

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

MARCUS ALLEN PERKINS d/b/a
EMERALD CITY PARTY BUS, LLC
and ELLIE’S LIMO AND LUXURY
CAR SERVICE

DOCKET TE-160822
ORDER 02

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

BACKGROUND

- 1 The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine whether Marcus Allen Perkins d/b/a Emerald City Party Bus, LLC and Ellie’s Limo and Luxury Car Service (Emerald City or Company) is operating as a charter party or excursion service carrier for transportation of passengers for compensation between points in the state of Washington and on the public highways of Washington state without the necessary certificate required for such operations. The Commission, through its regulatory staff (Staff), also complains against the Company, alleging four violations of RCW 81.70.220, and recommending penalties of up to \$5,000 per violation, for a total potential penalty of \$20,000.
- 2 The Commission convened an evidentiary hearing before Administrative Law Judge Rayne Pearson on October 5, 2016, at 1:30 p.m. At the hearing, Staff presented documentary evidence and testimony from compliance investigator Michael Turcott. Marcus Perkins, owner of Emerald City, testified for the Company.¹
- 3 According to Staff’s investigation report, Mr. Perkins applied for authority to operate as a charter party and excursion service carrier on behalf of “Emerald City Towncar Service” on July 1, 2011 (2011 Application). On September 28, 2011, the Commission granted

¹ Due to physical disabilities that prevent him from driving, Mr. Perkins was allowed to appear by telephone.

Charter Certificate CH-64426. On November 12, 2012, the Commission issued an order suspending the certificate for failure to maintain required insurance. On January 9, 2013, the Commission cancelled the Company's certificate.

4 Staff's investigation report also notes that a 1996 Ford bus listed on the 2011 Application was registered with the Department of Licensing to Mr. Perkins and "Emerald City Town Car Service" until January 22, 2016, when it was transferred to Kim D. Perkins of Kent, Washington. A similar 1996 Ford bus is currently registered to "Ellie's Limo and Luxury Car service and Emerald City Party Bus LLC" at Mr. Perkins's home address in SeaTac.

5 Mr. Turcott testified that Staff contacted the Company in 2014 and advised Mr. Perkins that he must have charter party and excursion carrier authority to provide the services advertised on the Company's website. Mr. Perkins responded to Staff's email that he is physically disabled and not driving, that he uses his bus and website solely for advertising, and that he refers potential customers to "partner" carriers that are certificated by the Commission. Staff subsequently sent follow-up compliance letters to Mr. Perkins on January 5, 2016, and March 7, 2016.² Mr. Perkins did not respond.

6 Mr. Turcott explained that Staff contacted the Company via email on April 29, 2016, and requested a quote for party bus service for 18 people on June 11. On May 3, Mr. Perkins responded and confirmed the availability of a bus that seats up to 20 passengers on the requested date. This exchange gave rise to the first violation alleged in the Complaint for offering to provide charter party carrier service without authority from the Commission.

7 Mr. Turcott also testified about the contents of the Company's website, www.emeraldcitytowncar1.com, which advertises charter party and excursion carrier service, and specifically advertises a party bus that holds up to 18 passengers. Mr. Turcott testified that the Company's website is still active. The contents of the Company's website constitute the second violation alleged in the Complaint for advertising charter party carrier service without authority from the Commission.

8 Mr. Turcott further testified about the contents of the Company's Facebook page, which lists the Company's contact information and website. The Company's Facebook page

² The March 7, 2016, compliance letter was sent by certified mail, and was returned as "unclaimed."

constitutes the third violation alleged in the Complaint for advertising charter party carrier service without authority from the Commission.

9 Finally, Mr. Turcott described the Company's July 13, 2016, Craigslist advertisement, which advertises party buses and a Hummer limo. The Company's Craigslist advertisement constitutes the fourth violation alleged in the Complaint for advertising charter party carrier service without authority from the Commission.

10 Mr. Perkins testified that he was in an automobile accident several years ago that left him severely disabled and unable to drive. Following the accident, he continues to advertise party bus services on his website and act as a "broker," referring customers to "Rick" at Brar Airport Town Car Service and "Manoj Sharma" at DD Limousine. Mr. Perkins claims that both companies are certificated by the Commission.³ Mr. Perkins testified that he receives a commission for each referral, which has allowed him to stay afloat financially.

