

JUN 03 2019

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the
Proper Carrier Classification of, and
Complaint
for Penalties Against

KIM JONES
D/B/A DESERT WAVE

DOCKET TE-190052

ORDER 02

STIPULATED INITIAL ORDER
CLASSIFYING RESPONDENT AS
CHARTER PARTY OR EXCURSION
SERVICE CARRIER; ORDERING
RESPONDENT TO CEASE AND DESIST;
IMPOSING AND SUSPENDING
PENALTIES ON CONDITION OF
FUTURE COMPLIANCE

BACKGROUND

Synopsis. *This is an Administrative Law Judge's Initial Order that is not effective unless approved or allowed to become effective as described in the notice at the end of this Order. This Initial Order is based upon a stipulation presented by the parties. If this Initial Order becomes final, Kim Jones d/b/a Desert Wave (Desert Wave or Company) will be assessed a financial penalty in the amount of \$10,000 for two violations of RCW 81.70.260(1). A \$9,000 portion of the penalty will be suspended for a period of two years from the date of this order, then waived, subject to the condition that Desert Wave refrains from further operation as charter party or excursion service carrier without first obtaining the required certificate from the Washington Utilities and Transportation Commission (Commission). In addition, if this Initial Order becomes final, Desert Wave will be classified as a charter party or excursion service carrier and required to permanently cease and desist from operating as a charter party or excursion service carrier without first obtaining a certificate from the Commission.*

- 1 **Nature of Proceeding.** The Commission initiated this special proceeding to determine if Desert Wave has engaged, and is engaging, in unlawful operations following the cancellation of its charter party or excursion carrier certificate.
- 2 **Procedural History.** On February 13, 2019, the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing, pursuant to RCW 81.04.510, initiating this docket on its own motion. The Complaint alleges that Desert Wave violated RCW 81.70.260 by:

- (1) offering on at least one occasion to provide charter party or excursion service in the state of Washington;
- (2) advertising charter party or excursion services within the state of Washington on at least one occasion;

after the cancellation of their certificate required for such operations. On the same date, the Commission issued a *Subpoena and Subpoena Duces Tecum For Production of Documents* (Subpoenas) to the Company commanding Kim Jones, owner of Desert Wave, to appear before the Commission at a special proceeding scheduled to convene at 9:00 a.m. on March 12, 2019, in the Commission's offices at 1300 S. Evergreen Park Drive S.W., Olympia, Washington, and to bring the documents specified in the *Subpoenas*.

3 On February 20, 2019, Kim Jones requested a continuance. On March 1, 2019, the Commission issued a Notice Rescheduling Classification Proceeding for June 4, 2019.

4 **Hearing.** On June 4, 2019, the hearing convened as scheduled in Olympia, Washington, before Administrative Law Judge Laura Chartoff.

5 **Appearances.** Ms. Kathryn McPherson, Compliance Investigator, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff).¹ Kim Jones, Richland, Washington, represents the Company, *pro se*.

DISCUSSION

6 **Applicable Law.** RCW 81.70.020(1) defines "charter party carrier" as:

every person engaged in the transportation over any public highways in 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

¹ In adjudications the Commission's regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

upon in advance or modified by the chartered group after leaving the place of origin.

7 RCW 81.70.020(5) defines “excursion service carrier” as:

every person engaged in the transportation of persons for compensation over any public highway in this state from points of origin within the incorporated limits of any city or town or area, to any other location within the state of Washington and returning to that origin.

8 RCW 81.70.260(1) defines “conduct any operations” as:

Advertising or soliciting, offering, or entering into an agreement to provide such service.

9 RCW 81.70.260(1) prohibits charter party or excursion service carriers from conducting any operations after the cancellation or revocation of a certificate from the Commission. Upon proof of unauthorized operations, RCW 81.04.510 authorizes the Commission to order the unpermitted company to cease and desist its activities. Additionally, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by a company that violates any law, order, or rule of the Commission.

