

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

CASCADE ADVENTURES INC.;
CASCADE ADVENTURES BAKER
BUS LLC

DOCKET TE-190086

ORDER 04

APPROVING SETTLEMENT
AGREEMENT; CLASSIFYING
RESPONDENT AS A CHARTER
AND EXCURSION CARRIER;
IMPOSING AND SUSPENDING
PENALTIES

BACKGROUND

- 1 On February 15, 2019, the Washington Utilities and Transportation Commission (Commission) issued an Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; Notice of Hearing set for March 12, 2019, at 9 a.m. (Order 01). Order 01 sought to classify Cascade Adventures Inc.; Cascade Adventures Baker Bus LLC (Baker Bus or Company) as a charter party and excursion carrier and to impose penalties against the Company for operating as a charter party or excursion carrier after its certificate was canceled by the Commission.
- 2 On March 12, 2019, the Commission entered Order 02, Stipulated 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 (Order 02). Order 02 imposed a \$10,000 penalty, an \$8,500 portion of which was suspended for a period of two years, to be waived thereafter, subject to the conditions that Baker Bus refrains from further operations as a charter party and excursion service carrier without first obtaining the required certificate from the Commission.
- 3 On March 3, 2021, Commission staff (Staff) filed a Motion to Impose Suspended Penalties (Motion). The Motion alleges Staff found evidence that the Company continued to operate as a charter party and excursion service carrier in the state of Washington without having obtained the required certificate from the Commission.

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

- 4 On March 5, 2021, the Commission issued a Notice of Opportunity to Respond to Motion to Impose Suspended Penalty. On March 10, 2021, the Company responded to the Motion, arguing that it no longer operates as a charter party or excursion carrier because it has changed its business structure to a non-profit organization. On March 19, 2021, Staff filed a response requesting the Commission set this matter for prehearing conference to permit additional discovery and resolve the parties' factual dispute.
- 5 On May 7, 2021, the Commission convened a virtual prehearing conference in this docket before Administrative Law Judge Rayne Pearson. On May 12, 2021, the Commission entered Order 03, Prehearing Conference Order; Notice of Hearing (Order 03). Among other things, Order 03 established a procedural schedule that included an evidentiary hearing set for August 31, 2021.
- 6 On July 8, 2021, counsel for Staff contacted the presiding officer on behalf of the parties to inform the Commission that the parties had reached a settlement in principle. The Commission subsequently issued a Notice Suspending Procedural Schedule and Notice Requiring Filing of Settlement Documents by August 5, 2021.
- 7 On August 5, 2021, Staff filed a settlement agreement on behalf of the parties (Settlement). As part of the Settlement, Baker Bus admits that it violated RCW 81.70.220(1) on two occasions by advertising and offering to provide charter party or excursion carrier service during the timeframe alleged in Staff's Motion. Baker Bus further admits that it is operating as a charter and excursion carrier subject to Commission jurisdiction.
- 8 The parties agree that the Commission should assess a penalty of \$10,000, a \$9,000 portion of which will be suspended for a period of two years, and then waived, provided Baker Bus does not operate as a charter or excursion service carrier without first obtaining authority to conduct such operations from the Commission. The \$1,000 portion of the penalty that is not suspended will be paid according to the terms of a mutually agreeable payment plan that the parties will file jointly. The parties agree that due to the ongoing public health concerns related to the COVID-19 pandemic and the seasonal nature of the Company's operations, no payment will be due prior to December 1, 2021. If the parties cannot agree to the terms of a payment plan, they will request that the Commission set such terms.

9 Harry Fukano, Assistant Attorney General, represents Staff. Paul Engel, Owner, Glacier, Washington, represents Cascade Adventures, *pro se*.

DISCUSSION

10 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.

11 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.

12 We approve the Settlement without condition. Because Baker Bus admits to the two violations alleged in Staff’s Motion, the Commission classifies Baker Bus as a charter and excursion service carrier and orders the Company to cease and desist such conduct, as required by RCW 81.04.510.

13 We also find that the \$10,000 penalty, a \$9,000 portion of which is suspended for two years subject to the condition the Company complies with the Commission’s order to cease and desist, is reasonable, both in terms of the \$1,000 penalty the Company must pay now, and in terms of the substantial suspended amount it must pay if it fails to comply with this Order. The Company may work with Staff to establish a payment plan to reduce any immediate financial impact to the Company. Within 60 days of the effective date of this Order, the parties should file with the Commission a proposed payment plan or a request that the Commission establish a plan by subsequent 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

detering illegal operations and permits the Company to pay a penalty according to the terms of a mutually agreeable payment arrangement. Given these factors, we find the Settlement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

- 15 (1) The settlement agreement between Cascade Adventures Inc.; Cascade Adventures Baker Bus LLC 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.
- 16 (2) Cascade Adventures Inc.; Cascade Adventures Baker Bus LLC is classified as a charter party and excursion service carrier within the state of Washington.
- 17 (3) Cascade Adventures Inc.; Cascade Adventures Baker Bus LLC 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) Cascade Adventures Inc.; Cascade Adventures Baker Bus LLC is assessed a penalty of \$10,000 for two violations of RCW 81.70.220(1). The Commission suspends a \$9,000 portion of the penalty for two years, and then waives it, subject to the condition that Cascade Adventures Inc.; Cascade Adventures Baker Bus LLC complies with the terms of this Order.
- 19 (5) Cascade Adventures Inc.; Cascade Adventures Baker Bus LLC must file jointly with Staff a proposed payment plan or a request that the Commission establish a plan by subsequent order within 60 days of the effective date of this Order.
- 20 (6) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective August 12, 2021.

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