

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

BAKER BUS SKI AND
SNOWBOARD CLUB,

Respondent.

DOCKET TE-240673

ORDER 01

INITIAL ORDER CANCELLING
CERTIFICATE

BACKGROUND

- 1 On August 27, 2024, Commission staff (Staff) conducted an investigation into Baker Bus Ski and Snowboard Club's (Baker Bus) compliance with the safety requirements contained in Chapter 480-30 Washington Administrative Code (WAC). As a result of this investigation, Staff documented 24 safety requirement violations with 73 individual occurrences and proposed an unsatisfactory safety rating. Staff notified the Company of this proposed rating on August 27, 2024.¹
- 2 On September 25, 2024, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Intent to Cancel Certificate; Notice Extending Cancellation Date; and a Notice of a Brief Adjudicatory Proceeding (Notice).
- 3 On October 21, 2024, the Commission held a Brief Adjudicatory Proceeding (BAP). Therein, the presiding officer was informed that the carrier had not received the details of the investigation until October 17, 2024. Staff did not object to using that date as the date

¹ Under normal circumstances, pursuant to 49 C.F.R § 385.13(a)(1), Baker Bus would have been required to come into compliance with applicable laws by obtaining Commission approval of a safety management plan no later than October 11, 2024, and if the Company failed to come into compliance by that date, the Commission would have cancelled its charter and excursion carrier services certificate effective October 12, 2024. Thereafter, as an unregistered company, Baker Bus would have been prohibited from providing charter and excursion carrier services in the state of Washington. However, given the unusually short time period between the issuance of the notice and the cancellation date, the Commission on its own initiative and consistent with the goal of ensuring the public interest in the form of due process, the previous presiding officer extended the cancellation date to October 28, 2024, in accordance with WAC 480-07-110.

of notice, for the purpose of calculating the 45-day deadline set by Title 49 Code of Federal Regulations (49 CFR) § 385.13.

4 At the hearing, Commission staff (Staff) presented documentary evidence and the testimony of Motor Carrier Safety Supervisor Jason Sharp and Inspector Sandra Yeomans.² Baker Bus presented testimony of Club President Paul Engel.

5 Staff testified that the Commission sent the Company notice; Staff testified that Baker Bus had not submitted proof of corrective actions with the Commission by the day of the hearing.

6 Regarding the alleged violations of safety regulations, Staff explained that a number of acute and critical violations were identified during the course of the investigation – many of which stemmed from Baker Bus’s use of a vehicle that holds over 15 passengers, which triggered a variety of additional regulatory requirements which were not met. This safety inspection was admitted into the record as Exhibit SY-2.³ Staff testified that the inspection found three acute violation types and three separate critical violations.

7 Ultimately, the investigation yielded Baker Bus an unsatisfactory safety rating under the FMCSA regulations incorporated by Commission rules.

8 The owner acknowledged the violations and stated that they would be addressed. Specifically, Mr. Engel indicated that Baker Bus would no longer operate the larger vehicle, which qualified as a commercial motor vehicle.⁴

9 At the time of the hearing, Mr. Engel testified that several, but not all, of the issues had been addressed.

10 The Commission asked the Company to work with Staff and submit its proof of corrective actions to Staff prior to December 2024.⁵

² In adjudications the Commission’s regulatory staff participates like any other party, while the 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.

³ Tr. 12:1.

⁴ Tr. 32-33.

⁵ Tr. 40.

- 11 On November 27, 2024, Baker Bus filed a Safety Management Plan with Staff.⁶
- 12 On December 3, 2024, Staff filed a letter responding to Baker Bus’s Safety Management Plan. Staff noted that Baker Bus did not provide sufficient evidence to justify an upgraded safety rating. Staff stated that technical assistance has been provided, but because of the failure to timely cure, the carrier’s authority should be revoked.⁷
- 13 Staff recommends that the Club’s certificate be cancelled due to its failure to improve its safety rating within 45 days.

DISCUSSION AND DECISION

- 14 “It is the Commission’s duty to regulate charter party carriers and excursion service carriers with respect to safety of equipment, driver qualifications, and safety of operations.”⁸ The Commission may cancel, revoke, or suspend a charter party and excursion service carrier’s certificate on the following grounds: failure to maintain required insurance coverage in full force and effect; violations of Revised Code of Washington (RCW) Chapter 81.70; failure to timely pay a fee; or the violation of an order, decision, rule, regulation, or requirement established by the Commission.⁹
- 15 The Commission considers several factors when deciding on the type of enforcement action to take or the level of penalty to be imposed.¹⁰ These include how serious or harmful the violation is to the public; whether the violation was intentional; whether the company self-reported the violation; whether the company promptly corrected the violation; the number of violations; the number of customers affected; the company’s past performance regarding compliance; the company’s existing compliance program; and the size of the company.¹¹

⁶ The Safety Management Plan was not submitted to this docket or considered by the presiding officer. If the Club wishes to challenge staff’s final safety rating, they may do so in accordance with 49 CFR § 385.15. Additionally, the Club may request a change to a final safety rating based on corrective action, pursuant to the process described in 49 CFR § 385.17.

⁷ Evaluation of SMP (filed December 3, 2024)

⁸ RCW 81.70.270.

⁹ RCW 81.70.250.

¹⁰ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

¹¹ Enforcement Policy ¶ 15.

