

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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

BOBBY WOLFORD TRUCKING &  
SALVAGE, INC. d/b/a BOBBY WOLFORD  
TRUCKING & DEMOLITION

DOCKET TG-143802 and TG-151573

PETITION FOR STAY AND  
RECONSIDERATION

1. Bobby Wolford Trucking & Salvage, d/b/a Bobby Wolford Trucking & Demolition (“Wolford”) pursuant to WAC 480-07-860, by and through its attorney, Elizabeth Alvord, brings this Petition for Stay of Final Order Modifying Initial Order 04 and, pursuant to RCW 34.05.470 and WAC 480-07-850, files the below Petition for Reconsideration.

**I. PETITION FOR STAY AND RECONSIDERATION**

**Procedural Background**

2. On June 17, 2016 the Commission entered a Final Order Modifying Initial Order (Order 04) in the above-entitled matter. This Final Order was entered as a result Staff’s Petition for Administrative Review (“Petition”) of Orders 02 and 03, entered previously in this case. Staff’s Petition was served upon Wolford via regular US mail and was received on June 7, 2016.

3. Staff’s Petition cited WAC 480-07-825 as the basis for its legal authority to present its Petition. This Code allows ten (10) days for a responding party to serve its Answer to the Petition. On June 17, 2016, within the 10 day window allowed, Wolford served its Answer upon the Attorney General. Several days prior to serving its Answer, Wolford emailed Assistant Attorney General Christopher Casey and

informed him of the forthcoming pleading. Mr. Casey denied knowing the time frame required for submitting an Answer.

4. Despite this, on June 20<sup>th</sup>, Wolford received the Commission's Final Order 04. This Order stated it was entered on June 17, the same date Wolford's Answer was served. Necessarily, therefore, the Commission could not and did not consider Wolford's Answer prior to rendering its Final Order in this matter.

5. That same day, June 20<sup>th</sup>, Wolford emailed the Commission with its concerns regarding this problem. The Commission's Director, Greg Kopta replied to Wolford's email claiming that Mr. Casey had cited the wrong WAC in the Staff's Petition and that Wolford's Answer was actually due on June 14<sup>th</sup> under a different WAC. Apparently, according to Mr. Kopta, it makes no difference whatsoever that the Staff's Petition cited the wrong WAC, that Wolford had no right to rely on Staff's wrongful citation and that it didn't matter anyway because Wolford did not properly serve its Answer.

6. There are two problems with the Director's assessment. First, it is a serious matter of unfair and undue prejudice for the Commission to take the position that the Attorney General can cite virtually any WAC in its pleadings and rule that the responding party has no right to rely upon that citation in its responsive pleadings. In this case, the Staff cited WAC 480-07-825 as its legal authority to seek review of the initial orders. Wolford had the right to rely on this citation and properly responded within the ten (10) day time frame allowed under this WAC. The second problem concerns the issue of Wolford's service and filing of its Answer. RCW 34.05.010(19) defines "service" under the APA as follows:

"Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic telefacsimile transmission, where copies are mailed simultaneously, or by commercial parcel delivery company".

By the APA definition, Wolford satisfied its service requirement when it both emailed and mailed its Answer on June 17, 2016. Concerning the issue of filing its Answer with the Commission on June 17, Director Kopta admitted that AAG Casey filed Wolford's Answer. Even if Wolford's Answer was filed as a courtesy, that doesn't change the fact that the Commission was put on notice and actually received Wolford's Answer which, therefore, should have been given consideration in the Commission's consideration of the Staff's Petition.

7. Taken together: the prejudicial defect in the Staff's Petition, the timely service of Wolford's Answer, the filing (and therefore actual notice) of Wolford's Answer and Washington law which favors resolution of cases on the merits, all serve to support the conclusion that the Commission should 1) stay enforcement of Order 04 and either order the Staff to Amend its Petition and grant Wolford the opportunity to Answer without the former prejudice; or reconsider its Final Order based upon the foregoing and the following issues of factual and legal dispute.

