

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

NICK ALEXANDER KONOPIK,
D/B/A NICHOLAS KONOPIK AND
KRAKEN TOURS, LLC

DOCKET TE-190822

ORDER 01

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

(Set for December 10, 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 Nick Alexander Konopik, d/b/a Nicholas Konopik and Kraken Tours, LLC, (Kraken Tours or Company), has engaged, and is engaging, in unlawful operations without a charter and excursion carrier certificate in violation of RCW 81.70.220.
- 2 The Commission has information from which it believes and therefore alleges that Kraken Tours has advertised, solicited, offered, or entered into one or more agreements to provide charter and excursion carrier service within the state of Washington without having first obtained a 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 Kraken Tours 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 Kraken Tours 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 Kraken Tours alleging violations of law as specified below and will decide whether Kraken Tours should be penalized.

ORDER AND NOTICE OF HEARING

5 The Commission has jurisdiction to institute a special proceeding to determine whether Kraken Tours 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 Titles 80 and 81 RCW, including but not limited to RCW 80.01.010, RCW 81.04.020, and RCW 81.70.220. This matter also involves the administrative rules set forth in WAC 480-30 and WAC 480-07.

6 **THE COMMISSION ORDERS that Kraken Tours appear before the Commission in this special proceeding conducted under the authority of RCW 81.04.510 at 9 a.m. on December 10, 2019, in the Commission’s Richard Hemstad Hearing Room at 621 Woodland Square Loop SE, Lacey, Washington, 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 Kraken Tours, 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: Nicholas Konopik
Kraken Tours, LLC
840 SE 4th Ave.
Oak Harbor, WA 98277

Representative: Unknown

Commission: Washington Utilities and
Transportation Commission
P.O. Box 47250

Olympia, WA 98504-7250
(360) 664-1160

Representative: Michael Dotson
Compliance Investigator
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1217
Michael.Dotson@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 party and excursion service carriers, under the provisions of Title 81 RCW.
- 12 Respondent, Kraken Tours, is a charter party and excursion service 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 establish probable cause for the Commission to complain against the activities of Kraken Tours and to seek penalties in accordance with applicable law.
- 15 On or about September 20, 2019, Kraken Tours offered to provide charter party or excursion carrier service without first having obtained a certificate from the Commission.

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).

- 16 According to evidence obtained from the Company’s website, www.krakentourswa.com, Kraken Tours has been operating as a charter party carrier or excursion service carrier within the state of Washington without a certificate.

APPLICABLE LAW AND REGULATION

- 17 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).
- 18 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).
- 19 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.
- 20 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.
- 21 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.
- 22 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).

- 23 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).
- 24 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

- 25 The Commission, through its Staff, re-alleges the statements contained in paragraphs 14 through 24 above.
- 26 Kraken Tours has violated RCW 81.70.220(1) at least once by offering charter party or excursion carrier services to transport passengers without first having obtained a certificate from the Commission.
- 27 Kraken Tours has violated RCW 81.70.220(1) at least once by advertising to transport passengers without first having obtained a certificate from the Commission.

REQUEST FOR RELIEF

- 28 Staff requests that the Commission, pursuant to its authority under RCW 81.70.220(2), assess penalties of up to \$5,000 per violation against Kraken Tours. 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 the Company's intent to comply with all applicable laws and rules governing the passenger charter and excursion carriers industry.

PROBABLE CAUSE

- 29 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

30 **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 December 10, 2019, in the Commission's Richard Hemstad Hearing Room, 621 Woodland Square Loop SE, Lacey, Washington.**

31 Administrative Law Judge Rayne Pearson, from the Commission's Administrative Law Division is designated to preside at the hearing of these matters.²

DATED at Lacey, Washington, and effective October 24, 2019.

/s/ Gregory J. Kopta _____
GREGORY J. KOPTA
Administrative Law Judge

Inquiries should be addressed to:

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

² Judge Pearson can be reached by telephone at (360) 664-1136 or by email at rayne.pearson@utc.wa.gov.

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, 621 Woodland Square Loop SE, Lacey, WA 98503, 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.: (____)_____