

SERVICE DATE

DEC 19 1991

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )  
)   
Complainant, )  
)   
v. )  
)   
SNO-KING GARBAGE COMPANY, )  
INC., G-126 )  
)   
Respondent. )  
)   
..... )

DOCKET NO. TG-900657  
FIFTH SUPPLEMENTAL ORDER

WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )  
)   
Complainant, )  
)   
v. )  
)   
NORTHWEST GARBAGE CO., )  
INC., G-43 )  
)   
Respondent. )  
)   
..... )

DOCKET NO. TG-900658  
SIXTH SUPPLEMENTAL ORDER  
ORDER DENYING STAY

PROCEDURAL HISTORY: The Commission served an order on December 10, 1991, resolving issues in consolidated cases involving rates and charges for service. The order rejects respondents' proposed tariffs and it authorizes and requires respondents to file tariffs complying with the order no later than ten days after the order was served. The order also requires the respondents to make refunds of excess collections, to be implemented in the first billing cycle after effect of the required tariffs.

PETITION: Respondents petitioned on December 19, 1991, for a stay of the Commission order. They contend that they intend to file a timely petition for reconsideration, and that if the petition is granted and the final order modified, the companies would then file different rates from those now ordered. They urge that a failure to do so would subject them to irreparable harm. Commission staff answered, offering no objection to the stay.

COMMISSION: The Commission denies the petition. A petition for stay should demonstrate irreparable harm; patent error in a final order such that reconsideration will almost certainly be granted; or substantial hardship combined with substantial possibility that the order to be stayed will be modified.

APPEARANCES: Craig Gannett, attorney, Seattle, represents petitioners. Robert E. Simpson, assistant attorney general, Olympia, answered on behalf of Commission Staff.

MEMORANDUM

This is a proceeding involving rates for solid waste and recycling collection. The Commission entered a final order on December 10, 1991, rejecting the respondents' filed proposed tariffs. The order authorized and required respondents to refile tariffs no later than ten days after the order was entered, for effect on January 1, 1991. Petitions for reconsideration -- and petitions for stay -- are also due within ten days after entry of a final order.

On December 19, 1991, the respondents petitioned for a stay of the final order. They contend that they will file a timely petition for reconsideration of the order; that the Commission may grant the petition; and if reconsideration is granted the respondents would then file different rates and make different refunds from those authorized and required in the order. Petitioners contend that, without the stay, errors discovered during reconsideration could be prevented from correction by principles of retroactive ratemaking. Petitioners represent that they will be filing other tariffs for effect January 1 and February 1, 1992.

Commission staff does not oppose the petition.

In reviewing petitions for stay, the Commission will consider showings of irreparable harm from the order; of patent error of law or fact such that reconsideration and modification are virtual certainties; or of a combination of substantial hardship with a substantial possibility of modification. A stay is useful in those extremely rare circumstances when the risk of damage from interim application of the order is great and when a substantial question of modification of the order exists.

The Commission denies the petition. No substantial reason is demonstrated for granting the stay. A grant upon the showing made would invite a stay in every proceeding involving rates, and would increase the likelihood that a stay or supersedeas would prevent application of the rates pending judicial review. Principles of retroactive ratemaking will not apply, as the Commission has jurisdiction to adjust rates in this continuing proceeding if a different rate level is found appropriate on reconsideration.

The companies are already planning other tariff filings, on varying schedules, and the timing of the ordered filing will not affect consumer understanding nor be burdensome. The company has known that its waiver of the statutory deadline expired December 31, and that it could expect a filing requirement for effect near the first of January. Its temporary rates were allowed subject to refund, so the requirement for refund does not surprise petitioners. Time remains for respondents to work with staff for consolidated filings as appropriate. There is no demonstration of hardship or harm that might result from staying the order. The Commission finds no merit in staying the requirement for the filing of permanent rates to be effective January 1, 1992.


The Commission retains flexibility to deal with issues after the complying tariffs are filed and before their effect. If exceptional circumstances are presented, the Commission retains its power to deal with those circumstances and to fashion any remedy, including a possible stay, which may be proper.


ORDER

THE COMMISSION DENIES the respondents' petition for stay of the final order.

DATED at Olympia, Washington and effective this 19<sup>th</sup> day of December, 1991.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
SHARON L. NELSON, CHAIRMAN

  
A. J. PARDINI, COMMISSIONER