

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against,

MARTIN'S GORGE TOURS, LLC

DOCKET TE-220293

ORDER 02

CANCELLING SPECIAL
PROCEEDING; APPROVING
SETTLEMENT AGREEMENT

BACKGROUND

- 1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine if Martin's Gorge Tours, LLC, (Martin's Gorge or Company) has engaged, and continues to engage, in business as a charter party or excursion service carrier within the state of Washington without possessing the certificate required for such operations.
- 2 **Procedural History.** On October 19, 2022, the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Virtual Hearing (Order 01), pursuant to RCW 81.04.510, initiating this Docket on its own motion. The Complaint alleges that Martin's Gorge violated RCW 81.70.220 by:
 - (1) offering charter party or excursion carrier service on at least one occasion
 - (2) advertising charter party or excursion carrier service on at least one occasion

without the necessary certificate required for such operations. On the same date, the Commission issued a *Subpoena and Subpoena Duces Tecum for Production of Documents* (Subpoenas) to the Company, commanding Martin Hecht, Company owner, to appear before the Commission at a special proceeding scheduled to convene virtually at 9:30 a.m. on November 29, 2022, and to provide the documents specified in the *Subpoenas*.

- 3 **Settlement Agreement.** On November 23, 2022, Commission staff (Staff) filed a settlement agreement (Settlement) on behalf of the parties that resolves all the contested issues in this proceeding. The parties request that the Commission cancel the brief adjudicative proceeding and consider the Settlement on a paper record.

4 **Appearances.** Jason Hoxit, Compliance Investigator, Lacey, Washington, represents Staff.¹ Martin Hecht, Owner, Stevenson, Washington, represents the Company *pro se*.

DISCUSSION

5 **Applicable Law.** WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed Settlement without condition.
- Approve the proposed Settlement subject to conditions.
- Reject the proposed Settlement.

6 **Settlement.** As part of the Settlement, Martin’s Gorge admits that it operated as a charter party or excursion service carrier subject to Commission jurisdiction. The Company also admits that it violated RCW 81.70.220 on two occasions by (1) offering and (2) advertising to provide charter party or excursion carrier service.

7 The parties agree that the Company will be assessed a \$10,000 penalty and, on the condition that the Company permanently stays out of the industry without first obtaining a permit from the Commission, agree that \$9,000 of the penalty should be suspended for two years, then waived.

¹ In adjudications, the Commission’s regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

8 The parties agree that the Company will pay the remaining \$1,000 portion of the penalty by December 29, 2022, and that if the penalty is not paid by that date, that the entire \$10,000 penalty will become due and payable.

9 **Decision.** The Commission approves the Settlement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Martin's Gorge admits that its conduct violated RCW 81.70.220 and has agreed to pay a reduced penalty on the condition that the Company refrains from unauthorized operations. The Settlement supports the Commission's goal of compliance by permitting the Company to pay a reduced penalty of \$1,000 and suspending, then waiving, the \$9,000 remainder of the penalty conditioned on the Company complying with the terms of this Order and timely paying the remaining \$1,000 portion of the penalty.

10 The terms of the Settlement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Accordingly, we find that the Settlement is consistent with the public interest and should be approved as filed.

FINDINGS AND CONCLUSIONS

- 11 (1) The Commission is an agency of the State of Washington vested by statute with authority to regulate persons engaged in providing charter party and excursion carrier service in Washington.
- 12 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Martin's Gorge.
- 13 (3) The Settlement proposed by the parties is not complex and is unopposed.
- 14 (4) The Settlement is not contrary to law or public policy, and it reasonably resolves all issues in this proceeding.
- 15 (5) The Settlement agreement is consistent with the public interest.
- 16 (6) The Commission should approve the Settlement without condition and order the penalty amount, conditions, and other terms as proposed by the parties in the Settlement.

ORDER

THE COMMISSION ORDERS:

- 17 (1) The special proceeding scheduled to convene virtually at 9:30 a.m. on November
29, 2022, is cancelled.
- 18 (2) The Settlement is approved without condition, is attached as Exhibit A to, and
incorporated into, this Order, and is adopted as the final resolution of all issues in
this proceeding.
- 19 (3) Martin's Gorge, LLC, is classified as a charter party or excursion service carrier.
- 20 (4) Martin's Gorge, LLC, is ordered to immediately cease and desist operations as a
charter party or excursion service carrier within the state of Washington without
first obtaining the required certificate from the Commission.
- 21 (5) Martin's Gorge, LLC, is assessed a penalty of \$10,000. A \$9,000 portion of the
penalty is suspended for a period of two years from the date of this Order, and
waived thereafter, provided that (1) Martin's Gorge, LLC, refrains permanently
from further operations as a charter party or excursion service carrier within the
state of Washington without first obtaining the required certificate from the
Commission, and (2) Martin's Gorge, LLC, pays the \$1,000 portion of the penalty
by December 29, 2022.
- 22 (6) The Commission retains jurisdiction over the subject matter and the parties to this
proceeding to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective November 23, 2022.

/s/ Rayne Pearson
RAYNE PEARSON
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 (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters 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 with due diligence at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-825(1) 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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).

APPENDIX A