

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2017-00327

APRIL 5, 2018

MAINE PUBLIC UTILITIES COMMISSION
Amendments to Chapter 520
Tour, Charter, and Water Taxi
Services, and Unscheduled Freight
Services in Casco Bay

ORDER ADOPTING
RULE AND STATEMENT
OF FACTUAL POLICY
BASIS

VANNOY, Chairman; WILLIAMSON and DAVIS, Commissioners

I. SUMMARY

In this Order, the Commission adopts amendments to Chapter 520, the rule that governs unscheduled tour, charter, water taxi, and unscheduled freight services in Casco Bay. The revised Rule amends the definition of charter service to address certain circumstances under which waivers have been granted for the provision of charter service, and promotes efficiency in the submission and review of applications through the Commission's electronic case management system (CMS).

II. BACKGROUND

Chapter 520 establishes the requirements and limitations for the provision of unscheduled tour, charter, water taxi, and unscheduled freight services between the mainland of Cumberland County and Peaks Island, Great Diamond Island, Little Diamond Island, Long Island, Chebeague Island, or Cliff Island, or between these stated regulated islands. Section 5101-D of Title 35-A provides the statutory authority for the Commission's regulation of unscheduled freight service in Casco Bay, *see also Atlantic Water Taxi Request for Approval of Unscheduled Freight in Casco Bay*, Docket No. 2017-00175 (Sept. 19, 2017) (concluding section 5101-D continues to regulate unscheduled freight service in Casco Bay), and section 5101-E directs the Commission to adopt rules governing unscheduled tour, charter, and water taxi services.

On January 10, 2018, the Commission issued a Notice of Rulemaking (NOR), attaching a proposed revised Chapter 520. The NOR explained that, during the prior calendar year, the Commission reviewed and approved several applications to provide charter, water taxi, and unscheduled freight services in Casco Bay. In reviewing those applications, it became apparent Chapter 520 had not been updated following the implementation of CMS, and that electronic filing and notice features made available through CMS were not reflected in the Rule. Further, following the granting of certain waivers regarding the provision of charter service, *Request for Approval of Transportation in Casco Bay Pertaining to Portland Harbor Fleet, LLC*, Docket No. 2016-00144, Order (Jan. 9, 2017) (authorizing inn employer to schedule transport of employees, and one-way transport of guests under certain circumstances), it appeared

the Commission should examine requirements and limitations on the provision of charter service. Therefore, the NOR proposed to amend Chapter 520 to update the definition of charter service and require applications to be filed electronically through CMS. The NOR further proposed incorporating directly into the Rule requirements that had been previously set forth in an application form, *Maine Public Utilities Commission, Amendments to Chapter 520 Unscheduled Tour, Charter and Water Taxi Services in Casco Bay*, Docket No. 2000-00555, Order (Sept. 19, 2000), and to otherwise make modifications to clarify the Rule and make non-substantive corrections.

The Commission convened a public hearing on February 16, 2018, where the Commission received comment from Casco Bay Island Transit District (CBITD). On March 15, 2018, CBITD filed written comments, which were consistent with the comments made at hearing and provided more detail in support of its comments. We address CBITD's comments below.

III. ADOPTED PROVISIONS

A. Section 1. Purpose and Scope

The Commission proposed only minor, non-substantive changes to Section 1 of the Rule. The Commission received no comments on this section, and therefore adopts the proposed amendment as drafted.

B. Section 2. Definitions

The Commission proposed to amend Section 2(B), which is the definition of charter service. The Commission proposed to amend the Rule to authorize a charter provider, who is an employer, to provide and operate scheduled or unscheduled one-way or round trip service to its employees for the sole purpose of transporting those employees to and/or from work. The amended definition did not propose to address a second issue presented in *Request for Approval of Transportation in Casco Bay Pertaining to Portland Harbor Fleet, LLC*, Docket No. 2016-00144, Order (Jan. 9, 2017), namely the authorization of an employer to provide one-way transport to persons other than its employees. Under the proposed rule, those circumstances will continue to require a waiver.

CBITD submitted comment on section 2(B)(iii), which creates a new exception to ferry service to classify an employer's transportation of its employees as charter service under certain circumstances. CBITD stated it generally has no objection to this new exception as long as it requires the employer to provide round trip transportation, either on its own or by making arrangements with another provider, such as CBITD. Thus, CBITD requested that in proposed section 2(B)(iii) the Commission delete "one way or," thereby leaving the revised definition of charter service to refer to round trip travel. CBITD states none of the other existing categories of charter service contemplate one-way transportation, and further explains one-way transportation to the regulated islands

presents significant issues for CBITD. CBITD's current practice is to collect tickets for island-bound trips and not for mainland-bound trips. The proposed change would provide an opportunity for an employer to provide outward bound transportation, only to allow employees to ride for free on a CBITD vessel for the return trip. This, CBITD states, would place a burden on CBITD and effectively require paying passengers to subsidize an employer's operations. The Commission understands CBITD's concern and agrees the Rule should not provide an opportunity for nonpayment of CBITD services. Accordingly, the Commission has removed the identified language from Section 2(B)(iii) of the Rule.

