

**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, INC.

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Carrier Classification of, and Complaint
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BOBBY WOLFORD TRUCKING &
SALVAGE, INC. d/b/a BOBBY
WOLFORD TRUCKING &
DEMOLITION, INC.

DOCKET TG-151573
(*Consolidated*)

ORDER 04

Docket TG-143802
(*Consolidated*)

ORDER 05

ORDER DENYING MOTION FOR
STAY AND PETITION FOR
RECONSIDERATION OF FINAL
ORDER

BACKGROUND

- 1 On June 17, 2016, the Washington Utilities and Transportation Commission (Commission) entered Order 03/04, Final Order Modifying Initial Order (Final Order), in the above-captioned dockets.¹ That order modified the penalty assessment against Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. (Bobby Wolford Trucking or Company) in Order 02/03, Initial Order (Initial Order) for operating as a solid waste carrier without the required Commission-issued certificate. Specifically, the Commission assessed a penalty of \$73,800, of which the Commission suspended \$35,000 for a period of two years on the condition that Bobby Wolford Trucking complied with the orders in these dockets.
- 2 On June 27, 2016, Bobby Wolford Trucking filed a Petition for Stay of Final Order and Petition for Reconsideration of Final Order (Petitions). The Company contends that the Commission should stay the Final Order because the Commission entered that order

¹ That order summarizes the prior procedural history, which we will not repeat here. See Final Order ¶¶ 1-7.

before Bobby Wolford Trucking answered Commission Staff's (Staff) petition for administrative review of the Initial Order and thus did not consider the Company's position prior to making a determination. Bobby Wolford Trucking also asserts that the administrative law judge properly weighed the evidence in applying the factors in the Commission's Enforcement Policy and that the Commission should adopt the findings, conclusions, and outcome in the Initial Order.

DISCUSSION AND DECISION

- 3 We deny both Petitions for the reasons we discuss below.
- 4 Bobby Wolford Trucking seeks a stay of the Final Order because the Commission did not consider the Company's answer prior to ruling on Staff's petition for administrative review. Bobby Wolford Trucking, however, served its answer on the assistant attorney general well after the date it was due and never filed that document with the Commission. We will not stay the Final Order to remedy the Company's failure to comply with Commission rules.
- 5 Bobby Wolford Trucking nevertheless claims that it reasonably relied on the deadline for an answer in WAC 480-07-825 because Staff cited that rule as authority for its petition. We disagree. We expect counsel who practice before the Commission to be familiar with Commission rules and to comply with them. This was a brief adjudicative proceeding governed by WAC 480-07-610.² Staff timely filed its petition for administrative review even though Staff did not cite the correct rule authorizing that filing. The Company's response was due within seven days from the date Staff served the petition,³ not 10 days after the Company received it.⁴ Bobby Wolford Trucking was responsible for making its

² Docket TG-151573, Order 01 ¶ 38.

³ WAC 480-07-610(7)(c).

⁴ The certificate of service for Staff's petition states that Staff's counsel served the Company by mail on June 3, 2016. "Service by mail is complete when a copy of the document is properly addressed, stamped, and placed in the United States mail." WAC 480-07-150(8)(a). Even if WAC 480-07-825(4)(b) were applicable, the answer would have been due on June 13, 2016, 10 days after service by mail was complete. The Company's allegation that it did not receive the petition until June 7 is irrelevant. By serving its answer on Staff on June 17, 2016, therefore, Bobby Wolford Trucking failed to comply with the deadline in the rule on which the Company claims to rely.

own determination of the applicable deadline. The Company failed to do so and may not blame Staff for that failure.

