

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

NICHOLAS PAPADIMAS d/b/a
ORION NW

DOCKET TE-210622

INITIAL ORDER 02

CLASSIFYING RESPONDENT AS A
CHARTER PARTY OR EXCURSION
SERVICE CARRIER; ORDERING
RESPONDENT TO CEASE AND
DESIST; SUSPENDING AND
WAIVING PENALTIES SUBJECT TO
CONDITION

BACKGROUND

- 1 On February 13, 2019, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Virtual Hearing set for December 8, 2021, (Complaint) pursuant to RCW 81.04.510, initiating this special proceeding on its own motion to determine if Nicholas Papadimas d/b/a Orion NW (Orion NW) has engaged, and is engaging, in unlawful operations following the voluntary cancellation of its charter party or excursion service carrier certificate in October 2020.
- 2 The Complaint alleged that Orion NW violated RCW 81.70.220 by offering on one occasion, and advertising on another, to provide charter party or excursion service in the state of Washington without first obtaining a charter party or excursion service carrier certificate. The Commission may impose financial penalties of up to \$5,000 for each violation.
- 3 On December 8, 2021, the Commission held a virtual evidentiary hearing before Administrative Law Judge Andrew J. O'Connell. At the hearing, Commission staff (Staff) presented documentary evidence and testimony from Commission compliance investigator Michael Dotson. Nicholas Papadimas, owner of Orion NW, represented the Company *pro se* and testified on its behalf.

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

- 4 Staff testified and provided documentation explaining that it requested roundtrip transportation between Olympia and Seattle for 20 passengers on August 15, 2021, through Orion NW’s website, www.orionnw.com. The Company responded via email and quoted a \$1,000 price for the trip. Staff then requested the same roundtrip for August 26, 2021, and the Company again confirmed its availability.¹ Staff also produced screenshots of the Company’s website and licensing documentation identifying a large vehicle advertised on the Company’s website as one that falls under the Commission’s regulation of charter party and excursion service carriers.²
- 5 Staff explained that Orion NW does not currently have a certificate from the Commission authorizing the Company to engage in business as a charter party or excursion service carrier, and recounted the Company’s history. The Company was authorized by the Commission to operate as a charter party or excursion service carrier from 2013 until October of 2020, when the Company requested to voluntarily cancel its certificate due to the economic downturn caused by the COVID-19 pandemic. There was a brief period in those intervening years when the Company’s certificate was canceled, but subsequently reinstated, for lack of insurance.³
- 6 Papadimas then testified that when Orion NW voluntarily canceled its certificate in October 2020, it ceased operations as a charter party or excursion service carrier and sold its two large vehicles that were regulated by the Commission.⁴ Papadimas further explained that the Company has a limousine license from Washington’s Department of Licensing for its remaining 15-passenger vehicles, which are regulated as “for hire” motor vehicles.⁵ Papadimas testified that he did not state and Staff did not request transportation only by one vehicle for the entire 20-person group, and explained that he had intended to provide the transportation using two of the Company’s 15-passenger vehicles.⁶

¹ Dotson, TR at 9:11-10:1, Declaration of Michael Dotson, Attachments H, I, J.

² Dotson, TR at 10:2-5; Declaration of Michael Dotson, Attachments A, F, G.

³ Dotson, TR at 9:1-5; Declaration of Michael Dotson, Attachments C, D; *see* Papadimas, TR at 12:8-17, 13:4-18, 14:10-12.

⁴ Papadimas, TR at 12:10-13:21.

⁵ *Id.* at 12:18-14:24.

⁶ *Id.* at 16:14-17:13.

- 7 Regarding the Company’s website, Papadimas testified that the website was inactive and that he did not know how Dotson was able to view it and use it to contact the Company.⁷ In addition, Papadimas admitted that there was a picture on the website of a large luxury vehicle regulated by the Commission, but that the vehicle had already been sold and he was unable to remove the picture from the inactive website.⁸
- 8 Staff recommends the Commission classify Orion NW as a charter party or excursion service carrier and assess a \$10,000 penalty for (1) advertising to provide and (2) offering to provide transportation as a charter party or excursion service carrier without authorization from the Commission. Staff further recommends the Commission suspend a \$9,000 portion of the penalty for two years, and then waive it, subject to the condition that the Company cease and desist conducting business as a charter party or excursion service carrier without first obtaining the certificate required for such operations.

