

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| In re Application of | DOCKET TE-161295 |
| GO VIP LLC d/b/a GO VIP SEATTLE | ORDER 02 |
| For a Certificate to Operate as a Charter Party and Excursion Service Carrier | FINAL ORDER DENYING MOTION TO REOPEN RECORD; DENYING PETITION FOR ADMINISTRATIVE REVIEW |

BACKGROUND

- 1 On December 20, 2016, Go VIP LLC d/b/a Go VIP Seattle (Go VIP or Company) filed with the Washington Utilities and Transportation Commission (Commission) an application for authority to operate as a charter party and excursion service carrier in Washington (Application) under Revised Code of Washington (RCW) 81.70 and Washington Administrative Code (WAC) 480-30.
- 2 On April 4, 2017, the Commission issued a Notice of Intent to Deny Application for Certificate and Notice of Opportunity for Hearing (Notice) resulting from Commission staff's (Staff) review and investigation of the Application. The Notice included the facts that: (1) the applicant, Steve Valentinetti, was listed as both the owner and manager of AMI Coaches, LLC (AMI Coaches), a company that was placed out of service by the Federal Motor Carrier Safety Administration (FMCSA) following a 2013 audit that led to an unsatisfactory safety rating; and (2) the applicant, Mr. Valentinetti was listed as both the owner and manager of Airline Shuttle, Inc. (Airline Shuttle), a company that was placed out of service by the FMCSA following a 2014 audit that led to an unsatisfactory safety rating.
- 3 The Commission's notice relates the following facts underlying FMCSA's actions with respect to AMI Coaches and Airline Shuttle, respectively, in 2013 and 2014 as follows:

AMI Coaches

FMCSA lists AMI as out of service because a safety audit produced an unsatisfactory safety rating. During the November 2013 safety audit that produced the unsatisfactory rating, FMCSA discovered that AMI (1) did not have the necessary substance and alcohol testing program; (2)

knowingly allowed, required, permitted, or authorized an employee to operate a passenger carrying vehicle without the proper endorsement or intrastate restrictions during an interstate trip; (3) made a fraudulent or intentionally false entry on an annual inspection form; (4) permitted drivers to make trips before receiving negative drug testing results; (5) permitted drivers to make trips without a valid medical certificate; (6) failed to inquire about the driving records of drivers; (7) failed to make records of duty status; and (8) operated motor vehicles which were not periodically inspected as required.¹

Airline Shuttle

FMCSA lists Airline Shuttle as out of service because a safety audit produced an unsatisfactory safety rating. During the March 2014 audit that produced the unsatisfactory safety rating, FMCSA discovered that Airline Shuttle (1) did not have the necessary substance and alcohol testing program, (2) failed to maintain proof of insurance at its principle place of business, (3) operated a passenger carrier vehicle without the necessary levels of insurance, (4) failed to make records of duty status, (5) failed to maintain driver qualification files, (6) failed to keep inspection and vehicle maintenance records, (7) failed to require drivers to prepare driver vehicle inspection reports, (8) operated motor vehicles which were not periodically inspected, (9) failed to update its MCS-150 form, and (10) operated motor vehicles without the required marking.²

- 4 The Commission's Notice states that based on the common ownership of AMI Coaches, Airline Shuttle and Go VIP it appeared that Mr. Valentinetti incorporated Go VIP to conceal a history of noncompliance and avoid compliance with orders forbidding AMI Coaches and Airline Shuttle from operating. Thus, the Commission considered Go VIP's application to be an effort to reincarnate unlawfully the operations of carriers previously placed out of service by FMCSA. Considering this, and the unrebutted findings of violations by FMCSA in its audits that led to AMI Coaches and Airline Shuttle being placed out of business by FMCSA, the Commission found that "Go VIP LLC is not fit to operate as a charter or excursion carrier"³ in Washington. The Commission's Notice

¹ Notice ¶ 10.

² Notice ¶ 12.

³ Notice ¶ 13.

provided Go VIP the opportunity to request a hearing to contest “the factual allegations set out in this notice” by April 18, 2017.

