

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

ALASKA AMPHIBIOUS TOURS, LLC
d/b/a SEATTLE SPLASH TOURS,
Petitioner,

For an Exemption from WAC 480-30-191
(1)(a)

DOCKET TE-210118

ORDER 01

GRANTING PETITION FOR
EXEMPTION

BACKGROUND

- 1 On May 11, 2021, Alaska Amphibious Tours, LLC d/b/a Seattle Splash Tours (Alaska Amphibious or Company), filed with the Washington Utilities and Transportation Commission (Commission) a Petition for an exemption (Petition) from Washington Administrative Code (WAC) 480-30-191(1)(a). On February 2, 2021, the Company filed an application with the Commission for a charter and excursion carrier services certificate in the state of Washington.
- 2 WAC 480-30-191(1)(a), requires each applicant for charter/excursion authority and each charter/excursion Company to file with the Commission evidence of currently effective liability and property damage insurance written by a company authorized to write insurance in Washington.
- 3 Alaska Amphibious is a company that provides both land and water tours using amphibious vehicles in the Ketchikan area for 20 years. The Company's application to the Commission lists three 49 seat, Hydra Terra amphibious vehicles which they propose to use in the Seattle area. Pursuant Revised Code of Washington (RCW) 81.70.280, insurance must cover each motor vehicle used or to be used under the permit. WAC 480-30-191(2) requires minimum coverage of \$5,000,000 for vehicles which have a passenger seating capacity of 16 or more persons including the driver.
- 4 Alaska Amphibious requests in its Petition to retain the necessary \$5,000,000 in liability coverage from a surplus line insurer that is not authorized to write insurance in the State

of Washington. Surplus lines insurance is used when licensed insurers in the standard market will not provide coverage because the risk is too high, too unfamiliar, or does not otherwise meet the insurers' guidelines. Surplus line insurers have more flexibility to design and price their policies and generally charge higher premiums because they ensure risks that are usually more costly to cover.

- 5 While the specific requirements of Commission rules can be exempted, under RCW 81.70.280, the Commission must "require the carriers to either procure and file liability and property damage insurance from a company licensed to write such insurance in the state of Washington, or deposit security, for the limits of liability and on terms and conditions that the Commission determines are necessary for the reasonable protection of the public against damage and injury for which the carrier may be liable by reason of the operation of any motor vehicle." Because this is a statutory requirement, the Commission cannot grant the Company an exemption from the obligation to purchase its insurance from a company licensed in Washington. The Office of the Insurance Commissioner (OIC) authorizes insurance companies to write insurance in Washington. RCW 48.15.040 allows surplus lines coverage under certain conditions if insurance from authorized insurers cannot be procured and for the use of surplus line coverage provided that the insurance must be procured through a licensed surplus line broker. The licensing requirements for surplus line brokers are found in RCW 48.15.070.
- 6 Because surplus lines insurers take on higher risk, they are often more expensive than traditional admitted insurers. In return, the regulatory requirements are less stringent than those for authorized carriers. Notably, the Federal Motor Carrier Safety Administration (FMCSA) accepts surplus lines insurance under CFR Title 49, Part 387.315.
- 7 Alaska Amphibious has secured a quote for \$5,000,000 in commercial liability coverage from Prime Insurance Company (Prime). Prime is not on the admitted list with the Office of the Insurance Commissioner (OIC). Prime is a member of the Surplus Lines Association of Washington and possesses an A.M. Best Rating Services credit rating of "A". A.M. Best Rating is a credit rating agency that provides comprehensive information for anyone interested in the creditworthiness of insurance companies. Alaska Amphibious' surplus line broker is Worldwide Facilities, LLC (Worldwide Facilities), which is licensed by the OIC to produce surplus line insurance in Washington. RCW 48.15.040 also requires that the insurance must not be procurable after a diligent effort has been made to do so from a majority of the insurers who are authorized to transact the necessary insurance in this state. Staff confirmed with Worldwide Facilities that Prime is

the only company within the United States that will insure amphibious tour operators.¹

8 Alaska Amphibious requests an exemption from WAC 480-30-191(1)(a) so that it may meet the insurance requirements as an auto transportation company and charter service in Washington state.

9 Commission staff (Staff) supports the Company's Petition. Staff is willing to recommend the use of surplus lines insurance when a company buys insurance from a highly rated surplus lines company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070. Prime possesses an AM Best financial strength credit rating of "A".

DISCUSSION

10 We agree with Staff and grant Alaska Amphibious' Petition. Under WAC 480-07-110(1), the Commission may grant an exemption from any of its rules if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes. We find that the Company's Petition meets this standard subject to the condition that the Company must buy insurance from a highly rated surplus lines company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070. The purpose of the insurance rule is to protect the public from loss or damage caused by the Company while providing service. Surplus lines insurance responds to that need and is a viable option for high-risk or unique lines of business where risk is less certain. Accordingly, we find that the Petition for exemption is consistent with the public interest, the purposes underlying regulation, and applicable statutes, and conclude that it should be granted.

FINDINGS AND CONCLUSIONS

11 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rules, regulations, and practices, accounts, and affiliated interests of public service companies, including auto transportation companies.

¹ Staff additionally received an independent confirmation from Land and Sea Tours of Santa Barbara, California of this fact.

- 12 (2) Alaska Amphibious is an auto transportation company and a public service company subject to Commission jurisdiction.
- 13 (3) This matter came before the Commission at its regularly scheduled meeting on June 3, 2021.
- 14 (4) Pursuant to WAC 480-07-110(1), the Commission may grant an exemption from any of its rules if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes.
- 15 (5) After reviewing Alaska Amphibious' Petition and giving due consideration to all relevant matters and for good cause shown, the Commission finds that granting exemption from WAC 480-30-191(1)(a) meets this standard.

ORDER

THE COMMISSION ORDERS:

- 16 (1) Alaska Amphibious Tours, LLC d/b/a Seattle Splash Tours' Petition for exemption from WAC 480-30-191(1)(a) is GRANTED.
- 17 (2) The Commission retains jurisdiction over the subject matter and Alaska Amphibious Tours, LLC d/b/a Seattle Splash Tours, to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective June 3, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner