcement ("PSA") to the media notifying of the Hearing scheduled for February 20, 2008 on St. Croix and February 21, 2008 on St. Thomas. Pursuant to the Press Release the public at large was invited to make comments on the rate investigation verbally and/or in writing.

The Hearing was conducted on St. Croix on February 20, 2008 as scheduled. Other than various media representatives, there were no testifiers present. The Hearing was presented in its entirety on February 20, 2008 and reported by both local newspapers, The V.I. Daily News and The St. Croix Avis the next day. On February 21, 2008 the Hearing Officer was available telephonically for any public testimony on St. Thomas. The PSC representatives, including the technical Consultant, V.I. SeaTrans and its legal counsel were present on St. Thomas. There were no testifiers present in the St. Thomas/St. John District and the matter was adjourned by the Hearing Officer.

There were approximately two inquiries from members of the public, one on St. Croix and one on St. Thomas respectively. The inquiry from St. Croix was received telephonically by the Hearing Officer the day after the hearing on St. Croix. The individual expressed concern about the limitations of the schedule between St. Thomas and St. Croix which limits transportation primarily to the weekends. The individual on St. Thomas sent an email inquiry to the PSC inquiring as to why the PSC was only concerned with regulating the ferry rates and not that of the monopolized seaplane transportation between St. Thomas and St. Croix.

The witnesses that testified during the Hearing on February 20, 2008, were as follows: Richard Moore, Ph.D., Technical Consultant, Tanisha Bailey-Roka, Esq., General Counsel for PSC; Captain Marjorie E. Smith, Director of Operations on behalf of Petitioner, V.I. SeaTrans, and Frank Schulterbrandt, Esq., attorney for Petitioner.

The following documents were admitted into evidence as Joint Exhibits:

1. Act. No. 6918 of the Twenty Seventh Legislature;
2. Notice of Scope and Schedule;
3. PSC Orders: 08/2008;11/2008;12/2008;13/2008;
4. Staff Interrogatories;
5. Response to Staff Interrogatories;
6. Consultant's Technical Report;
7. Motion for Extension of Time;
8. Pre-File Testimony;
9. Transcript of Hearing February 20, 2008;
10. Transcript of Hearing February 21, 2008; and
11. Public Comments.

Post Hearing Briefs were filed by Petitioner V.I. SeaTrans and The PSC on March 14, 2008.

FINDINGS AND RECOMMENDATION

Based upon the evidence presented in the record in its entirety, as set forth in the exhibits, oral and written testimony of the respective parties and comments as noted in the record, the Hearing Examiner makes the following findings and recommendations:

On or about May 10, 2007 The Twenty Seventh Legislature of the Virgin Islands enacted legislation, to wit, Bill No. 27-0012 which became Act No. 6918. Act. No. 6918 mandated the PSC to regulate the rates and fees of Aquatic Management, LLC, d/b/a V.I. SeaTrans. By this legislation, V.I. SeaTrans was granted an exclusive franchise to provide ferry service between St. Thomas and St. Croix for a period of fifteen (15) years commencing on June 10, 2007 until June 10, 2022. Act No. 6918 authorized V.I. SeaTrans ". . . to operate all public marine passenger ferry service between St. Thomas and St. Croix . . . Act No. 6918 further required that ". . .the PSC, within thirty (30) days after its enactment, adopt a schedule of rates and fees for the interisland travel between St. Thomas and St. Croix." The Act anticipated that a schedule of rates and fees would be instituted and subsequently amended by the PSC.

Accordingly, on or about June 11, 2007 the PSC adopted temporary rates and fees that were proposed by V.I. SeaTrans. Pursuant to the mandates of Act No. 6918 a ninety (90) day extension of time was granted to allow for the review of the passenger rates and fees for V.I. SeaTrans.

On or about July 24, 2007 V.I. Sea Trans filed an application with the PSC seeking approval of its passenger rates and cargo fees. Due to its status as a relatively new entity in the Territory, V.I. SeaTrans has a limited financial history and track record as it relates to operations of the franchise in the U.S. Virgin Islands. Consequently, in formulating his report, PSC Technical Consultant, Richard Moore utilized six (6) months of financial data from January through June, 2007.