C. Section 3. Authorization Required

The Commission proposed only minor, non-substantive changes to Section 3(A) of the Rule. The Commission received no comments on this section, and therefore adopts the proposed amendment as drafted.

The Commission proposed amending Section 3(B)(1)(i) to require applicants for charter, water taxi, or unscheduled freight service to submit applications electronically through the Commission's CMS. The Commission further proposed to make an application form available on its website to assist applicants in filing the required information. CBITD requested the addition of language requiring electronic service of applications on CBITD through CMS because, as noted below, Section 3(B)(2) of the proposed rule eliminated the requirement that applicants serve hard copies of applications on CBITD. In response to CBITD's comments, the Commission includes in Section 3(B)(1)(i) a requirement that applicants shall request electronic service of their applications on CBITD. CBITD's comments regarding notice are addressed in more detail below regarding Section 3(B)(2).

In Section 3(B)(1), the Commission further proposed incorporating into the text of the Rule the application requirements that were previously set forth in the application form, which had been incorporated into and appended to the Rule. The text proposed for Section 3(B)(1) largely mirrored the language of the former application form with some updating, for example, requiring the submission of an email address and copies of state and federal registrations, certification of sufficient personnel and liability insurance to operate the proposed service or services, and any other information required by the Commission to review the application. Additionally, the proposed Rule clarified that if an applicant obtained any vessel after having obtained authorization to provide any regulated service, then the applicant must provide notice of the additional vessel or vessels. The proposed Rule did not, however, require Commission review and approval for any new or replacement vessels added to an existing authorized service. Finally, the Commission proposed striking the application form from inclusion at the end of the Rule, and making a courtesy copy of the application form available on the Commission's website.

CBITD made a series of comments on proposed Section 3(B)(1)(ii), which regards the provision of background applicant information. CBITD suggested "limited

liability corporation” be changed to “limited liability company” in Section 3(B)(1)(ii)(b); “or a member run LLC” be added after “partnership” in Section 3(B)(1)(ii)(c); “or member” be added after “partner” in Section 3(B)(1)(ii)(c); “member managed” be replaced with “manager run” in Section 3(B)(1)(ii)(d); “board member” be replaced with “manager” in Section 3(B)(1)(ii)(d); and “each officer, each board member, and” be added after “the name and address of” in Section 3(B)(1)(ii)(e). CBITD recommended these changes to conform the Rule to legal terms, for consistency and clarity, and to ensure information is gathered regarding the operator of an applicant corporation. The Commission agrees with CBITD’s comments and clarifies Section 3(B)(1)(ii) in this regard.

Additionally, the Commission has modified Section 3(B)(1)(iii)(c) in accordance with CBITD comments requesting a reference to the return trip of passengers to the point of origin. These modifications to Section 3(B)(1)(iii)(c) are consistent with the modification to Section 2(B)(iii) explained above, and otherwise provide clarity. Therefore, the Commission amends Section 3(B)(1)(iii)(c) as requested by CBITD.

Regarding Section 3(B)(1)(iv), CBITD requested a new section be added, requiring applicants to provide the name and address of the owner of the vessel. CBITD explained this information is necessary to determine the identity of the person or persons operating the service being offered. While this information may otherwise be contained in the information required under the proposed Rule, for example the registration papers for the vessel, expressly requiring owner identification is not a burdensome applicant requirement and may assist the Commission in monitoring the regulated services. Therefore, the Commission adopts CBITD’s request to require applicants to submit the name and address of the owner of the vessel.

The Commission proposed in Section 3(B)(2) to eliminate the requirement that applicants mail hard copies of applications to CBITD. In the NOR, the Commission explained it did so because the proposed Rule requires applicants to file applications electronically in the Commission’s CMS, because the Commission’s Rules of Practice and Procedure, Chapter 110, § 8(A), requires the Commission to provide notice of adjudicatory proceedings, and because Chapter 110, § 4(B) provides that a party’s service obligation is met upon filing in the Commission’s electronic filing system. Therefore, service on CBITD of a hard copy of applications no longer appeared necessary. CBITD, however, requested that language be added to Section 3(B)(1)(i) to provide that the Commission “shall send notice of such application to CBITD,” to ensure receipt of notice. CBITD explained its receipt of applications is important to provide it with an opportunity to review applications and ensure the requested service is one permitted by the rules and statute, and that it has no objection to receiving notice by CMS provided CMS is set up to automatically provide such notice to CBITD. In view of the existing regulatory provisions cited above and in the NOR, and because the Commission’s rules do not in other contexts redundantly provide for service given these existing provisions, the Commission declines to adopt this requested language. The Commission does, however, amend the proposed Rule to continue to require applicants to provide notice of applications to CBITD, as explained above regarding Section 3(B)(1)(i).

