

**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

ORDER 02

REINSTATING CERTIFICATES;
GRANTING EXEMPTION FROM
WAC 480-30-181(1)(b)

BACKGROUND

- 1 On December 8, 2022, the Washington Utilities and Transportation Commission (Commission) served Scenic Bound Tours Co. (Scenic or Company) with a Notice of Intent to Cancel Certification as a Charter and Excursion Carrier and Opportunity to Request a Hearing (Notice) for failure to file a 2021 annual report and pay 2022 regulatory fees.¹² The Notice informed the Company that the Commission would cancel the Company's certificates without further notice unless the Company filed its delinquent annual report and paid its delinquent regulatory fees, or requested a hearing to demonstrate why its certificates should not be cancelled, within 30 days of the date the Notice was served.³
- 2 The Company failed to submit a 2021 annual report or 2022 regulatory fee to the Commission within the 30-day period, and the Commission did not receive a request for hearing from the Company.

¹ Scenic Bound Tours Co. holds authority to operate as a charter and excursion carrier under certificates CH000389 and ES00062.

² Charter and excursion carriers regulated by the Commission must file annual reports and pay regulatory fees annually pursuant to Revised Code of Washington (RCW) 81.04.080, RCW 81.70.350, Washington Administrative Code (WAC) 480-30-071(2), and WAC 480-30-076(2). Under the authority of RCW 81.04.080, RCW 81.70.250, and WAC 480-30-171(2), the Commission may cancel a charter or excursion carrier's certificate for failure to file an annual report or pay a regulatory fee.

³ Under WAC 480-07-150(4), the Commission may serve documents electronically except where proof of service is required by law. The Commission's Final Order adopting changes to WAC 480-07 accepted Staff's position that electronic service is acceptable for commencing adjudicative proceedings against regulated companies. *See* General Order 588 – Final Adoption Order – WSR 17-06-051, Docket A-130355 ¶16 and Appendix A (March 2, 2017).

- 3 On February 7, 2023, the Commission entered Order 01, Canceling Certificates (Order 01), canceling the Company’s charter and excursion carrier certificates.
- 4 On February 21, 2023, Scenic filed a petition for administrative review of Order 01 (Petition). In its Petition, Scenic stated that the Company’s email address on file with the Commission belonged to an employee who had been discharged, and that the Company had therefore not received service of the Notice. Scenic subsequently filed its annual report and paid the delinquent regulatory fees.
- 5 On March 1, 2023, Commission staff (Staff) filed a response to the Petition (Response). In the Response, Staff recommends that the Commission interpret the Petition as a request for reinstatement under WAC 480-30-181 because it does not meet the requirements for petitions for administrative review. Staff observes that the Company does not demonstrate any circumstances that would invalidate the findings and conclusions in Order 01, but rather pleads “extenuating circumstances” and asks to be allowed to continue to operate under its certificates. Staff recommends that the Commission either enter an order reinstating Scenic’s certificates, subject to the condition that the Company comply with the additional requirements for reinstatement under WAC 480-30-181, or enter an order reinstating Scenic’s certificates and waiving the other requirements in the rule.

DISCUSSION AND DECISION

- 6 As a preliminary matter, we agree with Staff that the Petition is not a proper petition for administrative review because it does not challenge any factual or legal conclusions in Order 01 based on the record in this case. Rather, as authorized under WAC 480-07-395(4), we construe the Petition as a request for reinstatement of the Company’s certificates under WAC 480-30-181. As such, we agree with Staff’s recommendation to reinstate the Company’s certificates without requiring the Company to comply with the additional application requirements in WAC 480-30-181(1)(b).
- 7 The Commission’s primary interest in any enforcement action is compliance with applicable law. In this case, the Company took prompt action to correct the conditions leading to the cancelation of its certificates and provided evidence of extenuating circumstances that explained its initial failure to file its annual report and pay its regulatory fees in response to the Notice. Accordingly, we find that requiring Scenic to file an application and pay an additional fee to reinstate its certificates is unduly burdensome and unnecessarily punitive in light of the circumstances presented here.
- 8 To that end, we also find that granting an exemption from the application and fee requirements in WAC 480-181(1)(b) is appropriate. WAC 480-30-046 provides that the Commission may grant an exemption from the provisions of any rule in Chapter 480-30 WAC if doing so is consistent with the public interest, the purposes underlying

regulation, and applicable statutes. For the reasons stated above, we conclude that exempting the Company from the application and fee requirements in WAC 480-30-181(1)(b) is consistent with the public interest and the purposes underlying the applicable laws and rules.

9 Accordingly, we exempt the Company in this case from the reinstatement application and fee requirements of WAC 480-30-181(1)(b) and grant Scenic's request to reinstate its certificates.

10 Although the Commission exercises its discretion to reinstate Scenic's certificates and waive the applicable rules, we remind the Company that it is ultimately responsible for ensuring it has a valid email address on file with the Commission at all times. Similarly, the Commission's Notice was provided as a courtesy; it is the Company's responsibility to file its annual reports and pay its regulatory fees whether it receives reminders or not.

ORDER

11 **THE COMMISSION ORDERS THAT** The charter and excursion carrier certificates held by Scenic Bound Tours Co. are reinstated effective on the date this Order is served.

DATED at Olympia, Washington, and effective March 10, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner