

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of

CRESCENT BAR CHARTERS LLC,

For a certificate to operate as a charter
and excursion carrier.

DOCKET TE-180252

NOTICE OF INTENT TO DENY
APPLICATION FOR CERTIFICATE;

NOTICE OF OPPORTUNITY FOR
HEARING

I. INTRODUCTION

1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission
(Commission) hereby provides notice of its intent to deny the application of Crescent Bar
Charters LLC (Crescent Bar Charters, Company, or Applicant) for a charter and
excursion service carrier certificate for failure to meet the application requirements set
forth in RCW 81.70 and chapter 480-30 of the Washington Administrative Code.

2 **Procedural Background.** On March 26, 2018, Crescent Bar Charters filed an application
(Application) with the Commission for authority to operate as a charter and excursion
carrier in the state of Washington. Mr. Troy Davis signed the Application on behalf of
Crescent Bar Charters and included a business license number, USDOT number, and an
insurance identification card. As recently as December 2017, Crescent Bar Charters had
authority and was operating as a certified charter and excursion carrier.

3 Commission Staff (Staff) has reviewed the Application and recommends that the
Commission deny the Application for the following reasons.

II. APPLICABLE LAW

4 Pursuant to RCW 81.70.220(1), no person may engage in the business of a charter party
carrier or excursion carrier service without first obtaining a certificate from the
Commission.

5 RCW 81.80.075(3) states that the Commission must issue a certificate to any charter and
excursion carrier applicant who establishes proof of safety fitness and insurance
coverage. Under WAC 480-30-121(1), an applicant must be fit, willing, and able to
provide service and comply with state law and safety and insurance requirements. WAC
480-30-121(2) states that the Commission will issue a certificate to operate to qualified

applicants upon receipt of a completed application, proof of insurance, and proof of company vehicle(s) passing a Commercial Vehicle Safety Alliance inspection. The Commission will grant or deny an application after it conducts a complete review of the application to determine fitness.

6 The safety requirements referenced in WAC 480-30-121 are set out in WAC 480-30-221. WAC 480-30-221 adopts by reference a number of the federal regulations set out in Title 49 of the Code of Federal Regulations (CFR), including all or portions of 49 CFR Parts 40, 379, 380, 382, 383, 385, 390, 391, 392, 393, 395, 396, and 397.

7 Title 49 CFR Part 391.41(a), which WAC 480-30-221 adopts by reference, provides “a person subject to this part must not operate a commercial motor vehicle unless he or she is medically certified as physically qualified to do so . . .”

8 RCW 81.04.070 grants the Commission and its employees the authority to inspect the books, accounts, and documents of any public service company. RCW 81.70.310 explains that all provisions of Title 81 relating to the procedure and powers of the Commission shall apply to charter party carriers and excursion carriers. The Commission’s rules in WAC 480-30-241 state that the Commission may delegate authority to Staff to inspect equipment, drivers, records, files, accounts, books, and documents. The rule in WAC 480-30-241 also describes the Commission’s compliance program.

III. FACTUAL ALLEGATIONS

9 Crescent Bar Charters and its owners and officers recently failed to demonstrate safety fitness and have been unwilling or unable to comply with state law and relevant safety regulations for charter and excursion carriers. Therefore, the Company is not a qualified and fit applicant.

10 Crescent Bar Charters and its officers previously operated as a certificated charter and excursion carrier in Washington state in 2017. On September 21, 2017, Motor Carrier Safety Investigator Francine Gagne performed a standard Level I vehicle inspection on a vehicle operated by Crescent Bar Charters (VIN 1FD4E45S18DA98539). During the inspection, Ms. Gagne identified that the driver was operating a passenger carrying vehicle without possessing a valid medical certificate in violation of 49 CFR Part 391.41(a).

11 On October 17, 2018, Staff contacted Crescent Bar Charters and requested that the Company make records available for inspection and review on October 30, 2017.

Crescent Bar Charters responded to Staff stating that the Company would not be operating until 2018, and the owners/operators would be vacationing until at least December 2017.

- 12 On November 30, 2017, Staff attempted to reschedule the appointment to review the Company's records for December 11, 12, or 13, 2017. On December 3, 2017, the Company responded to Staff that a December appointment would not be feasible and the Company would re-apply for authority to operate in 2018.
- 13 On December 7, 2017, the Commission cancelled Crescent Bar Charters' operating authority due to a lack of insurance verification.
- 14 On January 2, 2018, as a follow-up to prior requests related to Company's September 21, 2017, safety violation, Staff again requested records from Crescent Bar Charters. Staff requested that Crescent Bar Charters provide the requested information by 5 p.m. on January 19, 2018.
- 15 As of the date of this Notice, Crescent Bar Charters still has not provided any of the information Staff requested.
- 16 Staff recommends that the Commission deny the Application of Crescent Bar Charters because its officers have demonstrated that they are unable or unwilling to respond to Staff's requests for records after the Company committed a safety violation. Crescent Bar Charters should not be deemed a qualified candidate because the Company has refused to comply with state law and the Commission's safety rules.

IV. DISCUSSION

- 17 Based on the information Staff presented, the Commission agrees with Staff's recommendation and intends to deny the Application. Crescent Bar Charters' lack of cooperation with Motor Carrier Staff's investigation indicates that the Company is unfit to operate as a Charter and Excursion company. First, the Company has a recent safety violation. Second, and more importantly, the Company has a recent history of ignoring compliance obligations and requests from Commission Staff related to that safety violation. Crescent Bar Charters has therefore shown an inability or unwillingness to comply with applicable state rules and regulations.
- 18 Staff's findings support the conclusion that the Applicant has failed to meet the requirements of RCW 81.70.230 and WAC 480-30-121(1) and that the Commission should deny the Application.

V. NOTICE

- 19 **NOTICE OF OPPORTUNITY FOR HEARING.** Crescent Bar Charters may request a hearing to contest the factual allegations set out in this notice. Crescent Bar Charters may request such a hearing by filing a written request for a hearing with the Commission by May 11, 2018. As provided in WAC 480-07-140(5), such request must be submitted via the Commission's web portal at www.utc.wa.gov/e-filing. If you are unable to submit the request via the portal, you may submit your request by email to the Commission's Records Center at records@utc.wa.gov.
- 20 If Crescent Bar Charters requests a hearing by May 11, 2018, the Commission will schedule a brief adjudicative proceeding under RCW 34.05.482 and WAC 480-07-610. If Crescent Bar Charters does not request a hearing by that date, the Commission will enter an order denying the Application.

DATED at Olympia, Washington, and effective April 20, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


STEVEN V. KING
Executive Director and Secretary

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