

**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 01

ORDER INSTITUTING SPECIAL
PROCEEDING; COMPLAINT SEEKING
TO IMPOSE PENALTIES; NOTICE OF
HEARING

(Set for Mar. 12, 2019, at 9 a.m.)

INTRODUCTION

- 1 The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 81.04.510, institutes this special proceeding on its own motion to determine whether Kim Jones d/b/a Desert Wave (Desert Wave) has engaged, and is engaging, in unlawful operations following the cancellation of its charter and excursion carrier certificate in violation of RCW 81.70.260.
- 2 The Commission has information from which it believes and therefore alleges that Desert Wave has advertised, solicited, offered, or entered into one or more agreements to provide charter and excursion carrier service within the state of Washington following the cancellation of its charter and excursion carrier certificate.
- 3 Pursuant to RCW 81.04.510, upon proof of these allegations, the Commission is authorized to issue an order requiring Desert Wave to cease and desist activities subject to regulation under Title 81 RCW. In addition, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by Desert Wave that violates any law, or any order or rule of the Commission. The Commission may impose financial penalties of up to \$5,000 for each violation.
- 4 At the hearing in this special proceeding that will be conducted pursuant to Part IV of the Administrative Procedure Act (APA), RCW 34.05, of which notice is given here, the Commission will also consider its Complaint against Desert Wave alleging violations of law as specified below and will decide whether Desert Wave should be penalized.

ORDER AND NOTICE OF HEARING

5 The Commission has jurisdiction to institute a special proceeding to determine whether Desert Wave is conducting business requiring operating authority, or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 80.01.010, and RCW 81.04.510. In addition to the foregoing statutes, this matter involves Title 81 RCW, including but not limited to RCW 80.01.010; RCW 81.04.020; RCW 81.70.220, and RCW 81.70.260. This matter also involves the administrative rules set forth in WAC 480-30 and WAC 480-07.

6 **THE COMMISSION ORDERS that Desert Wave appear before the Commission in this special proceeding conducted under the authority of RCW 81.04.510 at 9 a.m., on March 12, 2019, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, to give testimony and evidence under oath as to its operations.**

7 The burden of proving that the alleged operations are not subject to the provisions of Title 81 RCW shall be upon Desert Wave, as provided by RCW 81.04.510.

8 **THE COMMISSION GIVES NOTICE THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.**

9 If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that a qualified interpreter may be appointed at no cost to the party or witness.

10 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Kim Jones
Desert Wave
2569 N Columbia Center Blvd
Richland, WA 99352
jonesdesertwave@gmail.com

Representative: Unknown

Commission: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Kathryn McPherson
Compliance Investigator
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1108
Kathryn.McPherson@utc.wa.gov

COMPLAINT SEEKING PENALTIES

PARTIES

- 11 Complainant, the Commission, is an agency of the state of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including charter and excursion carriers, under the provisions of Title 81 RCW.
- 12 Respondent, Desert Wave, is a charter and excursion carrier that does business in the state of Washington.

JURISDICTION

- 13 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 81.04.110, RCW 80.01.010, RCW 81.04.160, RCW 81.04.460, and RCW 81.70.

BACKGROUND

- 14 According to the Declaration of the Commission Compliance Investigator, presented to the undersigned administrative law judge¹ under penalty of perjury, the following facts

¹ Administrative law judges appointed by the Commission are empowered, among other things, to “make findings of probable cause and issue complaints in the name of the commission.” RCW 80.01.060(1).

establish probable cause for the Commission to complain against the activities of Desert Wave and to seek penalties in accordance with applicable law.

15 On March 30, 2016, the Commission issued charter and excursion service certificate CH-067101 to Desert Wave.

16 On June 8, 2018, the Commission cancelled Desert Wave's charter and excursion service certificate at Desert Wave's request.

17 According to Desert Wave's Squarespace webpage, viewed on January 15, 2019, Desert Wave has been operating as a charter party carrier or excursion service within the state of Washington without a certificate.

18 On or about January 16, 2019, Desert Wave offered to provide charter party or excursion carrier service without first having obtained a certificate from the Commission.

APPLICABLE LAW AND REGULATION

19 Under state law, the definition of "charter party carrier" includes 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." RCW 81.70.020(1).

20 Under state law, the definition of charter party carrier includes a person who "advertises, solicits, offers, or enters into an agreement to carry passengers over any public highway within the state of Washington." RCW 81.70.220(1).

21 The term "person" can mean a corporation or firm as well as an individual. RCW 81.70.020(9). Specifically included in this term are individuals, firms, corporations, associations, partnerships, lessees, receivers, trustees, consortiums, joint venture, or commercial entities. WAC 480-30-036.

22 The Commission defines a person who is engaged in the transportation of persons by party bus over any public highway in this state as engaging in the business of a charter party carrier or excursion service carrier. WAC 480-30-036.

23 Charter party and excursion service carriers are common carriers. RCW 81.04.010(11). For the purposes of Title 81 RCW, every common carrier is a public service company. RCW 81.04.010.

- 24 It is illegal to engage in business as a charter party or excursion service carrier within the state of Washington after a carrier's certificate has been canceled by the Commission. RCW 81.70.260(1).
- 25 Any person who engages in business as a charter party or excursion service carrier in the state of Washington after its certificate has been canceled is subject to a penalty of up to \$5,000 per violation. RCW 81.70.260(2). If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation. RCW 81.70.260(1).
- 26 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. RCW 81.04.110.

COMPLAINT

- 27 The Commission, through its Staff, re-alleges the statements contained in paragraphs 11 through 26 above.
- 28 Desert Wave has violated RCW 81.70.260(1) at least once by offering charter party or excursion carrier services to transport passengers after its permit was canceled by the Commission.
- 29 Desert Wave has violated RCW 81.70.260(1) at least once by advertising to transport passengers after its permit was canceled by the Commission.

REQUEST FOR RELIEF

- 30 Staff requests that the Commission, pursuant to its authority under RCW 81.70.260(2), assess penalties of up to \$5,000 per violation against Desert Wave. Staff will present testimonial evidence at hearing to address the factors for determining an appropriate penalty amount. Further, Staff may request that some portion of any penalty actually imposed be suspended for a period of time sufficient to demonstrate Desert Wave's intent to comply with all applicable laws and rules governing the passenger charter and excursion carriers industry.

PROBABLE CAUSE

31 Based on a review of the Declaration of the Commission Compliance Investigator assigned to this matter, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

NOTICE OF HEARING

32 **THE COMMISSION GIVES NOTICE THAT it will conduct a hearing concerning this Complaint concurrently with the special proceeding noticed above, which will commence at 9 a.m., on March 12, 2019, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250.**

33 Administrative Law Judge Laura Chartoff, from the Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, is designated to preside at the hearing of these matters.

DATED at Olympia, Washington, and effective February 13, 2018.

RAYNE PEARSON
Administrative Law Judge
Director, Administrative Law Division

Inquiries should be addressed to:

Executive Director and Secretary
Washington Utilities and Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Mark L. Johnson, Executive Director and Secretary, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. **(PLEASE SUPPLY ALL REQUESTED INFORMATION)**

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter?

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____) _____