

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of) DOCKET TE-141214
SEA TO SKY CHARTERS, INC.)
) NOTICE OF INTENT TO DENY
) APPLICATION;
for a permit to operate as a charter)
party and excursion service carrier of) NOTICE OF OPPORTUNITY FOR
passengers) HEARING
.....)

I. INTRODUCTION

1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission
(Commission) hereby provides notice of its intention to deny Sea to Sky Charters,
Inc.'s (Sea to Sky or Applicant) application for authority for failure to meet the
application requirements in RCW 81.70 and WAC 480-30.

2 **Procedural Background.** On June 2, 2014, Sea to Sky filed with the Commission an
application requesting authority to operate as charter party and excursion service
carrier of passengers in the state of Washington under RCW 81.70 and WAC 480-30.

3 Commission Staff has reviewed the application, as well as materials received from
state and federal agencies regarding this company. Commission Staff recommends
that the Commission deny Sea to Sky's application for a certificate for the reasons set
forth below.

II. APPLICABLE LAW

4 RCW 81.70.230 requires that the Commission issue a certificate to any applicant who
establishes proof of safety fitness and insurance coverage. RCW 81.70.230(2).

III. FACTUAL ALLEGATIONS

5 Commission Staff makes the following factual allegations based on its review and
investigation of the application.

- 6 Sea to Sky is operated by one of the same individuals that operates Discovery Tours NW, LLC (Discovery Tours) and utilizes the same bus as Discovery Tours. Discovery Tours is currently subject to an out-of-service order issued by the Federal Motor Carrier Safety Association (FMCSA), which prohibits the company from operating any commercial motor vehicles in interstate and intrastate commerce.
- 7 On February 27, 2014, FMCSA enforcement staff conducted a Compliance Review of Discovery Tours, documenting numerous serious safety violations. As a result of the Compliance Review, the FMCSA gave Discovery Tours an “unsatisfactory” safety rating. The FMCSA required the company to take action within 45 days to improve its safety rating. The company failed to take the required action and on April 22, 2014, the FMCSA issued an out-of-service order on Discovery Tours for acute and critical safety violations. Discovery Tours was ordered to cease all operations of any commercial motor vehicles in interstate and intrastate commerce. The out-of-service order also applied to the operations of any successor entities, including any motor carrier entity or entities established or used to avoid the consequences of a final “unsatisfactory” safety rating. The out-of-service order has not been rescinded or reversed and remains in effect. Discovery Tours’ charter and excursion authority with the Commission was cancelled on July 15, 2014, due to failure to file proof of the required insurance coverage.
- 8 Melody Barnes is the Operations Manager for Discovery Tours. She is also a managing member of Sea to Sky, with 14 percent ownership of the company.
- 9 Ms. Barnes was the initial owner of Discovery Tours. Ms. Barnes’ mother, Iris Zimmerman , is the most recent owner of Discovery Tours. Ms. Barnes’ son, Chad Howell is the president of Sea to Sky Charters, with the same percentage of ownership as Ms. Barnes (14 percent).
- 10 Sea to Sky operates a bus currently registered to Discovery Tours. This same bus was put out of service during Discovery Tours’ federal Compliance Review for mechanical issues.
- 11 Because of the common ownership and officers, as well as the operation of the same bus, Commission staff believes Sea to Sky is a successor entity to Discovery Tours established to avoid the consequences of the federal out-of-service order.
- 12 These allegations, if not satisfactorily rebutted, support factual findings that Sea to Sky is currently subject to an out-of-service order that prohibits it from operating commercial motor vehicles interstate and within Washington, stemming from a Compliance Review and unsatisfactory safety rating. Such factual findings, in turn,

support the conclusion that the Applicant has failed to establish safety fitness as required by RCW 81.70.2230(2) and the application should be denied.

- 13 **NOTICE OF OPPORTUNITY FOR HEARING.** Sea to Sky may request a hearing to contest the factual allegations set out in this notice. Sea to Sky may request such a hearing by filing a written request for a hearing with the Commission by **July 30, 2014**. An original and five (5) paper copies of the request must be directed to the attention of Steven V. King, Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, and must reference Docket TE-141214.
- 14 If Sea to Sky requests a hearing by **July 30, 2014**, the Commission will schedule a brief adjudicative proceeding under RCW 34.05.482 and WAC 480-07-610. If Sea to Sky does not request a hearing by that date, the Commission will enter an order rejecting the application for authority.

DATED at Olympia, Washington, and effective July 16, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



STEVEN V. KING
Executive Director and Secretary