1. Unsatisfactory Safety Rating

- 16 Pursuant to RCW 81.70.270, the Commission regulates charter party and excursion service carriers with respect to safety and driver qualifications. WAC 480-30-221 adopts by reference a number of the federal regulations in 49 C.F.R., including the entirety of 49 C.F.R. Part 385.
- 17 The Commission periodically inspects carriers. Following a compliance review of carriers, Staff determines whether a motor carrier's operations are consistent with state safety regulations, which largely adopt federal safety regulations.¹² If Staff proposes an "unsatisfactory" safety rating, that rating becomes final 45 days later for commercial vehicles transporting passengers.¹³
- 18 The Commission will issue an order placing out-of-service any motor carrier that receives a proposed unsatisfactory safety rating and fails to cure the deficiencies prior to the rating becoming final. A motor carrier that has been placed out-of-service is prohibited from operating until such time as it requests and receives an upgraded safety rating based on evidence that it has taken appropriate corrective action, and that its operations currently meet applicable safety standards.¹⁴
- 19 Although the Commission held the record open after the hearing, Baker Bus has not yet obtained an upgraded safety rating. Baker Bus cannot continue operating in Washington state with an unsatisfactory safety rating.
- 20 Under WAC 480-30-171(1)(h), this failure to comply with rules pertaining to operations of passenger transportation companies could be cause for a suspension.
- 21 Further, this failure to timely cure could be grounds for cancelation, if the Commission finds, pursuant to WAC 480-30-171(2)(d), that there is "reason to believe the passenger transportation company will not comply with those laws and rules following a specified period of suspension."
- 22 Staff recommends cancelling Baker Bus's operating authority due to the safety violations documented in Staff's recent safety inspection. Staff testified that several of the violations were serious, specifically the annual review of driver records appeared to be fraudulently certified:

¹² WAC 480-30-221; WAC 480-30-999; 49 C.F.R. § 385.9(a).

¹³ 49 C.F.R. § 385.11(c)(1).

¹⁴ 49 C.F.R. § 385.13(a)(1).

For Baker Bus, he had the paperwork dated prior to any abstract. So therefore, he was signing off that he had read the abstract and all was good, when really, he had not even had the abstract to review.¹⁵

23 Finally, Staff found that Baker Bus did not take adequate measures to justify an upgrade of safety rating. Staff's evaluation notes that the "SMP fails to demonstrate that Baker Bus has identified why each violation was allowed to occur or that it has taken appropriate corrective action to develop a compliant safety program that will prevent repeat violations in the future. Further the SMP does not include a carrier statement certifying that its operations meet the safety standards and factors specific to 49 C.F.R. 385.5 and 385.7."¹⁶

24 While Mr. Engel testified that some of the violations had been cured, this did not sufficiently address all of the issues identified by Staff. Upon submission of an SMP, Staff found that Baker Bus "presented documentation that was used to demonstrate corrective action [but] contained errors that would lead to violations."¹⁷

25 We agree with Staff's recommendation to cancel Baker Bus's certificate in light of these acute and critical violations. WAC 480-30-171(2) provides that the Commission may cancel a certificate for cause. Here, Baker Bus has still not taken sufficient action to improve its safety rating. Baker Bus's failure to obtain an upgraded safety rating within the prescribed time forecloses its continued operation.

26 Further, given the amount of time this docket has remained open; the amount of technical assistance provided; Staff's recommendation to cancel; we find that there is a "reason to believe the passenger transportation company will not comply with those laws and rules following a specified period of suspension."¹⁸ Therefore, we find cancelation to be a more appropriate penalty than a suspension.

27 Lastly, we note that the violations relating to Baker Bus's certifying that it had reviewed abstracts prior to their creation is an independent cause for cancelation pursuant to WAC 480-30-171(2)(f) ("Submission of false, misleading or inaccurate information.").

¹⁵ Tr. 15:9-12.

¹⁶ SMP Evaluation at 2.

¹⁷ SMP Evaluation at 2.

¹⁸ See 480-30-171(2)

FINDINGS AND CONCLUSIONS

- 28 (1) The Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including charter party and excursion service carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 29 (2) Commission Staff performed a safety inspection of Baker Bus in August 2024, which found three acute violation types and three critical violation types.
- 30 (3) Baker Bus did not contest the violations identified in Staff’s investigative report, SY-2.
- 31 (4) Commission rules that govern safety regulations for charter and excursion carriers, WAC 480-30-221, adopt by reference each of the federal safety regulations violated by Baker Bus.
- 32 (5) Baker Bus has not demonstrated sufficient corrective action.
- 33 (6) Baker Bus received notice of its proposed unsatisfactory rating by at least October 17, 2024. Baker Bus did not improve its safety rating within the 45 days prescribed by 49 CFR 385.13(a)(1). Baker Bus’s proposed safety rating became final on December 1, 2024.
- 34 (7) There is a reason to believe that a period of suspension for a specified period will be insufficient.
- 35 (8) The Commission should find good cause to cancel Baker Bus’s certificate pursuant to WAC 480-30-171(2) due to the Club’s continued violation of Commission rules, and its submission of fraudulent information. *See also* 49 C.F.R. 385.13(e) (noting revocation of operating authority as penalty for an unsatisfactory safety rating becoming final).

ORDER

THE COMMISSION ORDERS THAT:

- 36 Baker Bus Ski and Snowboard Club’s certificate to operate as a charter party and excursion service carrier in the state of Washington is CANCELLED.

DATED at Lacey, Washington, and effective December 17, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Bijan Hughes
BIJAN HUGHES
Administrative Law Judge

NOTICE TO 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 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of 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 at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) 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). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).