

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties against:	DOCKET TE-190052
KIM JONES, d/b/a DESERT WAVE	ORDER 03 IMPOSING SUSPENDED PENALTY

BACKGROUND

- 1 On June 4, 2019, following a special proceeding before an administrative law judge, the Washington Utilities and Transportation Commission (Commission) entered Order 02, Stipulated Initial Order Classifying Respondent as a Charter Party or Excursion Service Carrier; Ordering Respondent to Cease and Desist; Imposing and Suspending Penalties on Condition of Future Compliance (Order 02). Order 02 required Kim Jones, d/b/a Desert Wave, (Desert Wave or Company) to cease and desist operating as a charter party or excursion service carrier and imposed a penalty of \$10,000 for two violations of RCW 81.70.260(1), all but \$1,000 of which was suspended for a period of two years conditioned on the Company: (1) permanently refraining from operating as a charter party or excursion service carrier without first obtaining a certificate from the Commission, and (2) complying with all applicable statutes and Commission rules. Desert Wave paid the \$1,000 portion of the penalty that was not suspended.
- 2 On June 1, 2021, Commission staff (Staff) filed with the Commission a Motion to Impose Suspended Penalties (Motion). In its Motion, Staff alleges that Desert Wave continued to operate as a charter party or excursion service carrier without the required certificate by advertising and offering to provide those services. The Motion alleges that Staff performed a follow-up investigation and discovered that the Company continues to advertise and offer charter party or excursion carrier service without a certificate. Staff recommends the Commission impose the remaining \$9,000 suspended portion of the penalty for failing to comply with the conditions in Order 02.
- 3 On June 2, 2021, the Commission issued a Notice of Opportunity to Respond and Notice of Opportunity to Request a Hearing. On June 25, 2021, Desert Wave filed a response (Response). In its Response, the Company stated that it does not believe it is operating as a charter party or excursion carrier service. The Company provided several supporting documents that Desert Wave claims show that both of its operating vehicles are licensed as limousines with the Department of Licensing (DOL) and that the Company was

operating only as a limousine service. The Company further stated that it is unable to afford the \$9,000 penalty due to the economic impact of the COVID-19 pandemic and related shutdowns. Finally, the Company requested “clarification” regarding Commission rules and requirements.

4 On July 2, 2021, the Commission issued a Notice of Opportunity to Reply to the Company’s Response, and on July 9, 2021, Staff filed a reply (Reply). In its Reply, Staff states that the Company’s 20-passenger 2005 Hummer H2 (Hummer H2) has never received a limousine license from DOL and is therefore not a limousine and the Company, by offering the Hummer H2 for group transport, has been continuing to operate as a charter party or excursion carrier without a Commission certificate. Staff further states in its Reply that it does not believe that any further clarification or technical assistance would be helpful at this time as ample technical assistance was provided prior to the issuance of Order 02, and that at the June 4, 2019, special proceeding, the Company stated that it fully understood the difference between operating as a limousine service and operating as a charter party and excursion carrier.

5 On July 13, 2021, the Company filed in this docket copies of vehicle inspection reports for both of its vehicles, and on July 16 and 27, Staff filed letters in response to that filing stating that recent vehicle inspections, although relevant to obtaining a limousine license, do not change the fact that in May 2021 the Company was operating as a charter party and excursion service without a certificate.

6 On August 4, 2021, the Company filed in this docket copies of DOL limousine licenses for both of its operating vehicles, dated July 30, 2021, as well as a copy of its business license, acquired July 16, 2021.

DISCUSSION AND DECISION

7 We find that Desert Wave violated the conditions of Order 02 and impose the \$9,000 suspended portion of the penalty.

8 RCW 81.70.020(1) defines “charter party carrier” as any person “engaged in the transportation over any public highways of this state of a group of persons who, pursuant to a common purpose and under a single contract, acquire the use of a motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after leaving the place of origin.” Under RCW 81.70.220, a person operates as a charter party carrier by providing charter party service, or by advertising or soliciting, offering, or entering into an agreement to provide such service.

9 Staff provided evidence that Desert Wave is engaging in the business of a charter party and excursion service carrier by advertising and offering those services. The Company concedes that it violated Order 02 by advertising as a charter party and excursion carrier without a certificate, but claims its conduct was inadvertent, and that it has since completed the requirements to be licensed as a limousine service. We find these arguments unpersuasive. The Company stated on June 4, 2019, that it fully understood what it could and could not do as a licensed limousine service and which operations were prohibited without first obtaining a Commission certificate. The Company continued to knowingly offer charter party and excursion services without either a certificate from the Commission or a limousine license from DOL. The fact that it has since come into compliance with the legal requirements for limousine service companies does not alter the fact that the Company violated RCW 81.70.260(1) when it advertised and offered to provide charter party and excursion carrier service without the required certificate in May 2021.

10 In light of the economic downturn and hardship faced by charter and excursion service companies due to the COVID-19 public health crisis, however, we exercise our discretion to allow Desert Wave to pay the penalty in 36 monthly installments of \$250 each, the first of which will be due on September 1, 2021. Desert Wave must make its monthly payment on the first day of each month, or the first business day thereafter, until the entire \$9,000 penalty is paid in full, according to the following schedule:

Installment	Due Date	Amount
1	September 1, 2021	\$250
2	October 1, 2021	\$250
3	November 1, 2021	\$250
4	December 1, 2021	\$250
5	January 3, 2022	\$250
6	February 1, 2022	\$250
7	March 1, 2022	\$250
8	April 1, 2022	\$250
9	May 2, 2022	\$250
10	June 1, 2022	\$250
11	July 1, 2022	\$250
12	August 1, 2022	\$250
13	September 1, 2022	\$250
14	October 3, 2022	\$250
15	November 1, 2022	\$250
16	December 1, 2022	\$250

17	January 3, 2023	\$250
18	February 1, 2023	\$250
19	March 1, 2023	\$250
20	April 3, 2023	\$250
21	May 1, 2023	\$250
22	June 1, 2023	\$250
23	July 3, 2023	\$250
24	August 1, 2023	\$250
25	September 1, 2023	\$250
26	October 2, 2023	\$250
27	November 1, 2023	\$250
28	December 1, 2023	\$250
29	January 2, 2024	\$250
30	February 1, 2024	\$250
31	March 1, 2024	\$250
32	April 1, 2024	\$250
33	May 1, 2024	\$250
34	June 3, 2024	\$250
35	July 1, 2024	\$250
36	August 1, 2024	\$250

11 If Desert Wave fails to pay any installment by the due date, the entire balance will immediately become due and payable. Desert Wave may make additional payments in advance of the payment due dates or may pay an increased amount on the due date, but no additional payment or increased amount will relieve the Company of its obligation to make its timely monthly installment until the full amount of \$9,000 is satisfied. Desert Wave may seek reinstatement of its certificate at any time. The payment arrangement approved by this Order will not impact the Commission's evaluation of the Company's application for reinstatement provided the Company is complying with the terms of the payment arrangement.

ORDER

THE COMMISSION ORDERS That

12 (1) Kim Jones, d/b/a Desert Wave, has not complied with the conditions under which the Commission suspended \$9,000 of the \$10,000 penalty assessment.

- 13 (2) The full \$9,000 suspended penalty is now due and payable according to the payment schedule approved by this Order and the terms described in paragraph 11, above.

DATED at Lacey, Washington, and effective August 18, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Director