11 Mr. Perkins further testified that his girlfriend, Adriana Ivan – also a former town car driver – re-posts his Craigslist ad every 7 to 10 days and responds to all emails on his behalf. Mr. Perkins claims that Ms. Ivan explains to each potential customer that they will be referred to another company that will ultimately provide the requested service.

12 Finally, Mr. Perkins explained that his website was created in 2009 and has not been updated or altered since then. Mr. Perkins acknowledged that his Company violated state law by advertising charter party service, but denied that he has provided such service since his accident several years ago.

³ Bhupinder Singh Brar d/b/a Brar Airport Town Car Service has an active charter party and excursion carrier certificate with the Commission. Neither "DD Limousine" nor "Manoj Sharma" presently hold authority to operate as a charter party or excursion carrier. On January 13, 2012, the Commission issued an order in Docket TE-120069 suspending Manoj K. Sharma d/b/a DD Limousine & Town Car Service's charter and excursion certificate for failing to maintain required insurance. Mr. Sharma failed to respond, and DD Limousine & Town Car Service's certificate was cancelled on February 15, 2012.

- 13 Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Staff.⁴
Marcus Perkins, SeaTac, Washington, represents Emerald City, *pro se*.

DISCUSSION AND DECISION

- 14 **Classification as Charter Party or Excursion Carrier.** RCW 81.04.510 authorizes this special proceeding to determine whether Emerald City is engaging in business or operating as a charter party or excursion carrier in Washington without the requisite authority. The Respondent bears the burden of proof and must demonstrate that its acts or operations are not subject to the provisions of RCW Chapter 81.
- 15 WAC 480-30-036 defines “motor vehicle,” as it relates to charter party and excursion carriers, as “every self-propelled vehicle with a manufacturer’s seating capacity for eight or more passengers, including the driver.” The Commission regulates limousines and executive party vans with seating capacities of 15 passengers or greater as charter party or excursion carriers. The Commission also regulates party buses – defined as any motor vehicle whose interior enables passengers to stand and circulate throughout the vehicle because seating is placed around the perimeter of the bus or is nonexistent, and in which food, beverages, or entertainment may be provided – regardless of passenger capacity.⁵
- 16 The record shows that on one occasion, Emerald City offered to provide transportation services, and that on three occasions, Emerald City advertised as a charter party and excursion service carrier. Mr. Perkins admits that he advertises party bus services, but claims he informs potential customers that his company does not directly provide those services and refers them to other carriers. Mr. Perkins’s April 29, 2016, email exchange with Staff, however, contains no such explanation or referral. Accordingly, Mr. Perkins was unable to rebut the inferences reasonably drawn from Mr. Turcott’s testimony and exhibits that, doing business as Emerald City, he advertises and offers to conduct business as a charter party and excursion service carrier.

⁴ 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.

⁵ RCW 81.70.020(7).

- 17 Mr. Perkins also claims the Company does not operate the vehicles advertised on his website. The Company, however, holds itself out as a charter party and excursion carrier and, as documented by Staff, offers to provide those services when solicited. Mr. Perkins's claim that he refers the charter party and excursion services to other carriers for a fee has no bearing on whether the Company's conduct violates the applicable law. RCW 81.70.220 defines "engaging in business as a charter party or excursion carrier" to include advertising, soliciting, or offering to provide such service, which Mr. Perkins admits the Company is doing.
- 18 The Commission finds on the basis of this evidence that Emerald City is conducting business that requires Commission approval without the necessary operating authority. The Commission accordingly orders Mr. Perkins and Emerald City to cease and desist from such conduct, as required by RCW 81.04.510.
- 19 **Penalty.** At the hearing, Staff recommended the Commission impose penalties of \$5,000 for each of the four violations alleged in the Complaint, for a total penalty of \$20,000. Staff further recommended the Commission suspend a \$16,000 portion of the penalty for a period of two years, and then waive it, subject to the condition that the Company cease and desist offering, advertising, and providing charter party or excursion carrier services unless and until it obtains the required certificate from the Commission.
- 20 The Commission may consider a number of factors when determining the level of penalty to impose, including whether the violations were intentional, whether the company was cooperative and responsive in the course of Staff's investigation, and whether the company promptly corrected the violations once notified.⁶ Here, Emerald City received technical assistance prior to the Commission instituting this special proceeding; the Complaint describes several technical assistance emails and letters sent to the Company explaining that its operations – including advertisements – require a certificate from the Commission. Because Mr. Perkins knew he was in violation of state laws and Commission rules but failed to take corrective action, we find that the violations are both intentional and ongoing.
- 21 Considering the factors discussed above, the Commission determines that Emerald City should be penalized for an amount that will both punish the Company's wrongdoing and

⁶ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

encourage Mr. Perkins to fully comply with state laws and Commission rules going forward. Given the Company's history of disregarding the Commission's authority, we find that the maximum penalty, as proposed by Staff at hearing, is appropriate. Accordingly, we impose the maximum penalty of \$5,000 for each of the four violations alleged in the Complaint, for a total penalty of \$20,000.