- 6 Even if we were inclined to be lenient with the due date for filing a response to Staff’s petition, Bobby Wolford Trucking never filed its response. The Company simply emailed the document to Staff’s counsel. “Filing documents with the commission under [WAC 480-07-145] and service of the documents to all parties under WAC 480-07-150 are both required in all adjudicative proceedings. . . . [S]ervice upon the assistant attorney general does not constitute a filing with the commission.”⁵ Bobby Wolford Trucking cites no authority to support its argument that the Commission was obligated to consider the Company’s answer because the assistant attorney general forwarded a courtesy copy to the Commission’s Administrative Law Division.⁶ We reject that position. We take official notice that the filings in these dockets do not include a response to Staff’s petition for administrative review from Bobby Wolford Trucking, and accordingly, any such document does not exist for purposes of Commission consideration of the issues in this proceeding.
- 7 We find that Bobby Wolford Trucking has not stated any plausible grounds on which the Commission should stay the Final Order, and we will not do so.
- 8 Bobby Wolford Trucking’s request for reconsideration of the Final Order is equally devoid of merit. In any petition for reconsideration of a Commission final order, “[t]he petitioner must clearly identify each portion of the challenged order that it contends is erroneous or incomplete, must cite those portions of the record and each law or commission rule that the petitioner relies on to support its petition, and must present brief

⁵ WAC 480-07-145(4).

⁶ Bobby Wolford Trucking claims that the Director of the Commission’s Administrative Law Division “admitted that AAG Casey filed Wolford’s Answer.” Petitions ¶ 6 at 3. What the Director actually wrote was, “I understand that Mr. Casey received a copy of that document, which was forwarded to the Commission’s Administrative Law Division as a courtesy.” Email correspondence from Gregory J. Kopta to Elizabeth Alvord (June, 2016). Forwarding a document to the Commission’s Administrative Law Division as a courtesy does not constitute submitting the document to the Commission’s Records Center for filing.

argument in support of its petition.”⁷ The Company has not complied with this requirement.

9 Bobby Wolford Trucking does not identify any portion of the Final Order the Company believes is erroneous or incomplete or provide citations to any portion of the record or law to support such a belief. Rather, Bobby Wolford Trucking devotes its Petition for Reconsideration to challenging Staff’s petition for administrative review, which the Commission accepted only in part. The insufficiency of the Petition for Reconsideration on its face provides ample grounds to deny it.

10 Even teasing out the portions of the Company’s filing that arguably could apply to the Final Order, Bobby Wolford Trucking fails to provide any facts or law that demonstrate that the Final Order is erroneous or incomplete. The enforcement factor we found most significant is that Bobby Wolford Trucking violated the same statute the Company violated the year before. The Company claims that it acted in the good faith belief that its conduct was lawful, but we continue to agree with the administrative law judge that this claim is not credible. The judge found, and we agreed, that Bobby Wolford Trucking knew or should have known that it was committing the same violations for which the Commission previously penalized the Company.⁸ As we explained in the Final Order, such recidivism warrants the higher penalty we assessed.⁹

11 The Company nevertheless asserts that “A penalty in the amount sought by the Staff will, as testified to at the hearing, will [*sic*] cripple this company and many people will lose jobs, if the company isn’t forced to shut its doors completely.” The \$73,800 penalty the Commission assessed in the Final Order is less than half the amount Staff proposed, and the Commission suspended \$35,000 of that assessment. Staff states, without contradiction from the Company, that Bobby Wolford Trucking has represented to the Commission that the Company has over \$3 million in assets.¹⁰ No record evidence supports a finding that a penalty of less than 0.013 percent of those assets will result in the dire consequences Bobby Wolford Trucking predicts.

⁷ WAC 480-07-850(2).

⁸ Final Order ¶ 8.

⁹ *Id.* ¶ 10.

¹⁰ Staff Petition for Administrative Review of Initial Order ¶ 20.

- 12 We continue to conclude that the evidentiary record and application of the Commission’s enforcement criteria to that record support the penalty assessment in the Final Order. Bobby Wolford Trucking has not stated any plausible grounds on which the Commission should reconsider the Final Order, and we decline to do so.

ORDER

THE COMMISSION ORDERS That

- 13 (1) The Commission denies the Petition to Stay Final Order of Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc.
- 14 (2) The Commission denies the Petition for Reconsideration of Final Order of Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc.

DATED at Olympia, Washington, and effective July 8, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner