

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

KIM JONES D/B/A DESERT WAVE

DOCKET TE-190052

COMMISSION STAFF'S
REPLY IN SUPPORT OF ITS
MOTION TO IMPOSE SUSPENDED
PENALTIES

I. INTRODUCTION

1 On June 1, 2021, Staff of the Washington Utilities and Transportation Commission
(Commission) filed a motion to impose suspended penalties against Kim Jones d/b/a Desert
Wave (Desert Wave or Company) based on a declaration by its investigator, which
Commission staff (Staff) contends showed the Company violated the terms of Order 02 in
this docket. On June 25, 2021, the Company filed a response to Staff's motion. Staff
respectfully requests that the Commission grant Staff's Motion to Impose Suspended
Penalties and deny the relief sought in the Company's Response.

II. RELIEF REQUESTED

2 Staff respectfully requests that the Commission deny the relief sought in the
Company's June 25, 2021, Response, and grant Staff's June 1, 2021, Motion to impose the
\$9,000 suspended penalty assessed in Order 02.

III. STATEMENT OF FACTS

3 On June 1, 2021, Staff filed with the Commission its Motion to Impose Suspended
Penalties in Docket TE-190052 (Motion), requesting that the Commission impose \$9,000 in
penalties that were imposed against the Company, but conditionally suspended, in Order 02
in Docket TE-190052. Staff documented in detail, in the Declaration of Jason Hoxit filed in

support of Staff’s Motion, how Desert Wave continued to both advertise and offer charter party or excursion carrier services without the required certificate from the Commission, directly violating Order 02 and the conditions on which \$9,000 of the Company’s \$10,000 penalty was suspended.¹ For example, on May 13, 2021, Staff secured a quote directly from Kim Jones (the owner of Desert Wave) over the telephone for roundtrip transportation in the Company’s 20-passenger 2005 Hummer H2 (License No. B15674L, hereinafter Hummer H2) for 13-15 passengers from Richland, Washington, to the Gorge Amphitheater for the Watershed Festival on either July 31 or August 1, 2021.²

4 On June 25, 2021, Desert Wave filed a written response to Staff’s Motion (Response). In the Response, the Company states that it does not “believe” it is operating as a charter party or excursion carrier, and that: (1) the Company was “licensed and operating as a limousine carrier for the past couple of years”; (2) the vehicles listed on the Company’s website, including the Hummer H2, were previously approved as limousine vehicles through the Washington Department of Licensing (DOL); (3) the Company had a scheduled inspection for “both limousine[s]” on June 28, 2021, to renew its limousine license through DOL; and (4) that Desert Wave is currently in the process of acquiring records to support that it was “licensed to operate as a limousine carrier with these vehicles in pas[t] years.”

5 On June 29, 2021, Staff contacted DOL via email to follow-up on the Company’s Response, and inquire as to whether Desert Wave had registered its stretch Hummer as a limousine vehicle with DOL.³ That same day, DOL responded to Staff that the 1999 Lincoln Town Car is the sole limousine vehicle registered to Desert Wave, that the Lincoln

¹ Motion at ¶ 4, n.7.

² Declaration of Jason Hoxit in Support of Staff’s Motion to Impose Suspended Penalties (June 1, 2021) (First Hoxit Decl.) at ¶¶ 16-17.

³ Declaration of Jason Hoxit in Support of Staff’s Reply (July 2, 2021) (Second Hoxit Decl.) at ¶ 5.

Town Car was the only vehicle scheduled for inspection, and that there were no records of the Company submitting documentation to DOL for the stretch Hummer H2.⁴

6 On June 29, 2021, Staff emailed DOL to determine and clarify whether Desert Wave had *ever* registered its stretch Hummer H2 with VIN: 5GRGN23U55H100435 as a limousine vehicle through DOL.⁵ That same afternoon, DOL responded, “I don’t see that vehicle ever being listed on their account.”⁶

IV. APPLICABLE LAW

7 RCW 81.70.030(3) excludes limousine carriers under Chapter 46.72A RCW from regulation under Chapter 81.70 RCW.

8 RCW 46.72A.050(2) provides that each “limousine carrier shall obtain from the department a limousine carrier license for the business and a limousine vehicle certificate for each limousine operated by the carrier.”

