

**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 01

ORDER INSTITUTING SPECIAL
PROCEEDING; COMPLAINT SEEKING
TO IMPOSE PENALTIES; NOTICE OF
VIRTUAL HEARING

(Set for November 29, 2022, at 9:30 a.m.)

INTRODUCTION

- 1 The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 81.04.510, institutes this special proceeding on its own motion to determine whether Martin's Gorge Tours, LLC, (Martin's Gorge Tours or Company) has engaged, and is engaging, in unlawful operations without a charter party and excursion service carrier certificate in violation of RCW 81.70.220.
- 2 The Commission has information from which it believes and therefore alleges that Martin's Gorge Tours has advertised, solicited, offered, or entered into one or more agreements to provide charter party or excursion carrier service within the state of Washington without having first obtained a charter party and excursion service carrier certificate.
- 3 Pursuant to RCW 81.04.510, upon proof of these allegations, the Commission is authorized to issue an order requiring Martin's Gorge Tours to cease and desist activities subject to regulation under Title 81 RCW. In addition, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by Martin's Gorge Tours that violates any law, or any order or rule of the Commission. The Commission may impose financial penalties of up to \$5,000 for each violation.
- 4 At the hearing in this special proceeding that will be conducted pursuant to Part IV of the Administrative Procedure Act (APA), RCW 34.05, of which notice is given here, the Commission will also consider its Complaint against Martin's Gorge Tours alleging violations of law as specified below and will decide whether Martin's Gorge Tours should be penalized.

ORDER AND NOTICE OF HEARING

5 The Commission has jurisdiction to institute a special proceeding to determine whether Martin's Gorge Tours is conducting business requiring operating authority or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 81.01.010, and RCW 81.04.510. In addition to the foregoing statutes, this matter involves Title 81 RCW, including but not limited to RCW 81.04.020 and RCW 81.70.220. This matter also involves the administrative rules set forth in WAC 480-30 and WAC 480-07.

6 **THE COMMISSION ORDERS that Martin's Gorge Tours appear virtually before the Commission in this special proceeding conducted under the authority of RCW 81.04.510 at 9:30 a.m., on November 29, 2022,** to give testimony and evidence under oath as to its operations. The burden of proving that the alleged operations are not subject to the provisions of Title 81 RCW shall be upon Martin's Gorge Tours, as provided by RCW 81.04.510.

7 To attend the hearing telephonically, you may call (253) 215-8782, enter Meeting ID: 831 9008 1715# and enter Passcode: 183269#. If you wish to attend via Zoom, please email jason.hoxit@utc.wa.gov and a link will be provided to you.

8 **THE COMMISSION GIVES NOTICE THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.**

9 If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that a qualified interpreter may be appointed at no cost to the party or witness.

10 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Martin Hecht
Martin's Gorge Tours, LLC
730 NE Bone Road
Stevenson, WA 98648
martin@martinsgorgetours.com

Representative: Unknown

Commission: Washington Utilities and
Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Jason Hoxit
Compliance Investigator
P.O. Box 47250
Olympia, WA 98504-7250
(360) 867-8305
jason.hoxit@utc.wa.gov

COMPLAINT SEEKING PENALTIES

- 11 **Parties.** Complainant, the Commission, is an agency of the state of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including charter party or excursion service carriers, under the provisions of Title 81 RCW.
- 12 Respondent, Martin’s Gorge Tours, is a charter party or excursion service carrier that does business in the state of Washington.
- 13 **Jurisdiction.** The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 81.04.110, RCW 81.01.010, RCW 81.04.160, RCW 81.04.460, and RCW 81.70.
- 14 **Background.** According to the Declaration of the Commission compliance investigator, presented to the undersigned administrative law judge¹ under penalty of perjury, the following facts establish probable cause for the Commission to complain against the activities of Martin’s Gorge Tours and to seek penalties in accordance with applicable law.
- 15 On April 26, 2022, Martin’s Gorge Tours offered to provide charter party or excursion carrier service without first having obtained a certificate from the Commission.

¹ Administrative law judges appointed by the Commission are empowered, among other things, to “make findings of probable cause and issue complaints in the name of the commission.” RCW 80.01.060(1).

- 16 According to evidence obtained from the Company's website, www.martinsgorgetours.com, Martin's Gorge Tours has been operating as a charter party or excursion service carrier within the state of Washington without a certificate.

