

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

MICHAEL S. MILLER,
D/B/A TIGER MOUNTAIN SHUTTLE
AND TIGER SHUTTLE

DOCKET TE-190828

JOINT NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 This Joint Narrative Supporting Settlement Agreement (Narrative) is filed pursuant to Washington Administrative Code (WAC) 480-07-740(3)(a) on behalf of Michael S. Miller, d/b/a Tiger Mountain Shuttle and Tiger Shuttle (Tiger Shuttle or Company) and Staff of the Washington Utilities and Transportation Commission (Staff) (collectively, “the Parties”). The Parties have signed the settlement agreement (Agreement), which is being filed concurrently with this Narrative. This Narrative summarizes the Agreement. It is not intended to modify any terms of the Agreement.

II. PROPOSAL FOR REVIEW PROCEDURE

2 In accordance with WAC 480-07-740, the Parties propose the following settlement consideration procedure for review of the proposed Agreement. The Parties believe that this matter is a less complex matter under WAC 480-07-740(2)(b). Accordingly, the Parties submit that conducting a hearing will not assist the Commission to decide whether to approve and adopt the settlement because of the limited scope of the incident and the Company’s cooperation with Staff. *See* WAC 480-07-740(2)(e).

3 If the Commission conducts a hearing, however, the Parties will present one or more witnesses to testify in support of the Agreement and to answer questions concerning the Agreement’s details, costs, and benefits. *See* WAC 480-07-740(3)(b). In addition, counsel for each party will be available to address any legal matters associated with the Agreement. If the Commission requires supporting documents beyond the Agreement, Narrative, and the other documents on file in this docket, the Parties will provide any documentation needed.

III. APPLICABLE LAW

4 RCW 81.70.020(1) defines a “charter party carrier” as a person who “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.”

5 Pursuant to RCW 81.70.220(1), 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.”

6 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 ventures, or commercial entities. WAC 480-30-036.

7 The term “charter party carrier” or “charter carrier” means 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 chartering group after leaving the place of origin. A person who is engaged in the transportation of persons by party bus over any public highway in this state is considered engaging in the business of a charter party carrier or excursion service carrier.

WAC 480-30-036.

8 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.

9 It is illegal to engage in business as a charter party or excursion service carrier within the state of Washington without having first obtained a certificate from the Commission. RCW 81.70.220(1).

10 Any person who engages in business as a charter party or excursion service carrier in the state of Washington without having first obtained a certificate from the Commission is subject to a penalty of up to \$5,000 per violation. RCW 81.70.220(2). If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation. RCW 81.70.220(1).

11 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.

IV. SCOPE OF THE UNDERLYING DISPUTE

12 On November 3, 2019, the Commission entered Order 01 Instituting Special Proceeding; Complaint Seeking to Impose Penalties; Notice of Hearing (Order 01). Order 01 alleged that the Company violated RCW 81.70.220(1) twice by both offering and advertising for charter and excursion carrier services within the State of Washington without the

necessary certificate required for such operations. On the same date, the Commission issued a Subpoena and Subpoena Duces Tecum for Production of Documents to the Company commanding an appearance at a special proceeding on December 10, 2019.

13 On December 10, 2019, the Company appeared at the special proceeding and represented that it intended to contest the allegations in the Complaint. The Commission determined that a formal classification hearing was necessary to determine whether the Company had engaged, and continued to engage, in business as a charter and excursion carrier company within the state of Washington without possessing the certificate requires for those operations. The Company and Staff agreed to a hearing date of February 25, 2020.

14 On February 12, 2020, the Parties agreed to the terms of the Agreement and notified the Commission that they had reached a settlement in principle.

V. DESCRIPTION OF SETTLEMENT AGREEMENT

15 The Agreement resolves all of the issues in dispute. The Parties agree to the following terms set forth in the Agreement:

- Violations: The Company admits that, on or about September 16, 2019, the Company both offered and advertised to provide charter party or excursion carrier service without first having obtained a certificate from the Commission, representing two violations of RCW 81.70.220(1). The Company agrees to the facts set forth in the Commission's November 3, 2019 Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; Notice of Hearing, as well as the October 25, 2019 Declaration of Commission Compliance Investigator Jason Hoxit.

- Mitigating circumstances and reduced likelihood of future violations: Due to the Company's cooperation with Staff, its subsequent conduct in discontinuing its illegal operations and advertising, and its commitment to comply with the Commission's rules and orders going forward, Staff believes the likelihood of repeated future violations to be low.
- Monetary penalty: The Commission will impose a penalty of \$5,000, with \$500 of that penalty immediately due and payable, and with \$4,500 of that penalty suspended for a period of two years from the effective date of the Commission order approving this settlement. The suspended penalty will be waived after the two year period provided that the Company refrains from operating as a charter party or excursion carrier, including advertising, without prior authorization from the Commission. The \$500 portion of the penalty that is due and payable is subject to the payment schedule contained in Appendix A.
- Future enforcement of allegations set forth in complaint: Staff confirms that it will not pursue further enforcement against the Company arising out of any of the allegations set forth in Docket TE-190828.

VI. STATEMENT OF IMPACT ON THE PUBLIC INTEREST

16 The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the public interest that this dispute conclude without the further expenditure of public resources or litigation expenses.

17 In accordance with WAC 480-07-740-750, the Parties believe the Agreement is in the public interest and appropriate for the Commission's acceptance without conditions under

WAC 480-07-750(2)(a) for the following reasons. First, the Company appears to have ceased operating and advertising, and has expressed its commitment to not resume operations or advertising until it has obtained operating authority from the Commission. Second, the Company's good faith cooperation with Staff demonstrates its understanding of the importance of compliance with Commission rules and intention to comply on a going-forward basis. Third, the suspended penalty will create an incentive for the Company to comply with the terms of the Agreement and cease providing charter and excursion carrier services without Commission authorization.

18 The Commission has formally expressed its support for negotiated resolutions of enforcement actions. The rule states, "The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest" WAC 480-07-700. For the reasons stated above, the Parties contend that their Agreement is lawful and consistent with the public interest.

VII. CONCLUSION

19 The Agreement resolves all of the issues in this docket and the Parties submit that their resolution complies with applicable legal requirements and is consistent with the public interest. The Parties respectfully request that the Commission issue an order approving the Agreement in its entirety.

DATED this 6th day of March 2020.

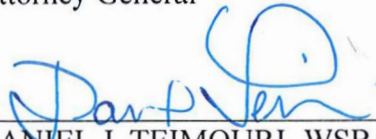
TIGER SHUTTLE



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