DISCUSSION AND DECISION

- 9 The Commission is authorized to conduct special proceedings, such as this, to determine whether a company such as Orion NW is engaging in the business of a charter party or excursion service carrier in Washington without the requisite authority from the Commission.⁹
- 10 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 upon in advance or modified by the chartered group after leaving the place of origin.¹⁰

⁷ *Id.* at 16:17-21.

⁸ *Id.* at 16:17-17:10.

⁹ RCW 81.04.510.

¹⁰ RCW 81.70.020(6) states that a “motor vehicle” is any self-propelled vehicle with a seating capacity of at least eight.

- 11 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. The service must not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may be regularly scheduled. Compensation for the transportation offered or afforded must be computed, charged, or assessed by the excursion service company on an individual fare basis.
- 12 Each person must first obtain a certificate from the Commission prior to engaging in the business of a charter party or excursion service carrier.¹¹ A person engages in the business of a charter party or excursion service carrier by advertising, soliciting, offering, or entering into an agreement to provide such service.¹² Persons who engage in the business of a charter party or excursion service carrier of without Commission authorization are subject to a penalty of up to \$5,000 for each violation.¹³
- 13 Upon proof of unauthorized operations, RCW 81.04.510 authorizes the Commission to order an unpermitted company to cease and desist its activities. Subject persons also have the burden of proof to demonstrate that their acts or operations are not subject to the provisions of Chapter 81 RCW.¹⁴
- 14 **Advertising.** Whether Orion NW advertised to provide transportation as a charter party or excursion service carrier, as Staff alleges, is a question of fact.¹⁵ Staff bases its claim that Orion NW advertised to provide transportation as a charter party or excursion service carrier on the Company’s website, which Staff used to book a roundtrip for 20 passengers between Olympia and Seattle.¹⁶ Papadimas testified at hearing that Orion NW’s website

¹¹ RCW 81.70.220(1).

¹² RCW 81.70.220(1).

¹³ RCW 81.70.020; RCW 81.70.220; RCW 81.70.260.

¹⁴ RCW 81.04.510.

¹⁵ RCW 81.04.510.

¹⁶ Declaration of Michael Dotson, Attachments H, I, J.

was inactive and does not know how Staff was able to access it.¹⁷ In addition, Papadimas admitted that there was a picture on the website of a large luxury vehicle regulated, or formerly regulated, by the Commission because he had been unable to remove it from the website.¹⁸

15 The Company's assertion that the website is inactive is not persuasive. The evidence produced by Staff shows Dotson's request for transportation on the "Contact Us" page of the website. That request was forwarded by the website to one of the Company's email addresses, which resulted in the interaction between Dotson and the Company.¹⁹

16 It is also undisputed that the Company's website portrays the 26-passenger 2010 Ford disclosed on the Company's April 2017 application for Commission authority that is owned or was formerly owned by the Company.²⁰ Papadimas testified that the Company sold the vehicles regulated by the Commission, including the 26-passenger 2010 Ford, when it voluntarily canceled its certificate in October 2020.²¹ Papadimas argued at hearing that Orion NW had no opportunity or ability to perform the requested transportation as a charter party or excursion service carrier because the Company no longer owns the vehicle pictured on its website.²²

17 The issue of current ownership is immaterial. As it regards advertising for charter party or excursion service, the Commission's consideration is whether such service is advertised, not whether the Company is capable of providing the service advertised or whether it owns or uses vehicles like those depicted in the advertisement. Regardless of the vehicle's ownership, the advertisement has the effect of welcoming a customer to contact the Company through its website to request transportation of the kind *advertised*.

¹⁷ Papadimas, TR at 16:17-21.

¹⁸ *Id.* at 16:17-17:10.

¹⁹ Declaration of Michael Dotson, Attachments H, I, J.

