

**BEFORE THE WASHINGTON STATE
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

ORDER 02

APPROVING SETTLEMENT SUBJECT TO
CONDITION; CLASSIFYING
RESPONDENT AS A CHARTER AND
EXCURSION CARRIER; IMPOSING AND
SUSPENDING PENALTIES

BACKGROUND

- 1 On November 3, 2019, the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing (Order 01), initiating this docket on its own motion. The Complaint alleged that Michael S. Miller, d/b/a Tiger Mountain Shuttle and Tiger Shuttle, (Tiger Shuttle or Company) violated RCW 81.70.220(1) on two occasions by advertising and offering to provide charter party and excursion services within the state of Washington without first obtaining from the Commission the certificate required for such operations. On the same date, the Commission issued a Subpoena and Subpoena Duces Tecum for Production of Documents commanding the Company to appear before the Commission at a special proceeding scheduled to convene at 9 a.m. on December 10, 2019, and to bring the documents specified in the subpoenas.
- 2 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 concluded that a formal classification hearing was necessary to determine whether Tiger Shuttle has engaged, and continues to engage, in business as a charter party and excursion company within the state of Washington without possessing the certificate required for such operations. The Company and Commission staff (Staff) agreed to a hearing date, and Commission subsequently issued a Notice of Brief Adjudicative Proceeding set for February 25, 2020, at 1:30 p.m.
- 3 On February 12, 2020, Staff filed with the Commission a letter explaining that the parties had reached a settlement in principle, and requesting the Commission cancel the brief adjudicative proceeding.

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

- 4 On February 14, 2020, the Commission issued a Notice Cancelling Brief Adjudicative Proceeding and Requiring the Filing of Settlement Documents.
- 5 On March 6, 2020, Staff filed a settlement agreement on behalf of the parties (Settlement).
- 6 As part of the Settlement, the Company admits that it violated RCW 81.70.220(1) on two occasions by advertising and offering to provide charter party or excursion carrier service without first having obtained from the Commission the certificate required to conduct such operations. The parties agree to the facts set forth in Order 01, as well as the October 25, 2019, declaration of Commission compliance investigator Jason Hoxit, which describes the violations in detail.
- 7 The parties agree that the Commission should assess a penalty of \$5,000, and that it should suspend a \$4,500 portion of the penalty for a period of two years, and then waive it, subject to the condition that Tiger Shuttle refrains from providing charter party or excursion carrier service that requires a certificate from the Commission. Finally, the parties agree that the Company should pay the remaining \$500 portion of the penalty in two installments of \$250, the first of which would be due 30 days following the effective date of the Settlement, and the second of which would be due 30 days later. The parties agree that if a payment is missed, the entire amount of the penalty, including the suspended portion of \$4,500, will become due and payable the day after the missed penalty was due.
- 8 Daniel J. Teimouri, Assistant Attorney General, Lacey, Washington, represents Staff. David Stirbis, Liberty Law, L.L.C., Lakewood, Washington, represents the Company.

DISCUSSION AND DECISION

- 9 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 Agreement 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 Agreement as a reasonable resolution of the issue(s) at hand.

10 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 We approve the Settlement with one condition. Due to the economic impact of the COVID-19 pandemic, the Commission exercises its discretion to delay Tiger Shuttle's first payment of \$250 for a period of six months. Accordingly, Tiger Shuttle's first \$250 payment will be due on October 16, 2020, and its second \$250 payment will be due on November 16, 2020. Nothing in this Order prohibits the Company from making payments in advance of those due dates, and all other terms of the Settlement – including the condition that if a payment is missed, the entire amount of the penalty, including the suspended portion of \$4,500, will become due and payable the day after the missed penalty was due – still apply.

12 Because Tiger Shuttle admits to the two violations alleged in the Complaint, the Commission classifies Tiger Shuttle as a charter party and excursion service carrier and orders the Company to cease and desist such conduct, as required by RCW 81.04.510.

13 We find that the \$5,000 penalty, a \$4,500 portion of which is suspended for two years subject to the condition the Company complies with the cease and desist order, is reasonable, both in terms of the \$500 penalty the Company must pay according to the modified installment arrangement, and in terms of the substantial suspended amount it must pay if it fails to comply with this Order.

14 The terms of the Settlement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. The Settlement supports the Commission's goal of deterring illegal operations and permits the Company to pay a reduced penalty contingent on the Company refraining from prohibited operations for two years, unless it obtains the required certificate, which provides an incentive for ongoing compliance. Given these factors, we find the Settlement is consistent with the public interest and should be approved as filed subject to the condition described above.

ORDER

THE COMMISSION ORDERS:

- 15 (1) The settlement agreement between Michael S. Miller, d/b/a Tiger Mountain Shuttle and Tiger Shuttle, and Commission Staff, attached as Exhibit A to, and incorporated into, this Order, is approved as the final resolution of the disputed issues in this docket subject to the condition set out in paragraph 11, above.
- 16 (2) Michael S. Miller, d/b/a Tiger Mountain Shuttle and Tiger Shuttle, is classified as a charter party and excursion service carrier within the state of Washington.
- 17 (3) Michael S. Miller, d/b/a Tiger Mountain Shuttle and Tiger Shuttle, is ordered to immediately cease and desist providing charter party or excursion carrier services in the state of Washington without first obtaining a certificate from the Commission.
- 18 (4) Michael S. Miller, d/b/a Tiger Mountain Shuttle and Tiger Shuttle, is assessed a penalty of \$5,000 for two violations of RCW 81.70.220(1). A \$4,500 portion of the penalty is suspended for a period of two years from the effective date of this Order subject to the condition that Michael S. Miller, d/b/a Tiger Mountain Shuttle and Tiger Shuttle, complies with the terms of this Order.
- 19 (5) Michael S. Miller, d/b/a Tiger Mountain Shuttle and Tiger Shuttle, must pay the \$500 portion of the penalty that is not suspended in two equal monthly installments of \$250. The first payment is due on October 16, 2020, and the second payment is due on November 16, 2020. Nothing prohibits Michael S. Miller, d/b/a Tiger Mountain Shuttle and Tiger Shuttle, from making payments in advance of these deadlines.
- 20 (6) If Michael S. Miller, d/b/a Tiger Mountain Shuttle and Tiger Shuttle, fails to pay either installment by 5 p.m. on the day it is due, the unpaid balance, including the \$4,500 suspended portion of the penalty, will immediately become due and payable without further order by the Commission.
- 21 (7) Within 10 days of the date of this Order, Michael S. Miller, d/b/a Tiger Mountain Shuttle and Tiger Shuttle, and Commission Staff must notify the Commission if

they accept the condition imposed by this Order. Such notice may be provided jointly.

- 22 (8) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective April 15, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson

RAYNE PEARSON

Administrative Law Judge

NOTICE TO 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 that is 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 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 480-07-610(9) 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 does not 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).

Exhibit A
Settlement Agreement