- 22 We are, however, sensitive to Mr. Perkins's situation and agree with Staff that suspending three-quarters of the penalty on the condition of future compliance is appropriate in light of the circumstances. Accordingly, the Commission will exercise its discretion to suspend a \$16,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) the Company must refrain from operating as a charter party or excursion carrier without first obtaining the required permit from the Commission; 2) the Company must comply with statutes and Commission rules governing charter and excursion service; 3) the Company must pay the remaining \$4,000 penalty within 10 days of the effective date of this Order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$4,000 portion of the penalty that is not suspended. If the Company fails to comply with any of the terms of this Order, the \$16,000 suspended portion of the penalty will immediately become due and payable.

FINDINGS AND CONCLUSIONS

- 23 (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.
- 24 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Emerald City.
- 25 (3) On at least one occasion, Emerald City offered to provide charter party and excursion carrier services within the state of Washington without first having obtained a certificate from the Commission, in violation of RCW 81.70.220.

- 26 (4) On at least three occasions, Emerald City advertised to provide charter party and excursion carrier services without first having obtained a certificate from the Commission, in violation of RCW 81.70.220.
- 27 (5) Emerald City should be directed to cease and desist from providing charter party and excursion carrier services over public roads in Washington as required by RCW 81.04.510.
- 28 (6) Emerald City should be penalized \$20,000 for four violations of RCW 81.70.220, a \$16,000 portion of which should be suspended for a period of two years, and then waived, provided the Company: 1) refrains from operating as a charter party or excursion service carrier without first obtaining the required permit from the Commission; 2) complies with statutes and Commission rules governing charter and excursion service; and 3) pays the remaining \$4,000 portion of the penalty no later than 10 days from the effective date of this Order. The Company may work with Staff to establish mutually agreeable payment arrangements to pay the \$4,000 portion of the penalty that is not suspended. If the Company fails to comply with any of the terms of this Order, the suspended portion of the penalty should immediately become due and payable.

ORDER

THE COMMISSION ORDERS:

- 29 (1) Marcus Allen Perkins d/b/a Emerald City Party Bus, LLC and Ellie's Limo and Luxury Car Service is classified as a charter party and excursion service carrier within the state of Washington.
- 30 (2) Marcus Allen Perkins d/b/a Emerald City Party Bus, LLC and Ellie's Limo and Luxury Car Service is ordered to immediately cease and desist operations as a charter party and excursion service carrier within the state of Washington without first obtaining a permit from the Commission.
- 31 (3) Marcus Allen Perkins d/b/a Emerald City Party Bus, LLC and Ellie's Limo and Luxury Car Service is assessed a penalty of \$20,000. A \$16,000 portion of the

penalty is suspended for a period of two years from the date of this Order, and waived thereafter, provided:

a) Marcus Allen Perkins d/b/a Emerald City Party Bus, LLC and Ellie's Limo and Luxury Car Service refrains permanently from further operations as a charter party and excursion service carrier in the state of Washington without first obtaining the required certificate from the Commission; and

b) Marcus Allen Perkins d/b/a Emerald City Party Bus, LLC and Ellie's Limo and Luxury Car Service complies with statutes and Commission rules governing charter and excursion service.

- 32 (4) Marcus Allen Perkins d/b/a Emerald City Party Bus, LLC and Ellie's Limo and Luxury Car Service must either pay the remaining \$4,000 penalty that is not suspended or file jointly with Staff a proposed payment plan no later than 10 days from the effective date of this Order.
- 33 (5) If Marcus Allen Perkins d/b/a Emerald City Party Bus, LLC and Ellie's Limo and Luxury Car Service fails to comply with any of the terms of this Order, the \$16,000 suspended portion of the penalty will immediately become due and payable without further Commission action.
- 34 (6) 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 October 10, 2016.

RAYNE PEARSON
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*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review 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 at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, 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.

You must serve on each party of record one copy of any Petition or Answer filed with the commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and **two (2)** copies of your Petition or Answer by mail delivery to:

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