²⁰ In its April 2017 application, Orion NW indicated a U.S. Department of Transportation number of 2402790 and that it owned a 26-passenger 2010 Ford with license plate C65350J. Declaration of Michael Dotson at 1, ¶ 7, Attachment A; Papadimas, TR at 12:10-13:21. Staff also produced screenshots of the Company's website showing that the large luxury vehicle advertised on the Company's website had matching license plate and marking on the side that indicated the same U.S. Department of Transportation number.

²¹ Papadimas, TR at 12:10-13:21.

²² *See id.* at 12:14-13:18, 16:14-17:23.

- 18 The testimony and evidence provided by Staff is convincing. We find that the Company is advertising to provide transportation as a charter party or excursion service carrier. Accordingly, we determine that the Company is engaged in the business of a charter party or excursion service carrier without authority from the Commission and should, therefore, be classified as a charter party or excursion service carrier and ordered to cease and desist.
- 19 **Offering.** We find that Orion NW did not offer to provide transportation as a charter party or excursion service carrier. To determine whether a passenger carrier service is subject to Commission regulation, we consider, among other factors, the number of passengers and the type and size of motor vehicle.²³ This involves, under certain circumstances, consideration of whether the carrier holds a license from another regulatory agency authorizing the carrier to operate.
- 20 Staff bases its claim that Orion NW offered to provide transportation as a charter party or excursion service carrier on the fact that Staff requested and received an offer from the Company for roundtrip passenger transportation between Olympia and Seattle for 20 persons.²⁴ Because of pictures on the Company’s website showing the 26-passenger 2010 Ford, Staff reasonably assumed – as any customer might – that an offer from the Company to provide transportation for a group of 20 persons would include transportation using that large luxury vehicle, the operation of which requires a certificate from the Commission.
- 21 A carrier could summarily rebut such an assumption if it has authorization from Washington’s Department of Licensing to operate as a limousine carrier and intends to provide the transportation using two smaller vehicles, which are authorized under such a license. Consequently, a limousine carrier would only need additional authorization from the Commission to conduct business as a charter party or excursion service carrier if the carrier offered to provide the requested transportation with a single, larger vehicle outside the authorization of a limousine license.
- 22 Orion NW has authorization from the Department of Licensing to provide for hire limousine services.²⁵ A “limousine” is a category of for hire motor vehicles that has been further categorized by the Department of Licensing to include an “executive van,” which

²³ WAC 480-30-016.

²⁴ Dotson, TR at 9:1-10:6.

²⁵ Declaration of Michael Dotson, Attachment E; Papadimas, TR at 12:18-14:24.

is a van or minivan with a seating capacity behind the driver of not more than 14 passengers.²⁶ Orion NW's 15-passenger vans fit this category of limousine. A larger vehicle, such as a party bus, with seating for more people would not qualify as a limousine and would be subject to regulation by the Commission. In this case, because it has authorization to provide limousine services, Orion NW's limousine license would authorize it to provide the requested transportation as long as it used multiple limousines.

23 It is undisputed that Orion NW offered to transport 20 persons as requested by Staff, but Papadimas testified that the Company intended to use two of its 15-passenger vans.²⁷ Staff presented no evidence or testimony showing that Orion NW offered or intended to use a single, larger vehicle for the requested transportation. Instead, evidence of Staff's interaction with the Company shows that the possibility to provide the requested transportation using two 15-passenger vehicles was never eliminated, consistent with the testimony offered by Papadimas.²⁸

24 We find, therefore, that the record evidence fails to support Staff's claim that Orion NW offered to provide service as a charter party or excursion service carrier in violation of Chapter 81.70 RCW. Rather, we find that the testimony offered by Papadimas rebuts Staff's claim, and that Papadimas satisfactorily demonstrated that the transportation offered by Orion NW is authorized by the Department of Licensing as a limousine service and not as charter party or excursion service requiring authority from the Commission. Accordingly, the Commission determines that Orion NW did not offer to provide transportation as a charter party or excursion service carrier as alleged in the Complaint.