REGULATION OF RATES AND FEES

Act No. 6918 granted the PSC the authority to regulate the rates and fees of all public utilities, including V.I. SeaTrans which provides exclusive interisland ferry service between St. Croix and St. Thomas. Such regulation must meet the legal requirements of government regulation and provide service that is safe, reasonable and adequate for the public. Appropriate law was created to allow for a permanent subsidiary but no set amount was established. Based upon projection, V.I. SeaTrans proposed a subsidy of approximately five hundred thousand dollars ($500,000.00). As a public utility in the subject market, V.I. SeaTrans is protected from competing interests in the same or similar market. However, the balancing factor to this advantage as addressed by the technical consultant is that the proposed rate system cannot be excessive and contrary to the public interest. In his technical report, the Consultant, Richard Moore, Ph.D. established that V.I. SeaTrans must earn and/or generate a reasonable rate of return on its net investment that would cover its expenses and allow it to remain viable. A very significant

component is nebulous at this point in time thereby compelling the Technical Consultant to create three (3) hypothetical scenarios based upon 1) a permanent grant; 2) a one time grant; and 3) no grant.

Specifically, Section 4 of Act No. 6918 provides eligibility for a franchisee such as V.I. SeaTrans to obtain local and federal assistance, including grants and/or subsidies to ensure the entity's economic viability. The key question here is whether a grant of five hundred thousand dollars ($500.000.00) or any amount at all will become a reality during the current fiscal year. V.I. SeaTrans represents that the subject grant which was authorized under Act No. 6918 is under negotiation. In his report, the Technical Consultant premised his calculations for V.I. SeaTrens net return of investment based upon a three dimensional premise, whether the grant would be permanent in nature, a one time grant or none at all. Currently, V.I. SeaTrans has not received any subsidy and is in the process of securing financing to purchase the vessel for the interisland travel. The Technical Consultant proposes that a six to eight percent (6-8%) rate of return on net investment would meet the revenue requirement for V.I. SeaTrans to remain viable. V.I. SeaTrans, however, reasonably anticipates a loss of revenue for the first couple of years, and has, already experienced such a loss during the first year. Contributing factors to be taken into consideration includes the cost of fuel, and interference in ferry service due to repairs/inoperation of the vessel.

In his Comprehensive Technical Consultant Report, Dr. Richard Moore, Ph.D. presented a two prong analysis which comprised of V.I. SeaTrans projected revenue needs based upon its available financial six (6) month statements and V.I. SeaTrans current schedule and passenger rates and fees. In order to meet the projection between total revenue and total operating cost accompanied by a fair and reasonable rate of return

on V.I. SeaTrans net investment, the Technical Consultant utilized a period of one (1) fiscal year for the recommended rates and schedule.

CURRENT PASSENGER RATES AND FEES

The V.I. SeaTrans temporary rates and fees are as follows:

Passengers (12 and over)	$90.00 round trip	$50.00 one way
Child(ren) (4-11 years)	$80.00 round trip	$45.00 one way
Senior Citizens (with valid I.D.)	$80.00 round trip	$45.00 one way
Students (with valid I.D.)	$80.00 round trip	$45.00 one way
Toddlers (ages 1-3 years)	$20.00 round trip	$10.00 one way
Infants (ages 0-11 mths)	No Charge	

Group Rates

25-30 persons	$80.00 per person (one way not discounted)
31 or more	$75.00 per person (one way not discounted)
School Groups	$70.00 per person (one way not discounted)

Passengers are allowed two pieces of luggage forty (40) pounds or less. Additional pieces are ten (10) dollars per piece up to forty dollars ($40.00) plus $0.75 for each additional pound. *(See Exhibit 1 attached Aquatic Management, LLC d/b/a V.I. SeaTrans Rate)*.

V.I. SEATRANS REVENUE REQUIREMENT

The Technical Consultant relied on quarterly financial statements for V.I. SeaTrans, including December 31, 2006, March 31, 2007 and June 30, 2007, respectively. Also included was V.I. SeaTrans pending application with a bank for financing in the amount of one million six hundred eighty thousand ($1,680,000.00) for

the purchase of the vessel, Royal Miss Belamar II and to provide funds for its repair and closing costs. V.I. SeaTrans total investment was estimated to be approximately two hundred and four thousand five hundred and thirty one dollars ($204,531.00) for this fiscal/calendar year. For 2007, V.I. SeaTrans served approximately thirty thousand and twenty three (30,023) passengers for that period. Pursuant to the analysis of the Technical Consultant the total passenger revenue needs of V.I. SeaTrans is approximately one million four thousand four hundred and forty seven dollars ($1,004,447.00).

In all fairness to V.I. SeaTrans and the public at large, it would not be fair and/or prudent at this time to presume the payment of a five hundred thousand dollar ($500,000.00) grant to be permanent and annual for the life of the franchise. The more prudent course of action would be to revisit the passenger rates and fee structure upon completion of the grant negotiations and appropriation of the grant. In the interim and until such time that the subject grant is distributed to V.I. SeaTrans on an annual basis, one time basis or otherwise, the passenger rates and fee structure should not take such a grant into consideration. It is undisputed that V.I. SeaTrans currently receives no grants, subsidies or any other form of financial assistance from the local or federal government at this time.

V.I. SeaTrans actual financial statements for its first year of operations supports the fact that the current rates and fees cannot be reduced without running the risk of closure for V.I. SeaTrans due to its resulting inability to remain viable. Also of significant consideration in the equation at this time is the rising cost of fuel, oil and gas charges in the Territory, particularly on the island of St. Thomas. Additionally, it is unknown at this time how, if at all, the pending application for purchase of the subject vessel would affect the current passenger rate and fee schedule. However, the public at

large must be assured of a safe, reliable and reasonably priced mode of transportation between the islands of St. Thomas and St. Croix.

PUBLIC COMMENTS

Despite the Public Service Announcements ("PSA") comments from the public was almost non existent except for two comments. One comment was received telephonically from the island of St. Croix. The other comment from a member of the public in St. Thomas was received by email. In summary the comment on St. Croix addressed the concern of the limited and unreliable schedule of the current ferry service provided by V.I. SeaTrans. There was an acknowledgement that the financially disadvantaged are more inclined to use the ferry but the service is limited to weekends only and is subject to change thus depriving passengers of consistency and reliability in travel as compared to ferry service between the islands of St. Thomas and St. John. In conclusion, the individual from St. Croix felt that the service would be utilized more readily by the public if the schedule was more reliable. There was, however, no concern expressed as to the fare as it was considered to be the lowest available means of transportation currently available between St. Thomas and St. Croix. Consideration was given for the fact that the ferry takes approximately one and a half hours between the two islands in comparison to air travel which takes approximately eighteen to twenty (18-20) minutes.

The individual in St. Thomas sent an email to the PSC addressing his interest in the fact that while the ferry service rates and fees were in question, there was no mention about the air travel service between the same islands and the fact that nothing was being done about the high charges and in effect the monopoly that was holding the public hostage. However, as reflected by the email response, the PSC does not regulate air fares, which falls within the jurisdiction of the Federal Aviation Association ("FAA").

While there were only two comments from the public, neither addressed and/or objected to the current ferry rates and fees as being excessive. To the contrary, the comments revealed that the ferry rates were quite decent compared to airfare and the schedules needed to be more reliable in order to facilitate consistent travel between St. Thomas and St. Croix, particularly for members of the public that may be financially disadvantaged and would otherwise be unable to engage in inter island travel without ferry service.