CBITD made two additional comments on proposed Section 3(B)(2). Regarding Section 3(B)(2)(ii), CBITD requests clarifying the proposed language to be clear notice of new vessels must be provided to the Commission not necessarily upon acquisition, but rather upon putting a vessel in service or using the vessel. CBITD explains an applicant might start using a different boat in service without acquiring it, or an applicant might acquire a boat that is unrelated to a regulated service. The Commission agrees CBITD's proposed language clarifies the Commission's intent and adopts this change. Regarding Section 3(B)(2)(iii), CBITD requests the Commission strike existing language providing an example as to when a hearing on an application would be held, that is, that a hearing would be held upon "a prima facie showing that the actual service to be provided will differ from the authorization requested." CBITD states there may be multiple reasons for holding a hearing, that it is unclear what a prima facie showing would be in this context, and therefore this language should be eliminated. Rather than strike the language, however, the Commission concludes the Rule should be clarified, indicating the expressly given example of showing a substantial need for a hearing—where a prima facie showing is made that the actual service to be provided will differ from the authorization requested—is not an exhaustive listing of reasons under which a hearing would be held. To clarify the Rule, the Commission modifies Section 3(B)(2)(iii) to provide demonstrating a substantial need for a hearing may be satisfied by, for example but not necessarily limited to, the prima facie showing currently articulated under the Rule.

The Commission proposed language for Section 3(B)(2) to clearly indicate the burden is on applicants to demonstrate all statutory and regulatory requirements have been satisfied in order to obtain authorization to provide the regulated services. The Commission received no comments on this section, and therefore adopts the proposed amendment as drafted.

Finally, the Commission corrects two typographical errors in Sections 3(B)(1)(iii)(e) and 3(B)(2)(i) in reference to freight services and a finding of public convenience and necessity, as noted by CBITD. And, in Section 3(C) of the Rule the Commission proposed minor, non-substantive changes to which the Commission received no comments, and therefore the Commission adopts the proposed amendment to Section 3(C) as drafted.

D. Section 4. Limitations on and Requirements for the Provision of Charter Service

In Section 4(B), the Commission proposed an amendment for the purpose of consistency with the proposed amendment to the definition of charter service, Section 2(B)(iii) of the Rule. In view of the changes made to Section 2(B)(iii) in response to CBITD's comments, namely that all charter service should be required to provide round trip transportation or make suitable alternate arrangements, the proposed language for Section 4(B) is moot, and therefore the Commission deletes from the adopted rule the reference to "[w]ith the exception of a Charter Service defined in Section 2(B)(iii) of this Chapter"

In the NOR, the Commission did not propose any amendment to Section 4(C). In its comments, however, CBITD requests that the Commission add language regarding the record keeping requirements of Charter Providers. Currently, Section 4(C) requires Charter Providers to maintain records of inbound and outbound passenger counts for each trip. CBITD proposes that language be added that “for any trip which the inbound and outbound passenger counts are not identical, records demonstrating compliance with this Chapter” CBITD states that charter providers must already maintain records, but the express record keeping requirement does not address compliance with whether the charter provider complied with the obligation under Section 4(B) to make suitable alternate arrangements for the return of passengers when the inbound and outbound passenger counts are different. As the burden is on charter providers to demonstrate compliance with the Commission’s rules, this requirement is implicit in the record keeping requirements of the existing rule, and the Commission agrees this clarification could assist the Commission and the regulated community, and therefore adopts CBITD’s proposed language.

E. Section 5. Limitations on the Provision of Water Taxi Service

The Commission proposed only minor, non-substantive changes to Section 5 of the Rule. The Commission received no comments on this section, and therefore adopts the proposed amendment as drafted.

F. Section 6. Limitations on the Provision of Unscheduled Freight Service

The Commission proposed only a minor, non-substantive change to Section 6 of the Rule. The Commission received no comments on this section, and therefore adopts the proposed amendment as drafted.

G. Section 7. Waiver

The Commission proposed only minor, non-substantive changes to Section 7 of the Rule. The Commission received no comments on this section, and therefore adopts the proposed amendment as drafted.

Accordingly, we

ORDER

1. That the attached Chapter 520, Tour, Charter and Water Taxi Services, and Unscheduled Freight Services in Casco Bay, is hereby approved;
2. That the Administrative Director shall file the rule and related materials with the Secretary of the State;
3. That the Administrative Director shall notify the following of this rulemaking proceeding:

- a. all certificated water carriers in the State, including CBITD;
 - b. all persons who have filed for permanent or seasonal Certificates of Public Convenience and Necessity for ferry services in Casco Bay;
 - b. all persons who have filed with the Commission within the past year a written request for notice of rulemakings; and
 - c. the Office of the Public Advocate
4. That the Administrative Director shall send copies of this Order and attached rule to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Hallowell, Maine, this 5th day of April 2018.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Vannoy
 Williamson
 Davis

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.