25 **Penalty.** Staff recommends that the Commission issue a penalty amount at the maximum allowed by statute – \$5,000 for each of two violations – and suspend a \$9,000 portion of that amount for a period of two years. Because we find that Orion NW committed only one of the two alleged violations, we reach a different conclusion.

26 Staff has proven that the Company is advertising to provide transportation as, and is therefore engaged in the business of, a charter party or excursion service carrier. The Company's website uses some level of automation from GoDaddy.com, as the record

²⁶ RCW 46.04.274; WAC 308-83-010(12)(C).

²⁷ Papadimas, TR at 16:14-17:13.

²⁸ Declaration of Michael Dotson, Attachments H, J; *see* Dotson, TR at 9:11-10:1.

evidence demonstrates.²⁹ As it regards the Company's former attempts to correct the website, we accept Papadimas's testimony that the Company has had difficulty either removing the advertisement from the Company's website or rendering the entire website inactive.³⁰

27 Rather than impose the maximum penalty as Staff recommends, we determine it is appropriate under the circumstances to assess a reduced penalty of \$1,000 for one violation of RCW 81.70.220. We also exercise our discretion to suspend the entire penalty, and then waive it, subject to the condition that the Company modifies, takes down, makes inaccessible, or otherwise removes from its website all advertisements of charter party or excursion carrier service within the state of Washington. If the Company fails to comply with this condition by 30 days after the effective date of this Order, the entire \$1,000 penalty will become immediately due and payable without further Commission order, and the Commission may pursue further action against the Company for additional violations.

28 Finally, nothing in this Order prevents Staff from further investigating the operations of Orion NW or pursuing further action against the Company for any new or repeat violation. If additional evidence of illegal conduct is discovered, the Commission may bring a new complaint or pursue other legal action.

FINDINGS AND CONCLUSIONS

29 (1) The Commission is an agency of the state of Washington vested by statute with authority to regulate persons engaged in the business of providing auto transportation services, including charter party and excursion carrier services, over public roads in Washington.

30 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Orion NW.

31 (3) On at least one occasion, Orion NW advertised to provide transportation as a charter party or excursion service carrier without first having obtained a certificate from the Commission in violation of RCW 81.70.220.

²⁹ See Declaration of Michael Dotson, Attachment J.

³⁰ Papadimas, TR at 16:17-17:10.

- 32 (4) The record fails to support Staff's claim that Orion NW offered to provide transportation as a charter party or excursion service carrier.
- 33 (5) Orion NW should be classified as a charter party or excursion service carrier and directed to cease and desist from engaging in the business of a charter party or excursion service carrier as required by RCW 81.04.510.
- 34 (6) Orion NW should be penalized \$1,000 for one violation of RCW 81.70.220. The entire amount should be suspended and then waived subject to the condition that the Company modifies, takes down, makes inaccessible, or otherwise removes from its website all advertisements of charter party or excursion service within the state of Washington. If the Company fails to comply with this condition by 30 days from the effective date of this Order, the entire penalty of \$1,000 should become immediately due and payable without further Commission order.

ORDER

THE COMMISSION:

- 35 (1) Classifies Nicholas Papadimas d/b/a Orion NW as a charter party or excursion service carrier within the state of Washington.
- 36 (2) Orders Nicholas Papadimas d/b/a Orion NW to immediately cease and desist operations as a charter party or excursion service carrier with the state of Washington without first obtaining a permit from the Commission.
- 37 (3) Assesses a \$1,000 penalty against Nicholas Papadimas d/b/a Orion NW. The entire penalty amount is suspended and then waived subject to the condition that Nicholas Papadimas d/b/a Orion NW modifies, takes down, makes inaccessible, or otherwise removes from its website all advertisements of charter party or excursion service within the state of Washington. If Nicholas Papadimas d/b/a Orion NW fails to comply with this condition by 30 days from the effective date of this Order, the entire \$1,000 penalty will become immediately due and payable without further Commission order.
- 38 (4) Retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective December 28, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*

ANDREW J. O'CONNELL
Administrative Law Judge

NOTICE TO 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 480-07-610(7) provides that any party to this proceeding has 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) 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 does not 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).