ISSUES ARGUED BY THE PSC

The PSC argues that it cannot meet its obligation as mandated by the law as it pertains to Docket No. 572, Aquatic Management LLC., d/b/a V.I. SeaTrans until pertinent information is received about the status of the grant created by the Legislature in Act No. 6918. The PSC further argues that if the grant is received during the current fiscal and/or calendar year by V.I. SeaTrans, the passenger rates and fee schedule should be reduced by fifty (50%) percent which would provide V.I. SeaTrans with a six to eight (6-8%) rate of return on its net investment and result in rates that are fair, reasonable and nondiscriminatory. On the other hand, if the grant is not received by V.I. SeaTrans during the current fiscal and/or calendar year, then the passenger rates and fees should remain the same. The third scenario would address if any portion of the grant is received by V.I SeaTrans then there should be a proportionate reduction in the passenger rates and fee schedule.

ISSUES ARGUED BY V.I. SEATRANS

V.I. SeaTrans argues that its passenger rates and fees are based on the current market, its operating costs and the benefit to the public. Its cargo rates and fees are considered to be a secondary source of income. V.I. SeaTrans further argues that its Financial Statements for fiscal year 2007 reflects that most of the revenues derived from

passenger fees and cargo rates was consumed by the cost of fuel and oil, repairs and maintenance of the vessel, employee salaries and wages and rental of equipment. V.I. Sea Trans argues that the current passenger rates and fee structure is not sufficient to cover its expenses as demonstrated by its loss of approximately one hundred six thousand five hundred forty five dollars ($106,545.00) during its first year of operation in 2007. V.I. SeaTrans opposes the consideration of the proposed five hundred thousand dollar ($500,000.00) grant in making a determination of the current passenger rate and fee structure as it would be speculative at this time. The amount of the grant was proposed by V.I. SeaTrans and is still under negotiations. It has been confirmed that no grant, subsidy or other financial assistance has been received by the franchisee and its pending bank application to purchase the vessel may have a further adverse impact on revenues. V.I. SeaTrans speculates that given the current economic climate, even if a grant and/or subsidy is received from the government it would not be sufficient to cover the increasing cost of doing business in the Territory.

RECOMMENDATIONS OF HEARING EXAMINER

The Hearing Examiner has reviewed the record as presented for Docket No. 572 and given fair and reasonable consideration to all of the evidence presented and the arguments raised.

It is hereby recommended:

That Aquatic Management, LLC., d/b/a V.I. SeaTrans' application for approval of its passenger rates and fees should be granted and the current passenger rates, fee structure and cargo rates should remain the same.;

That V.I. SeaTrans provide an interim report within thirty (30) days as to the status of its pending application for financing to purchase the vessel; and a final report

within thirty (30) days of receipt of a decision, if not yet received by the date of this report.

That V.I. SeaTrans provide an interim report as to the outcome of the pending negotiations for the grant of five hundred thousand dollars ($500,000.00) as enacted by Act. No. 6918 and proposed by V.I. SeaTrans;

That V.I. SeaTrans provide an interim report of any other grants, subsidies or financial assistance that it receives and/or expects to from the local and/or federal government;

That in the event V.I. SeaTrans receives the grant of $500,000 or any amount on a permanent or one time basis, or any other financial assistance, that its passenger rates and fees and cargo rates be revisited for potential reduction in proportion to the financial assistance received, if warranted by the financial forecast of the franchise.;

That in the best interest of the public, the PSC should take any and all necessary action to monitor the operations of V.I. SeaTrans as mandated by law to ensure a safe, reliable and affordable means of transportation for the public between the islands of St. Croix and St. Thomas while protecting and preserving the franchise's ability to remain viable within the Territory for the duration of its franchise period which commence from June 10, 2007 until June 10, 2022.

CONCLUSION

Based upon the evidence presented in the record in its entirety for Docket #572 and taking into consideration the relatively new status of the franchise known as Aquatic Management, LLC., d/b/a V.I. SeaTrans, and as designated Hearing Examiner in this matter, it is hereby respectfully requested that the foregoing Report with the recommendations contained therein be favorably adopted by the members of the Board of the Public Service Commission on behalf of the People of the Virgin Islands.

Respectfully yours,

Dated: May 8, 2008

Natalie Nelson Tang How, Esq.
Designated Hearing Officer
Docket No. 572