V. ARGUMENT

A. **Limousine Licensure Through The Department Of Licensing**

9 The Company’s claim in its Response that its Hummer H2 vehicle was licensed as a limousine with the DOL in “past years” is unsubstantiated in the record, directly refuted by DOL, and regardless, it would not change the fact that the Company did not possess a DOL limousine license for the Hummer H2 in May of 2021, when the Company violated Order 02 as detailed in Staff’s Motion. As an initial matter, the Company’s Response never disputes the factual allegations in Staff’s Motion, that the Company continued to advertise and offer charter party or excursion carrier services in direct violation of Order 02 and the terms of the

⁴ *Id.*

⁵ *Id.* at ¶ 6.

⁶ *Id.*

Company's suspended penalty. Those facts remain uncontested. Instead, the Company attempts to evade the suspended penalty by claiming that its Hummer H2 vehicle was, in "past years," registered as a limousine with DOL, and that it was in the process of having the Hummer H2 inspected for renewal with DOL. The facts show otherwise. First, the Response itself admits that the Company's "license for limousine carrier was not [] renewed on 9/1/2020 because of shut downs."⁷ Second, the Company's claims that the Hummer H2 was previously registered as a limousine with DOL and in the process of renewal are unsubstantiated and are rebutted by Staff's communications with DOL. Staff had already determined, as part of its initial investigation in May of 2021, that the Company's Hummer H2 was not a registered limousine vehicle under authority from DOL pursuant to RCW 46.72A.050(2).⁸ In its response, the Company submitted dozens of attachments, most of which related to insurance coverage, but none of which demonstrate that the Company possessed a limousine vehicle certificate its stretch Hummer H2. Furthermore, as of June 29, 2021, DOL confirmed for Staff that the Company's Hummer H2 is not registered as a limousine through DOL, nor did the DOL staff member "see that vehicle ever being listed on [the Company's] account." Additionally, DOL's confirmation that only the Company's Lincoln Town Car was scheduled for inspection and/or renewal renders the Company's arguments on that point meaningless with respect to the Hummer H2.

10 Based on these facts, Staff believes that Desert Wave has not operated its stretch Hummer H2 as a limousine vehicle pursuant to RCW 81.70.030(3) and/or RCW 46.72A.050(2), and maintains the recommendation from its Motion for the Commission to impose the \$9,000 suspended penalty due to the Company's failure to comply with the

⁷ Response at 1.

⁸ First Hoxit Decl. at 18.

condition to refrain permanently from further operations as a charter party or excursion service carrier in the state of Washington without first obtaining the required certificate from the Commission.

B. Company Request For Additional Technical Assistance

11 In its Response, the Company also “request[s] clarification in regards to this manor,” which Staff interprets as a request for further technical assistance.⁹ Under the circumstances of this case, Staff does not feel that additional technical assistance would be productive, and therefore respectfully recommends that the Commission deny the Company’s request. First, Staff already provided extensive technical assistance to the Company leading up to the issuance of Order 02, and any further technical assistance would be redundant. Second, the Commission itself provided detailed technical assistance in its interactions with the Company, including through discussions at hearing and through its writings in Order 02. Third, when pressed by the ALJ at the June 4, 2019, special proceeding as to whether the Company understood the differences between a limousine endorsement through DOL and a charter certificate through the Commission, the Company responded that it understood what it legally could and could not do.¹⁰ Importantly, the Company also acknowledged that it knew Staff was available to assist the Company should it need any help discerning whether specific operations would or would not violate Order 02.¹¹ The Company never contacted Staff to seek technical assistance in advance of conducting operations.

⁹ Response at 2.

¹⁰ First Hoxit Decl. at 7.

¹¹ *Id.*

C. Company Request For Additional Leniency

12 Finally, the Commission should deny the Response's request for leniency because Staff believes that the Commission has already extended due leniency to the Company under the circumstances. For example, the Commission exercised leniency in suspending \$9,000 of the penalty imposed in Order 02 and affording the Company an opportunity to avoid the entire \$9,000 sum in return for compliance with Order 02's provisions. However, the Company did not take advantage of that opportunity as demonstrated by the unrebutted evidence that the Company continued to advertise and offer charter party and excursion carrier service in violation of Order 02. The Company was fully aware of the consequences that would flow from a violation of Order 02, as indicated by the Company's stipulation to Order 02 and its representations on the record that it fully understood the nature of Order 02 and the associated suspended penalty.

VI. CONCLUSION

13 Staff respectfully requests that the Commission grant Staff's Motion to Impose Suspended Penalties and deny the relief sought in the Company's Response.

Dated this 9th day of July 2021.

Respectfully submitted,

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