APPLICABLE LAW AND REGULATION

- 17 Under state law, the definition of "charter party carrier" includes every person "engaged in the transportation over any public highways in this state of a group of persons who, pursuant to a common purpose and under a single contract, acquire the use of a motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after leaving the place of origin."²
- 18 Under state law, the definition of charter party carrier includes a person who "advertises, solicits, offers, or enters into an agreement to carry passengers over any public highway within the state of Washington."³
- 19 The term "person" can mean a corporation or firm as well as an individual.⁴ Specifically included in this term are individuals, firms, corporations, associations, partnerships, lessees, receivers, trustees, consortiums, joint venture, or commercial entities.⁵
- 20 The term "charter party carrier" or "charter carrier" means every person engaged in the transportation over any public highways in this state of a group of persons who, pursuant to a common purpose and under a single contract, acquire the use of a motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after leaving the place of origin. A person who is engaged in the transportation of persons by party bus over any public highway in this state is considered engaging in the business of a charter party carrier or excursion service carrier.⁶

² RCW 81.70.020(1).

³ RCW 81.70.220(1).

⁴ RCW 81.70.020(9).

⁵ WAC 480-30-036.

⁶ WAC 480-30-036.

- 21 Charter party and excursion service carriers are common carriers.⁷ For the purposes of Title 81 RCW, every common carrier is a public service company.⁸
- 22 It is illegal to engage in business as a charter party or excursion service carrier within the state of Washington without having first obtained a certificate from the Commission.⁹
- 23 Any person who engages in business as a charter party or excursion service carrier in the state of Washington without having first obtained a certificate from the Commission is subject to a penalty of up to \$5,000 per violation.¹⁰ If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.¹¹
- 24 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission.¹²

COMPLAINT

- 25 The Commission, through its Staff, re-alleges the statements contained in paragraphs 11 through 24 above.
- 26 Martin's Gorge Tours has violated RCW 81.70.220(1) at least once by offering charter party or excursion carrier service to transport passengers without first having obtained a certificate from the Commission.
- 27 Martin's Gorge Tours has violated RCW 81.70.220(1) at least once by advertising to transport passengers without first having obtained a certificate from the Commission.

REQUEST FOR RELIEF

- 28 Staff requests that the Commission, pursuant to its authority under RCW 81.70.220(2), assess penalties of up to \$5,000 per violation against Martin's Gorge Tours. Staff will

⁷ RCW 81.04.010(11).

⁸ RCW 81.04.010.

⁹ RCW 81.70.220(1).

¹⁰ RCW 81.70.220(2).

¹¹ RCW 81.70.220(1).

¹² RCW 81.04.110.

present testimonial evidence at the hearing to address the factors for determining an appropriate penalty amount. Further, Staff may request that some portion of any penalty imposed be suspended for a period of time sufficient to demonstrate Martin's Gorge Tours' intent to comply with all applicable laws and rules governing the charter party and excursion service carrier industry.

PROBABLE CAUSE

- 29 Based on a review of the Declaration of the Commission compliance investigator assigned to this matter, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

NOTICE OF VIRTUAL HEARING

- 30 **THE COMMISSION GIVES NOTICE THAT it will conduct a virtual hearing concerning this Complaint concurrently with the special proceeding noticed above, which will commence at 9:30 a.m., on November 29, 2022.**

- 31 To attend the hearing telephonically, you may call (253) 215-8782, enter Meeting ID: 831 9008 1715# and enter Passcode: 183269#. If you wish to attend via Zoom, please email jason.hoxit@utc.wa.gov and a link will be provided to you.

- 32 Administrative Law Judge Rayne Pearson, from the Commission's Administrative Law Division, is designated to preside at the hearing of these matters.¹³

DATED at Lacey, Washington, and effective October 19, 2022.

/s/ Michael Howard

MICHAEL HOWARD
Administrative Law Judge

Inquiries should be addressed to:

Amanda Maxwell
Executive Director and Secretary
Washington Utilities and Transportation Commission

¹³ Judge Pearson can be reached by telephone at (360) 664-1136 or by email at rayne.pearson@utc.wa.gov.

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P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

Hearing facilities are accessible to persons with disabilities and persons who do not speak English as a first language. If limited English-speaking, hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please provide the information requested below via email to Paige Doyle, paralegal, at paige.doyle@utc.wa.gov:

(PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes)_____ (No)_____

Do you need a certified sign language interpreter?

Visual_____ Tactile_____

Other type of assistance needed: _____