- 5 On April 14, 2017, Go VIP filed with the Commission a Request for Hearing. The Commission noticed the matter as a brief adjudicative proceeding, accommodated Mr. Valentinetti’s request for an expedited schedule, and convened an evidentiary hearing before Administrative Law Judge Rayne Pearson on April 20, 2017, at 9 a.m.
- 6 Mr. Valentinetti appeared *pro se* and gave sworn testimony, subject to cross-examination. Mr. Valentinetti called Mr. Doug Ferguson, insurance broker, who also gave sworn testimony subject to cross-examination. Staff, represented by Assistant Attorney General Roberson, presented documentary evidence and the sworn testimony of motor carrier supervisor Mr. Mathew Perkinson. Mr. Valentinetti was allowed to cross-examine Mr. Perkinson.
- 7 The hearing resulted in a transcript of 130 pages and the admission of five exhibits from Staff, including copies of FMCSA’s Safety Audit Reports for AMI Coaches and Airline Shuttle. Mr. Valentinetti did not offer any documentary evidence for admission into the record. However, Mr. Valentinetti provided the presiding officer an “evidence book,” which the presiding officer considered, as allowed under RCW 34.05.494 and WAC 480-07-610(10). Various other documents have been filed and considered during this brief adjudicative proceeding, as discussed in this Order.
- 8 The Commission entered Order 01, its initial order, on May 5, 2017. Order 01 found that Go VIP failed to demonstrate its fitness to operate as a charter party and excursion service carrier and concluded that granting Go VIP a certificate to operate as a charter or excursion carrier would not be in the public interest. The initial order would deny Go VIP’s application for a certificate to operate as a charter party and excursion service carrier in the state of Washington, subject to administrative review by the Commission.
- 9 On May 24, 2017, Go VIP filed six documents that the Commission here considers collectively and construes liberally to constitute the Company’s “motion to reopen the record prior to entry of a final order” under WAC 480-07-830 and petition for administrative review of an initial order under RCW 34.05.488 and WAC 480-07-610. The Commission denies both the motion and the petition, for the reasons discussed below.

DISCUSSION AND DECISION

- 10 **Initial Order.** Order 01 discusses that RCW 81.70.230(2) and WAC 480-30-121, govern the Commission’s application process and consideration of applications for charter party

and excursion service carrier permits. The statute and rule provide that an applicant must be “fit, willing, and able to provide service to comply with state law and the safety and insurance requirements to receive a certificate.”⁴ Applicants such as Go VIP bear the burden of proving they are fit, willing, and able to conduct business as a charter party and excursion service carrier, and that issuing a permit to the Company is in the public interest.

- 11 The safety requirements referenced in WAC 480-30-121 are set out in WAC 480-30-221, which adopts by reference a number of the federal regulations in Title 49 of the Code of Federal Regulations (C.F.R.). As relevant to this matter, 49 C.F.R. Part 385.13(a)(1) provides that the FMCSA will issue an order placing out of service any carrier that receives an unsatisfactory safety rating. A carrier that has been placed out of service is prohibited from operating unless and 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. In that event, the carrier can be “reincarnated,” as the federal authorities express the matter. In addition, 49 C.F.R. Part 385.1005 provides that “two or more motor carriers shall not use common ownership, common management, common control, or common familial relationship to enable any or all such motor carriers to avoid compliance, or mask or otherwise conceal non-compliance, or a history of non-compliance, with statutory or regulatory requirements ... or with an order issued under such requirements.”
- 12 Order 01 discusses in detail unrebutted evidence that Mr. Valentinetti previously owned and operated two businesses, AMI Coaches and Airline Shuttle, that engaged in the same or substantially similar operations to those he now proposes to conduct, using the same vehicles and offices.⁵ AMI Coaches and Airline Shuttle each have a history of non-compliance with relevant safety regulations. The record includes FMCSA’s safety audits of those companies.⁶ Following these audits, FMCSA ordered both companies to cease providing service due to unsatisfactory safety ratings. FMCSA’s orders both became final orders after review, or after the time for review passed. *See In re AMI Coaches LLC*, US DOT No. 2351390, Docket Number FMCSA-2015-0110 (W. Serv. Ctr.), Final Order on Petition for Review of Denial of Upgrade of Safety Rating, at 11 (Dec. 2, 2015) (noting that AMI Coaches never challenged the violations or the unsatisfactory safety rating); *In re Airline Shuttle Inc.*, US DOT No 2158025, Docket Number FMCSA-2014-0414 (W.

⁴ WAC 480-30-121(1). WAC 480-30-121-96 establishes general rules for application filings and WAC 480-30-191 establishes insurance requirements.

⁵ Order 01 ¶ 24 and accompanying footnote 4.

⁶ Perkinson, Exh. MP-1 and MP-2, respectively.

Serv. Ctr.), Final Order on Petition for Review of Unsatisfactory Safety Rating (Dec. 11, 2014) (denying review of unsatisfactory safety rating). The Commission's Order 01 in this docket concludes that:

Mr. Valentinetti failed to satisfactorily rebut Staff's argument that, because companies previously under his control have an extensive history of noncompliance that has yet to be corrected, Go VIP is unable to adequately demonstrate that it is fit to provide service or able comply with state safety and insurance requirements.⁷

13 Order 01 addresses second the question whether Mr. Valentinetti attempted to conceal his relationship to AMI Coaches and Airline Shuttle by indicating on his application to the Commission that Go VIP had no relationships involving common ownership, common control, or common management with any FMCSA-regulated entities within three years prior to the date the application was filed.⁸ Mr. Valentinetti argued that he made no attempt to conceal his relationship to these companies because his application to the Commission used the same address, phone numbers and so forth as these two companies. Order 01 concludes that "[w]hether or not Mr. Valentinetti intentionally attempted to conceal his relationship to AMI Coaches and Airline Shuttle, his application contained a false statement" and this "speaks to his overall fitness" although it is not alone a basis for denying his application.⁹

14 Order 01 discusses finally the question of Mr. Valentinetti's overall fitness to hold a certificate and conduct business as a charter and excursion carrier in Washington. Order 01 finds that Mr. Valentinetti's inconsistent and self-contradictory testimony concerning violations cited by the FMCSA in the 2013 and 2014 safety audits of AMI Coaches and Airline Shuttle suggest that he is untrustworthy.¹⁰ He continued to refuse during his hearing to accept responsibility for violations found by FMCSA, following investigations and hearings, that FMCSA determined were significant enough to warrant orders requiring AMI Coaches and Airline Shuttle to cease operations.¹¹ Mr. Valentinetti failed to submit to FMCSA a satisfactory corrective action plan, which could have restored his

⁷ Order 01 ¶ 26.

⁸ Mr. Valentinetti's "Closing Statement," filed a week after the hearing, without leave from the presiding officer, includes an assertion that his association with these companies ended more than 3 years before his application at issue here. This is simply untrue. FMCSA's final orders, cited above, are dated December 11, 2014 and December 2, 2015. He filed his application on December 20, 2016.

⁹ Order 01. ¶ 28.

¹⁰ See Order 01 ¶ 25.

¹¹ See Order 01 ¶ 30.

authority to operate.¹² Mr. Valentinetti offered no material facts to dispute the violations previously found by FMCSA, admitted to material facts supporting the violations found by FMCSA, offered unsupported allegations of “false accusations” and “differential treatment” by regulators, made unsubstantiated claims of racially or ethnically based discrimination, and made *ad hominem* attacks against FMCSA personnel, Commission Staff,¹³ and the Assistant Attorney General assigned to represent Staff.

- 15 Citing more than a dozen instances in the record of hearing demonstrating Mr. Valentinetti’s “lack of candor, . . . fundamental inability to accept responsibility for his conduct, . . . blatant disregard for safety regulations, and . . . profound disrespect for government regulators,” Order 01 determines that Mr. Valentinetti “cannot be trusted to provide charter party and excursion carrier services consistent with the public interest.”¹⁴

Motion to Reopen the Record

- 16 On May 24, 2017, Go VIP filed six documents. None of these documents conform to standards for pleadings or motions as described in the Commission’s procedural rules. Nevertheless, the Commission here considers them collectively and construes them liberally to constitute Go VIP’s motion to reopen the record prior to entry of a final order under WAC 480-07-830 and the Company’s petition for administrative review of an initial order under RCW 34.05.488 and WAC 480-07-610. These appear to be the purposes of the documents, as indicated most directly by a one page document among the six that Mr. Valentinetti describes as “GO VIP’s TE-161295 official request for a Formal Hearing or WAC 480-07-830 Motion to reopen the record prior to entry of a final order.” The document includes a second citation to WAC 480-07-830 and citation to “WAC 480-07-610(5)(7) & RCW 34.05.488. Oral petitions for review.” Finally, the document directs us to “See request for Formal Hearing along with this cover letter GO VIP +1[.]”
- 17 Two documents in the set of six meet the description “request for Formal Hearing.” Neither document presents any argument suggesting that the Commission should, as allowed by WAC 480-07-830, “reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due

¹² A carrier that has been placed out-of-service by FMCSA 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. 49 C.F.R. 385.17; *see* Order 01 ¶¶ 21, 29, 31.

¹³ We note that Mr. Valentinetti even accused one former member of Commission staff, with whom he or his companies had direct contact, of highly inappropriate and arguably criminal behaviors without offering a scintilla of evidence to support his accusations. *See* Order 01 ¶ 14.

¹⁴ Order 01 ¶¶ 30, 34-35.

diligence at the time of the hearing or for any other good and sufficient cause.” A separate document, entitled “Evidence to present” is among the six filed on May 24, 2017, but it also fails to present any case for reopening the record. Indeed, it is simply a list of 32 items, many of which Mr. Valentinetti included in his “Evidence Book” that was provided to the presiding officer during the hearing and considered in her deliberations that led to Order 01.

- 18 Mr. Valentinetti’s “Evidence to present” document also includes a list of four witnesses, including himself and Mr. Ferguson, who both testified, and an unidentified “WSP Commercial Vehicle Inspector” and “Peter G”, neither of whom were identified as witnesses prior to the hearing.¹⁵ The document provides no description of the subject matter to which these previously unidentified witnesses would be asked to testify, no discussion of why or how their testimony might be “essential to a decision,” and no discussion of why any such evidence was “unavailable and not reasonably discoverable at the time of hearing.” Nor does the “Evidence to present” document offer any “other good and sufficient cause” to reopen the record to allow further or additional testimony.
- 19 The remaining two documents Mr. Valentinetti filed on May 24, 2017, are identified respectively as “Passenger Vehicle Brochure 508” and “Safety Comparison Chart – TE-161295.” The Passenger Vehicle Brochure offers nothing new. Mr. Valentinetti included this in his “Book of Evidence” that was considered by the presiding officer in the brief adjudicative proceeding. The Safety Comparison Chart appears not to have been presented previously but Mr. Valentinetti offers no argument that it includes evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing. Indeed, Mr. Valentinetti discussed during the hearing the substance of what this document purports to show.¹⁶
- 20 Mr. Valentinetti had a full and fair opportunity to present whatever evidence he chose to present through his own testimony and that of his witness, Mr. Ferguson. There was no motion in limine or pretrial order barring Mr. Valentinetti from calling additional witnesses. He had the opportunity, and did, cross-examine Staff’s witness. He submitted various documents that were considered by the presiding officer. He was given ample opportunity to present oral argument. He also presented written argument on April 27, 2017, in the form of a document entitled: “WUTC Hearing Valentinetti’s Explanation of Evidence book submitted & Closing Statement that was cut short.” We find nothing in

¹⁵ Mr. Valentinetti expressed his interest in putting on the stand a member of the Washington State Patrol who was in the hearing room to provide security. The presiding officer explained some of the reasons why this would be inappropriate.

¹⁶ See, e.g., TR. at 7:20 - 8:8; 8:25 - 9:5; 47:6-9; 54:17-20; 117:4-10.

the six documents Mr. Valentinetti filed on May 24, 2017, to support reopening the record. We determine here that the Commission should deny the motion to reopen.

Petition for Administrative Review

- 21 Judge Pearson gave considerable latitude to Mr. Valentinetti at hearing, allowing him to continue to dispute at length and in detail the violations cited by the FMCSA in its 2013 and 2014 safety audits. As Order 01 relates, however, Mr. Valentinetti did not provide persuasive evidence that FMCSA erred in any of its findings and, indeed, Mr. Valentinetti affirmatively acknowledged “nearly half the violations in his testimony.”¹⁷ In any event, Judge Pearson’s courtesies to a *pro se* party in this proceeding notwithstanding, we take FMCSA’s determinations as conclusive with respect to the question whether the companies Mr. Valentinetti previously controlled have a history of noncompliance with regulatory requirements. Inasmuch as this noncompliance has not, and probably now cannot, be corrected, we agree with the determination in Order 01 that Mr. Valentinetti failed to rebut satisfactorily Staff’s argument that this history of noncompliance supports a conclusion that “Go VIP is unable to adequately demonstrate that it is fit to provide service or able comply with state safety and insurance requirements.”¹⁸
- 22 Respecting Staff’s argument that he attempted to conceal in his application to the Commission his ownership and operation of AMI Coaches and Airline Shuttle, Mr. Valentinetti argued that he made no attempt to conceal these relationships, or these companies’ histories of noncompliance, because his application used the same address, phone numbers, and so forth as these two companies. This is unavailing. The fact remains he falsely stated in his application that he did not own or operate a FMCSA-regulated entity in the three years prior to the date of the application. Mr. Valentinetti attempted to explain this away by claiming that his relationship with AMI Coaches and Airline Shuttle terminated more than three years prior to his application in this docket.¹⁹ This is not the case. FMSCA took final action following the period allowed for review with respect to its order that AMI Coaches cease operations due to safety violations on December 2, 2015. Mr. Valentinetti’s petition for review of FMSCA’s order that Airline Shuttle cease operations due to safety violations was denied on December 11, 2014. Mr. Valentinetti filed his application respecting Go VIP on December 20, 2016, well within the three-year time frame.

¹⁷ Order 01 ¶ 25.

¹⁸ Order 01 ¶ 26.

¹⁹ TR. at 25:13-24; 47:24-48:2; 115:15-17

23 In terms of Mr. Valentinetti's overall fitness, we agree with the initial order that he cannot be relied on to exhibit consistently, if at all, the level of responsible behavior expected of certificate holders who must comply with the Commission's rules governing charter and excursion service carriers in this state. Indeed, our review of the record, including the hearing transcript and two post-hearing filings,²⁰ shows Mr. Valentinetti to exhibit consistently a defiant, even hostile, attitude toward regulatory requirements, regulatory authorities, and the individual employees of these authorities who are charged with conducting investigations and hearings to enforce regulatory requirements. His steadfast refusal over a period of years, and in this proceeding, to accept responsibility for proven violations of law, a number of which he acknowledged during the course of this proceeding insofar as the dispositive facts are concerned, shows conclusively that he is not fit to hold a certificate allowing him to operate as a charter party and excursion service carrier in Washington.

24 **Decision.** The Commission finds that Go VIP is not able or willing to comply with Commission safety requirements and that the Company is unfit to conduct business as a charter party and excursion service carrier in Washington. Accordingly, we determine that granting Go VIP a certificate to operate as a charter or excursion carrier would not be in the public interest and that the Commission should deny Go VIP's Application.

25 The Commission determines further, after considering the pleadings, evidence, and all documents regarding this matter that were considered by the presiding officer in this brief adjudicative proceeding, that it should adopt the initial order's findings and conclusions, as provided in WAC 480-07-825(9).

ORDER

THE COMMISSION ORDERS THAT:

26 Go VIP LLC's motion to reopen the record is DENIED.

27 Go VIP LLC's petition for administrative review is DENIED.

²⁰ We refer here to Mr. Valentinetti's "Explanation of Evidence Book and Closing Statement" and "Additional information provided on behalf of GO VIP, from Steve Valentinetti," filed respectively, without prior authorization from the presiding officer, on April 27, 2017, and June 6, 2017. The first of these documents was considered by the presiding officer before entry of the initial order, along with a response from Staff filed on May 3, 2017, allowed by notice issued in response to Mr. Valentinetti's unexpected filing on April 27, 2017.

- 28 The Commission adopts the findings and conclusions set forth in Order 01, the initial order in this proceeding, as entered on May 5, 2017.
- 29 The Application filed by Go VIP LLC d/b/a Go VIP Seattle on December 20, 2016, for a certificate to operate as a charter party and excursion service carrier in the state of Washington is DENIED.

DATED at Olympia, Washington, and effective June 13, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order under WAC 480-07-820(1)(b). In addition to judicial review, administrative relief may be available through a petition for reconsideration filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850.