## **II. ARGUMENT IN SUPPORT OF STAY AND PETITION FOR RECONSIDERATION**

8. The Staff's Petition for Administrative Review is based solely upon its "disagreement" with the amount of the penalty assessment because it "simply believes" that a higher penalty is merited. (See pg. 1, para. 1; pg 2, para. 3, page 3, para. 4 of Petition, accordingly). The Staff cites no error of law, evidence or fact. It provides no authority, rule or statute in support of its position. In short, the Staff's Petition is based upon a mere difference of opinion with Judge Pearson, which is an insufficient basis to modify a just and legally sound order. The Commission should deny the Staff's Petition for Review and ultimately deny its request to impose a higher penalty on Bobby Wolford Trucking & Demolition.

### **A. The factual findings support the original assessed penalty.**

3. At the hearing on this case, the following facts were undisputed: For over forty (40) years, Bobby Wolford Trucking has provided hauling, demolition and recycling services for the people,

municipalities and commercial businesses of Western Washington. Over four (4) decades of continuous public service, Wolford has received only two (2) complaints from the UTC. One of those complaints resulted in a settlement agreement in 2014 and the other is the present case.

The settlement agreement reached in 2014 resulted in a \$41,183.30 penalty of which \$21,183.30 was suspended. Wolford paid the assessment in full.

The undisputed facts also include the following:

(a) Pacific Pile and Marine contacted Bobby Wolford Trucking in 2014 about hauling creosote soaked, giant, pier pilings from the Pacific Pile's staging area in Seattle to the Cathcart Transfer Station in Snohomish County.

(b) At the time of this request, Pacific Pile presented to Wolford a letter from JR Myers, Senior Planner for Snohomish County purporting to grant Pacific Pile the authority to "use any contractor to deliver the material to the transfer station".

(c) Ordinarily, the solid waste contractor in that jurisdiction (Seattle) would be Republic Services.

Pacific Pile contacted Wolford however, because unlike Republic, Wolford utilizes massive end dump trailers. For this unique project, end dump trailers were essential to transport the pier pilings in one piece rather than cutting up the pilings and risk creosote contamination on land and in the waters of Puget Sound.

(d) Based upon the authorization letter from Snohomish County, Wolford, in good faith, believed it held the requisite authority to proceed with the haul.

(e) At some point during this project, Rubatino Refuse Removal called the UTC complaining that Wolford was hauling solid waste without a certificate. Although this was not Rubatino's hauling jurisdiction<sup>1</sup>, the UTC nevertheless acted on its informal complaint. At what point the UTC became

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<sup>1</sup> It's believed that Rubatino's hauling jurisdiction is limited to Snohomish County.

aware of the pier hauling is unclear. However, it wasn't until Wolford had completed 170 hauls before the UTC provided notification to Wolford to stop the project.

(f) Upon receiving the stop order from the UTC, Wolford immediately ceased hauling, corrected the situation and without delay, filed an application for temporary hauling authority. When that application was denied, Wolford filed a second application for limited authority.

When Judge Pearson presided over the hearing in this case, she listened to the testimony, reviewed the submitted documentation and came to the just and logical conclusion that the violations committed by Wolford were "neither serious nor harmful to the public". She also made the judicious and wise consideration that Wolford quickly sought to rectify the situation by applying for the proper authority for the work.

Moreover, Judge Pearson acknowledged the critical and compelling fact that the "Commission's goal is to bring Bobby Wolford Trucking into compliance, not to create an insurmountable financial burden for the Company". (Pg 7, para 28 of Order 03).

**B. Factors considered by the Commission further support the original outcome of this case.**

In an effort to justify its difference of opinion in this case, Staff cites the Commission's discretionary enforcement policy at Docket A-120061. By applying the facts and circumstances in this case to each of the 11 factors identified in Docket A-120061, it becomes abundantly clear why Judge Pearson arrived at her fair decision.

1. The violations were neither serious nor harmful to the public.

In her order, Judge Pearson emphatically concluded that the violations in this case were "neither serious nor harmful to the public." She arrived at this decision, undoubtedly, because she is well versed in the Commission's policy statement as expressed in Docket A-126001, which reads:

(1) *How serious or harmful the violation is to the public.* The more serious or harmful a violation, the more appropriate penalties or other sanctions may be. Certain violations or conditions

are a likely candidate for penalties or a complaint, even for a first-time offense. **Examples include, but are not limited to, the responsibility to charge consumers the tariff rates; the requirement for a drug and alcohol testing program, driver medical cards, and commercial drivers' licenses; and the requirement to maintain or repair corrosion protection on pipelines. In addition, if a violation exists that puts the public at an imminent safety risk, the Commission will take immediate action to prevent the risk from becoming reality, up to and including shutting down company operations** (emphasis mine).

Staff argues that this case rises to the extreme levels of seriousness and harm to the public as described in Docket A-120061. However, as the above verbatim citation clearly shows, the Staff's argument here is an extreme and unsustainable stretch. Note that the Staff provides no historic examples of a company's actions that rise to the level of the punishment they are seeking here. In fact, the actions taken by Wolford (providing a public service that actually helped prevent creosote contamination) was not in the realm of contemplation under this factor. Of further note is that the Staff's claim of public harm is nothing more than unsubstantiated speculation. Staff provides no evidence of any harm to any company or individual. Indeed, Judge Pearson readily acknowledged this and concluded that no substantial or serious harm occurred in this case.

## 2. The violation was not intentional.

At Wolford trucking, as is true with many trucking companies, a dispatcher takes a call for a job request, makes an assessment of it and renders a decision whether or not to provide service. In this case, Wolford's dispatcher made an unfortunately incorrect assessment of the request from Pacific Pile and, though believed he was making a correct and informed decision (especially after reading the letter from Snohomish County) he nonetheless should have inquired further with office staff or with the UTC to confirm his assessment. Staff argues that Wolford is attempting to place the entire blame on its dispatcher and that it made a similar argument in the one other previous case with the UTC. The facts are that the two instances involved two different dispatchers whose employment has since been

terminated. While not offered as an excuse, the evidence shows that this was a case of good faith belief and reliance on what was presented as authority from Snohomish County. There is no evidence, and Staff offers no evidence, of a deliberate attempt to circumvent or ignore or otherwise undermine the rules and regulations set forth by the Commission.

3. A lack of self reporting is alone not sufficient to support the highest financial penalty.

Wolford did not self report for one simple reason, it sincerely believed it had the authority (albeit and incorrect belief) to make the haul. Wolford was not hiding anything. It simply did not realize what it was doing was outside the perimeters of its authority. In retrospect, Wolford should have contacted the UTC to get their opinion before taking on the project. But its failure to do so was unintentional and the minute it learned of its error, it stopped the project. There is no basis under the Commission's enforcement policy to justify the highest monetary penalty in this case. Judge Pearson recognized this and her judgment should be sustained.

4. The company was cooperative and responsive.

As stated earlier and as is supported in the record, Wolford was fully cooperative and responsive. Judge Pearson was particularly impressed with Wolford's prompt action and their effort to obtain a temporary permit and limited authority permit. Staff is simply misinformed about the status of Wolford's solid waste hauler certificate application. Wolford has been working very closely with UTC staff, Mike Young and Suzanne Stillwell to finalize the application and tariff issues. Wolford is in the final stages of completing this complicated and difficult task.

5. The company promptly corrected the violations and remedied the impacts.

As supported in the record and Judge Pearson's Orders, Wolford promptly corrected the violations and remedied the situation immediately upon learning of its error.

6. The number of violations alone do not determine appropriate enforcement action.

Docket A-120061 states that the number of violations alone do not determine appropriate enforcement action. In this case it is unclear at exactly what point Staff became aware of Wolford's hauling of the pier pilings. We do know, however, that it was prior to when it notified Wolford to cease and desist. Had the UTC contacted Wolford as soon as they knew, Wolford would certainly have stopped sooner and the number of hauls could have been significantly reduced. In any case, the number of violations here are associated with truck trips to the transfer station prior to awareness of the problem. This is not an instance of the UTC notifying Wolford of the violation and then Wolford ignoring that notice. Judge Pearson understood the situation and rendered her decision accordingly.

