

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

DOCKET TE-210665

ORDER 02

AJ'S WINE TOUR & TRANSPORT
LLC D/B/A AJ'S WINE TOURS &
MORE LLC

APPROVING SETTLEMENT
AGREEMENT

BACKGROUND

- 1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine if AJ's Wine Tour & Transport LLC d/b/a AJ's Wine Tours & More LLC (AJ's Wine Tour or Company) has engaged, and continues to engage, in business as a charter party or excursion service carrier within the state of Washington without possessing the certificate required for such operations.

- 2 **Procedural History.** On October 28, 2021, the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Virtual Hearing, pursuant to RCW 81.04.510, initiating this Docket on its own motion. The Complaint alleges that AJ's Wine Tour violated RCW 81.70.220 by:
 - (1) offering on at least one occasion to provide charter party or excursion carrier service in the state of Washington, and
 - (2) advertising charter party or excursion carrier service within the state of Washington on at least one occasion

without the required certificate 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 Jose Sanchez Michel, owner of AJ's Wine Tour, to appear before the Commission at a special virtual proceeding scheduled to

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

convene at 1:30 p.m., on December 1, 2021, and to provide documents in electronic form in advance of the virtual hearing as specified in the Subpoenas.

3 **Hearing Waiver.** On November 30, 2021, Jose Sanchez Michel filed with the Commission a signed hearing waiver indicating that the Company waives its right to a hearing in this matter and requests the Commission base its decision on the written documents submitted by the parties.

4 **Settlement Agreement.** On November 30, 2021, Commission staff (Staff) filed a settlement agreement (Settlement) on behalf of the parties that resolves all the contested issues in this proceeding.

5 As part of the Settlement, AJ's Wine Tour admits that it has been operating as a charter party or excursion service carrier in the state of Washington without the required certificate. The Company also admits that it offered to provide charter party or excursion carrier service on at least one occasion and advertised to provide charter party or excursion carrier service on at least one occasion.

6 Also, as part of the Settlement, AJ's Wine Tour 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.

7 The parties agree that the Company will be assessed a \$10,000 penalty and, on the condition that the Company honors its pledge of compliance by permanently staying out of the industry without first obtaining a certificate from the Commission, agree that \$9,000 of the penalty should be suspended for two years, and then waived.

8 The parties agree that the Company will pay the remaining \$1,000 portion of the penalty in eight monthly installments according to the schedule set out in paragraph 4 of the Settlement.

9 **Appearances.** Jason Hoxit, Compliance Investigator, Lacey, Washington, represents Staff.¹ Jose Sanchez Michel, College Place, Washington, represents the Company, *pro se*.

DISCUSSION

10 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed Settlement without condition.
- Approve the proposed Settlement subject to conditions.
- Reject the proposed Settlement.

11 The Commission approves the Settlement in this case without condition. The parties made concessions relative to their respective litigation positions to arrive at the end results that are supported by the evidence in the record. AJ’s Wine Tour admits that its conduct violated Commission statutes and rules and has agreed to cease and desist all uncertificated operations unless and until it obtains a certificate from the Commission. The Settlement supports the Commission’s goal of compliance by permitting the Company to pay a reduced penalty of \$1,000 and suspending, then waiving, the \$9,000 remainder of the penalty conditioned on the Company complying with the terms of this

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.

Order and timely paying the remaining \$1,000 portion of the penalty.

- 12 The terms of the Settlement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Accordingly, we find that the Settlement is consistent with the public interest and should be approved as filed.

FINDINGS AND CONCLUSIONS

- 13 (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.
- 14 (2) The Commission has jurisdiction over the subject matter of this proceeding and over AJ's Wine Tour.
- 15 (3) AJ's Wine Tour waived its right to a hearing in this matter.
- 16 (4) AJ's Wine Tour admits that it was operating as a charter party and excursion service carrier without the required certificate.
- 17 (5) The Settlement is not contrary to law or public policy, and it reasonably resolves all issues in this proceeding.
- 18 (6) The Settlement is consistent with the public interest.
- 19 (7) The Commission should approve the Settlement without condition and order the penalty amount, conditions, and other terms as proposed by the parties in the Settlement.

ORDER

THE COMMISSION ORDERS:

- 20 (1) The Settlement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of all issues in this proceeding.

- 21 (2) AJ's Wine Tour & Transport LLC, d/b/a AJ's Wine Tours & More LLC is classified as a charter party or excursion service carrier within the state of Washington.
- 22 (2) AJ's Wine Tour & Transport LLC, d/b/a AJ's Wine Tours & More LLC is ordered to immediately cease and desist operations as a charter party or excursion service carrier within the state of Washington without first obtaining the required certificate from the Commission.
- 23 (3) AJ's Wine Tour & Transport LLC, d/b/a AJ's Wine Tours & More LLC is assessed a penalty of \$10,000. A \$9,000 portion of the penalty is suspended for a period of two years from the date of this Order, and waived thereafter, provided that: (1) AJ's Wine Tour & Transport LLC, d/b/a AJ's Wine Tours & More LLC 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, and (2) AJ's Wine Tour & Transport LLC, d/b/a AJ's Wine Tours & More LLC timely pays the portion of the penalty that is not suspended. The portion of the penalty that is not suspended is due and payable subject to the payment schedule set forth in the Settlement.
- 24 (4) The Commission 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 1, 2021.

/s/ Michael Howard
MICHAEL HOWARD
Administrative Law Judge

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) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 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 essential to a decision, but unavailable and not reasonably discoverable with due diligence 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 480-07-825(1) 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).

APPENDIX A