

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of the Cancellation of the
Charter and Excursion Carrier
Certificates Held by

SCENIC BOUND TOURS CO.,

For Failure to File an Annual Report and
Pay Regulatory Fees

DOCKET TE-220873

STAFF'S RESPONSE TO PETITION
FOR ADMINISTRATIVE REVIEW

I. INTRODUCTION

1 In this docket, the Commission cancelled the certificate authorizing Scenic Bound Tours Co. (Scenic) to provide charter and excursion service after the company failed to file an annual report or pay regulatory fees. Scenic now petitions for reinstatement of its certificate. Because the company has come into compliance and timely petitioned for review, Staff recommends that the Commission reinstate Scenic's certificate, either with a condition or a waiver of WAC 480-30-171(1)(b), as described further below.

II. BACKGROUND

2 In December 2022, the Commission served on a number of charter and excursion carriers notice of its intent to cancel the Commission-issued certificates authorizing those carriers to provide service for failure to file an annual report or pay regulatory fees, or both.¹ Scenic was one of the carriers served.² The notice informed the carriers that they had 30 days to prevent cancellation through one of two means: either (1) filing the requisite report

¹ See generally *in re Notice of Intent to Cancel Certification as a Charter and Excursion Carrier*, Docket TE-220873, Notice of Intent to Cancel (Dec. 8, 2022).

² *Id.* at 1.

or paying their regulatory fees, or (2) requesting a hearing to demonstrate why the Commission should not cancel the certificate.³

3 Scenic did not file its annual report or pay the overdue regulatory fees within 30 days of service of the notice.⁴ Nor did it request a hearing.⁵ The Commission, accordingly, entered an order cancelling Scenic’s certificate on February 7, 2023, for failure to file its annual report and pay regulatory fees.⁶

4 On February 21, 2023, Scenic filed a petition for administrative review.⁷ In its petition, Scenic acknowledged that the Commission provided notice to the email address on file for the company with the Commission, but explained that the company had terminated the employee holding that email address for theft in early 2022.⁸ Scenic explained that the failure to provide the Commission with an updated email address after the termination of that employee resulted in the company not receiving the notice of the cancellation until it received a letter attached to a copy of the order cancelling the company’s certificate.⁹ Scenic then explained that it would be filing its annual report and paying its regulatory fees immediately after submitting its petition.¹⁰

5 Scenic subsequently filed its annual report and paid the delinquent regulatory fees.¹¹

³ *Id.* at 1-2.

⁴ *In re Cancellation of the Charter and Excursion Certificates of Scenic Bound Tours Co.*, Docket TE-220873, Order 01, 1 ¶ 3 (Feb. 7, 2022).

⁵ *Id.*

⁶ *Id.* at 3 ¶ 13.

⁷ *See generally In re Cancellation of the Charter and Excursion Certificates of Scenic Bound Tours Co.*, Docket TE-220873, Request for Commission Review and Extenuating Circumstances (Feb. 21, 2023) (hereinafter “Petition”).

⁸ *Id.* at 1.

⁹ *Id.* at 1.

¹⁰ *Id.* at 1.

¹¹ Decl. of Rachel Stark at 1 ¶ 3.

III. ARGUMENT

6 The Commission has a process for the reinstatement of a cancelled charter and
excursion certificate. Scenic has complied with that process to some extent. The
Commission, accordingly, should reinstate the company’s certificate, either with a condition
requiring further action by the company or a waiver of the requirements with which Scenic
has not yet complied.

7 The Commission must first determine how it will address Scenic’s petition. Scenic
styles its pleading as a petition seeking review of the initial order,¹² and the Commission’s
rules allow for such petitions where it cancels a carrier’s certificate due to the failure to file
an annual report or pay regulatory.¹³ But Scenic identifies no factual or legal infirmity in the
initial order that would warrant review.¹⁴ It instead offers what Scenic calls “extenuating
circumstances.”¹⁵ One of these is Scenic’s pledge to file its annual report and pay its
regulatory fees just after filing its petition, which it did.

8 The relief Scenic requests and the circumstances it offers make Scenic’s petition
more like a request for reinstatement under WAC 480-30-181 than a request for review
under WAC 480-07-825. The Commission should treat it as such.¹⁶

9 Under WAC 480-30-181, the Commission may reinstate a carrier’s charter and
excursion certificate if the carrier does two things. First, it must “[c]orrect[] all conditions

¹² Petition at 1.

¹³ WAC 480-07-904(4); *see* WAC 480-07-825.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ WAC 480-07-395(4) (“the [C]ommission will liberally construe pleadings . . . with a view to effect justice among the parties. The [C]ommission will consider pleadings . . . based primarily on the relief they request.”); WAC 480-30-181 (the Commission may reinstate a carrier’s authority after cancellation under WAC 480-30-171); *cf.* WAC 480-30-171(2)(b) (the Commission may cancel a carrier’s authority for failure to file an annual report of pay regulatory fees).

leading to the cancellation.”¹⁷ Second, the carrier must “[f]ile[] an application to reinstate authority with the proper application fee within 30 days of the cancellation order service date.”¹⁸

10 Scenic has complied with one, but not both, of those prerequisites for reinstatement. It filed its annual report and paid its regulatory fees. But it has not filed an application for reinstatement or paid the application fees, seemingly because it filed this petition instead.

11 Staff thus recommends that the Commission take one of two alternate courses of action. First, it could issue an order reinstating Scenic’s certificate, subject to a condition that Scenic must submit an appropriate application for reinstatement and pay the appropriate fee within 30 days. Second, it could issue an order reinstating Scenic’s certificate and waiving the application and fee requirements. Either of those reflect that Scenic has corrected the underlying cause of cancellation; the second would reflect a Commission finding that the circumstances described by Scenic justify mitigation through waiver of the application and fee requirement.

VII. CONCLUSION

12 Staff respectfully requests that the Commission grant Scenic’s petition and reinstate its certificate, either with the condition described above or a waiver of the required application and fee.

//

//

//

//

¹⁷ WAC 480-30-181(1)(a).

¹⁸ WAC 480-30-181(1)(b).

DATED this 1st day of March 2023.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

/s/ Jeff Roberson, WSBA No. 45550
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 522-0614
jeff.roberson@atg.wa.gov