7. No evidence that customers were affected.

The Staff presents no evidence that any customer in this case was adversely affected by Wolford's hauls. In fact, two important points are key here: First, because of Wolford utilizing end dump trailers, the general public was protected from creosote contamination. Second, Republic Services, whose territory this was, did not complain about Wolford's hauling. It was their sole right to complain but they did not. Because there is no evidence of adverse customer impact, this factor has little or no application to the case at hand.

8. There is no likelihood of recurrence.

There are multiple, compelling reasons why there is little to no risk that this action by Wolford will recur. First, as a result of Judge Pearson's Order, Wolford will be under "probation" for the next two years. Second, Wolford has a new, fully trained dispatcher. Third, Wolford has implemented a new protocol to contact the UTC, prior to accepting any projects, that are questionable or of concern to obtain their opinion and guidance. Fourth, Wolford fully anticipates that its application for limited solid waste hauling authority will be granted.

9. The company's past performance does not indicate a future of repeated violations.



In over 40 years, Wolford has received only 2 formal UTC complaints. That record alone speaks to Wolford's commitment to honoring its permit and UTC authority. It is unfortunate and regrettable that in the last 2 years Wolford has experienced some employment and training challenges that it is now confident it has rectified.

10. The company has a newly implemented compliance program.

Following this incident, Wolford took quick internal action. The dispatcher's employment was terminated and a new, well informed, well trained dispatcher was hired. In addition, Wolford implemented a new protocol to make the UTC its first line of communication when an authorization question arises. This new protocol has been taught, and re-taught at Wolford. The new compliance program appears to be working well and should serve the company and the UTC well into the future.

11. The size of the company is small.

Docket A-120061 states: "The Commission will consider the size of the company in taking enforcement actions. It is not the Commission's intention to take enforcement actions disproportionate to companies of similar size with similar penalties, or to take enforcement actions disproportionate to a company's revenues...For the purposes of RCW 34.05.110, a small business is one with 250 or fewer employees or annual revenue of less than seven million dollars".

Wolford Trucking is a small company. It provides income for approximately 48 people and has far less than \$7m in assets. Wolford's assets fluctuate throughout the time of year. Its ability to provide income for its employees is a matter of hard work, not money sitting in the bank. A penalty in the amount sought by the Staff will, as testified to at the hearing, will cripple this company and many people will lose jobs, if the company isn't forced to shut its doors completely. As Judge Pearson wrote, the "Commission's goal is to bring Bobby Wolford Trucking into compliance, not create an insurmountable financial burden for the Company."

### III. CONCLUSION

When the Staff submitted its Petition for Administrative Review, it cited a WAC that allowed for ten (10) days to serve an Answer. Wolford complied with that requirement. It is unduly prejudicial for the Commission to render a Final Order in this case when 1) Wolford had the right to rely on the Staff's WAC citation; and, 2) Wolford's Answer was both served and filed prior to the expiration of that ten (10) day time period. In light of this, the Commission should enter a Stay of Order 04 and either order the Staff to amend its Petition and grant Wolford the opportunity to re-submit its Answer, or, reconsider its Final Order and reinstate Judge Pearson's original order because Judge Pearson rendered her decision, she did so after weighing all the evidence, listening to the witnesses, and reviewing the record, the law, rules and Commission enforcement policy.

Judge Pearson came to the conclusion that the penalty assessed of an additional \$21,186.30, \$50k suspended and a two year follow up investigation, was a fair and appropriate penalty. The Staff's mere dislike or difference of opinion with Judge Pearson is unsupported by the record and facts in this case. Judge Pearson reasoned this case carefully and rendered her order with fairness and judicial prudence; it should be sustained.

Dated this 27<sup>th</sup> day of June 2016.

*Elizabeth Alvord*  
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Attorney for Wolford Trucking.