10 RCW 81.70.260(2) subjects persons who conducts operations as a charter party or excursion service carrier of passengers in violation of RCW 81.70.260(1) a penalty of up to \$5,000 for each violation.

11 **Stipulation Presented by Parties.** At hearing, Kim Jones agreed that the Company has conducted operations in the state of Washington after the cancellation or revocation of the required certificate. The Company offered to provide charter party or excursion service carrier service on at least one occasion in the state of Washington and also advertised to operate as a charter party or excursion service carrier service in the state of Washington on at least one occasion.

12 On June 8, 2018, Desert Wave was notified by Commission Staff that its certificate (CH067101) was canceled at the request of the Company. The letter informed Desert Wave that it must cease all operations associated with the certificate.

- 13 Kim Jones has agreed to permanently shut down and cease operations as a charter party or excursion service carrier, as defined by RCW 81.70.020, without first obtaining a certificate from the Commission.
- 14 Under RCW 81.70.260(2), Commission Staff is authorized to seek a penalty of up to \$10,000 against the Company. Based upon the above-noted stipulation, Staff now seeks to have \$9,000 of the penalty suspended for two years, then waived, on the condition that the Company honors its pledge of future compliance by permanently staying out of the industry without first obtaining a certificate from the Commission.
- 15 The parties agree that the Company's expressed willingness to cease its unlawful operations is a positive factor, mitigating in favor of a lowered penalty amount to be paid now. The parties also agree that the Company's compliance history is a negative factor, making a penalty appropriate as a tool to ensure Desert Wave does not re-enter the charter party or excursion service carrier business without first obtaining the required certificate.

FINDINGS AND CONCLUSIONS

- 16 (1) The Commission is an agency of the state of Washington vested by statute with authority to regulate persons conducting operations as a charter party or excursion service carrier for compensation over public roads in Washington.
- 17 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Desert Wave.
- 18 (3) On at least one occasion, Desert Wave offered to conduct operations after the cancellation or revocation of a certificate from the Commission, in violation of RCW 81.70.260(1).
- 19 (4) On at least one occasion, Desert Wave advertised to conduct operations after the cancellation or revocation of a certificate from the Commission, in violation of RCW 81.70.260(1).

ORDER

THE COMMISSION ORDERS:

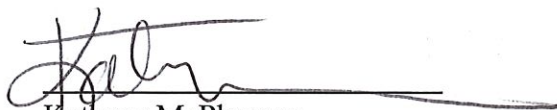
- 20 (1) Desert Wave is classified as a charter party or excursion service carrier within the state of Washington.
- 21 (2) Desert Wave is ordered to immediately cease and desist operations as a charter party or excursion service carrier within the state of Washington without first obtaining a certificate from the Commission.
- 22 (3) Desert Wave is assessed a penalty of \$10,000. \$9,000 of the penalty is suspended for a period of two years from the date of this Order, and waived thereafter, provided Desert Wave refrains permanently from further operations as a charter party or excursion service carrier in the state of Washington without first obtaining the required certificate from the Commission. The remainder of the penalty, \$1,000, is due and payable subject to the payment schedule in Appendix A.
- 23 (4) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective June 4, 2019.




Laura Chartoff
Administrative Law Judge

Agreed for Entry:



Kathryn McPherson
Utilities and Transportation
Commission



Kim Jones
Desert Wave

Appendix A

Due Date	Amount
6/4/2019	\$200
7/5/2019	\$200
8/5/2019	\$200
9/5/2019	\$200
10/4/2019	\$200

If a payment is missed, the entire amount of the penalty, including the suspended portion of \$9,000, will become due and payable the day after the missed penalty was due.

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2)(a) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(2)(b). WAC 480-07-825(2)(c) states that any party may file and serve an *Answer* to a Petition for Review within ten (10) days after the Petition is filed.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).