

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-41, SUB 19

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Bald Head Island Transportation, Inc., to Implement Temporary Ferry Schedule and Policies and for Expedited Approval of Application))))))	ORDER ALLOWING MOTION TO REPLACE BHIT-SPECIFIC OPERATING POLICIES WITH COMPLIANCE WITH GOVERNOR'S EXECUTIVE ORDERS
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BY THE COMMISSION: On March 25, 2020, Bald Head Island Transportation, Inc. (BHIT or Applicant), filed with the Commission an application seeking expedited approval of a Modified Ferry Schedule and temporary Emergency Procedures in response to the COVID-19 pandemic. On March 26, 2020, the Commission issued an Order Approving Modified Ferry Schedule and Temporary Procedures.

Since that time, the Governor's Office has issued several executive orders addressing the COVID-19 pandemic. For example, in May 2020, Governor Roy Cooper issued Executive Order Nos. 138 (EO 138) and 141 (EO 141), which implemented Phase 1 and 2, easing in part restrictions on travel, business operations, and mass gatherings. On June 24, 2020, Governor Roy Cooper issued Executive Order No. 147 (EO 147), in part announcing that EO 141 would continue to remain in effect for at least three more weeks and delaying Phase 3 of reopening. Gov. Cooper further announced a statewide mask mandate that would remain in place during this time.

On September 4, 2020, Gov. Cooper issued Executive Order No. 163 (EO 163). EO 163 provided that slowing and controlling community spread of COVID-19 remains critical to ensuring that the state's healthcare facilities remain able to accommodate those who require medical assistance. EO 163 also continued to urge all people in North Carolina to follow social distancing recommendations, including that everyone wear a cloth face covering, wait six feet apart and avoid close contact, and wash hands often or use hand sanitizer, and also required safety measures in certain business settings, limited mass gatherings, and closed certain types of businesses and operations. EO 163 recognized several reasons supporting a "Need for a Phased, 'Dimmer Switch' Approach to Loosening Restrictions." As a result, among other things, EO 163 loosened some restrictions and increased the number of persons allowed to gather under certain circumstances. But EO 163 also maintained numerous restrictions previously put in place, including a cap on the maximum number of guests allowed in various locations by way of the lesser produced by three different metrics, including in some instances 50% of stated capacity.

On September 30, 2020, Gov. Cooper issued Executive Order No. 169 (EO 169) or Phase 3. EO 169 maintained many of the restrictions previously put in place, and again provided that slowing and controlling community spread of COVID-19 remains critical. EO 169 provided several reasons supporting North Carolina's continued "Need for a Phased, 'Dimmer Switch' Approach to Loosening Restrictions." And, as a result of the trends, it lifted previous restrictions on several entertainment venues, for example, amusement parks, bars, arenas, movie theaters, et al., and in some instances allowed for up to 100 persons to gather in certain indoor and outdoor areas.

On March 23, 2021, Gov. Cooper issued Executive Order No. 204 (EO 204) "Further Easing Restrictions on Business and Gatherings," based in part upon sustained improvements in the state's key COVID-19 metrics –

specifically, as of the date of this Executive Order, the state is experiencing declines in the percent of emergency department visits that are due to COVID-like illness, the number of COVID-19 daily diagnoses, the percent of total COVID-19 tests that are positive, and the number of COVID-19-associated hospitalizations, relative to the peak severity of these metrics in January 2021[.]

EO 204, at 2. Accordingly, EO 204 increased the numbers of persons allowed to gather under certain specified circumstances.

Subsequently, as the COVID-19 pandemic guidelines from the Governor's Office have changed, BHIT sought, and the Commission approved, various modifications to BHIT's Schedule and Procedures. Most recently, on April 12, 2021, the Commission issued an Order Allowing Motion to Restore Full Ferry Vessel Capacity Limit But Otherwise Maintain Operating Policies.

On June 16, 2021, BHIT filed a Motion to Replace BHIT-Specific Covid-19 Requirements with General Compliance with Governor's Executive Orders. In support, BHIT cites Executive Order Nos. 215 and 220 (EO 215 and EO 220, respectively), stating that these orders have lifted certain capacity limitations and social distancing requirements on businesses, but that the latest Executive Order, EO 220, issued June 11, 2021, continues to require face coverings indoors at all times for all workers and riders on public or private transportation regulated by the State of North Carolina, unless an exception applies. See EO 220, Section 3.4. BHIT also states that on that same date, June 11, 2021, the United States Coast Guard issued a Marine Safety Information Bulletin, "COVID-19 Safety Requirements in the Maritime Transportation System: Change-2," which states that, from the Coast Guard's enforcement perspective, "mask wear in outdoor areas of maritime transportation conveyances and hubs is no longer required."

BHIT explains that it has been vigilant in implementing and following the Coast Guard's directives, the Executive Orders from the Governor's Office, and the Emergency Operating Procedures issued by the Commission, but that passengers are more likely to

be familiar with the Executive Orders (which are often the topic of newspaper and broadcast television reporting), and differences between the requirements in this docket and the various Executive Orders have resulted in confusion by passengers and difficulties in enforcement by ferry personnel. As a result, BHIT requests that any previous mandates or Orders regarding Emergency Operating Procedures be replaced and superseded by the general directive that BHIT operate consistent with the requirements of the Governor's Executive Orders and other applicable public health requirements by government authorities having jurisdiction.

According to BHIT the Public Staff has reviewed BHIT's motion and does not oppose its implementation.

Based on the foregoing, and the position of the Public Staff, the Commission finds and concludes that there is good cause to allow BHIT to restore its operations consistent with the requirements of the Governor's Executive Orders and other applicable public health requirements. The Commission recognizes the guidance set out in the Governor's phased approach to loosening restrictions and continues to emphasize that the requirements set by the Governor's Executive Orders addressing the COVID-19 pandemic remain in place. Accordingly, the Commission concludes that any previous mandates or Orders regarding Emergency Operating Procedures are replaced and superseded by the general directive that BHIT shall operate consistent with the requirements of the Governor's Executive Orders and other applicable public health requirements by government authorities having jurisdiction.

IT IS, THEREFORE, ORDERED as follows:

1. That that any previous mandates or Orders regarding Emergency Operating Procedures are replaced and superseded by the general directive that BHIT shall operate consistent with the requirements of the Governor's Executive Orders and other applicable public health requirements by government authorities having jurisdiction, effective no later than 36 hours after the issuance of this Order;
2. That upon any change of circumstances brought to the attention of BHIT regarding whether any BHIT employee has contracted COVID-19 or any case of infection can be traced to contact on the ferry, BHIT shall report the same to the Commission as soon as practicable; and

3. That BHIT shall provide notice of this change by posting a copy of this Order at the Deep Point and Bald Head Island ferry terminals and on the Bald Head Island website, send mass e-mails to island property owners, and inform passengers who call to make ferry reservations.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of June, 2021.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive style with a large initial 'K' and a distinct 'A'.

Kimberley A. Campbell, Chief Clerk