

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper	)	DOCKET TG-120308 ( <i>Consolidated</i> )
Carrier Classification of, and Complaint	)	
for Penalties against:	)	ORDER 03
	)	
MCAULIFFE AUTO SALES, INC.	)	
DBA MALTBY CONTAINER &	)	
RECYCLING	)	
.....	)	
	)	
In the Matter of the Penalty Assessment	)	DOCKET TG-140512 ( <i>Consolidated</i> )
Against	)	
	)	ORDER 01
MCAULIFFE AUTO SALES, INC.	)	
D/B/A MALTBY CONTAINER &	)	
RECYCLING	)	ORDER OF CONSOLIDATION
	)	AND NOTICE OF HEARING
In the Amount of \$27,100	)	<b>(Set for July 16, 2014, at 9:30 a.m.)</b>
	)	
.....	)	

1 On March 26, 2012, the Washington Utilities and Transportation Commission (Commission), pursuant to RCW 81.04.510, instituted a special proceeding (Docket TG-120308) on its own motion to determine whether McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling (Maltby or Company), is operating for the hauling of solid waste for compensation over the public highways in the state of Washington without the necessary certificate required for such operations by RCW 81.77.040. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service. Commission staff (Staff),<sup>1</sup> also complained against Maltby asserting three violations of RCW 81.77.040, and requested that the Commission, pursuant to RCW 81.04.380, impose penalties of \$1,000 per violation for a total of \$3,000.

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<sup>1</sup> In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

- 2 On June 19, 2012, the Commission entered in Docket TG-120308 Order 02 – Initial Order Approving Settlement Agreement; Requiring Respondent to Cease and Desist Operations; Imposing Penalties (Order 02). Order 02 became final on July 10, 2012.
- 3 Order 02 imposed a penalty of \$1,000 on Maltby, with \$700 suspended for a one-year period on condition that Maltby commit no further violations of RCW 81.77.040. Order 02 also directed Staff to conduct a compliance review and inspection of the business operations of Maltby to ensure compliance with its terms.
- 4 On January 30, 2014, Staff filed a Compliance Review and Inspection Report (Report) of Maltby’s operations from July 10, 2012 through July 10, 2013. Staff determined that the Company violated RCW 81.77.040 by providing solid waste collection services subject to regulation when it transported solid waste to a landfill for disposal 271 times during the compliance period. Staff recommended that the Commission impose the suspended \$700 suspended penalty for failure to comply with the conditions in Order 02.
- 5 On April 2, 2014, the Commission issued a notice stating that it finds that Staff’s Report provides *prima facie* grounds for imposing the suspended penalty. The Commission provided Maltby an opportunity to respond to the Report by April 18, 2014.
- 6 On April 18, 2014, Maltby filed with the Commission a statement of disputed issues of fact and law regarding staff’s compliance review and inspection report.
- 7 On April 1, 2014, the Commission issued a penalty assessment (Docket TG-140512) against Maltby in the amount of \$27,100. The Commission assessed the penalty for alleged violations of RCW 81.77.040, Certificate of convenience and necessity required, and Commission Order 02 issued pursuant to RCW 81.04.510 in Docket TG-120308, which ordered Maltby to cease and desist from advertising and providing all forms of solid waste collection services that require a certificate from the Commission.
- 8 On April 16, 2014, the Commission received a letter and request for hearing from Allan B. Bakalian, an attorney representing Maltby. Maltby’s letter provided no written statement or other support for its request for a hearing on the assessed penalty.

- 9 On April 17, 2014, the Commission provided Maltby with another opportunity to support its request if it filed a written statement of the reasons for its request for a hearing by April 24, 2014.
- 10 On April 24, 2014, Maltby filed a statement of disputed issues of fact and law regarding its penalty assessment. The Commission grants Maltby's request for a hearing.
- 11 The proposed imposition of the suspended penalty in Docket TG-120308 and the penalty assessment in Docket TG-140512 arise from the same facts. Pursuant to WAC 480-07-320, the Commission on its own motion may consolidate matters in which the fact of principles of law are related. The matters in Dockets TG-120308 and TG-140512 involve related facts and principles of law, and the Commission will consolidate those dockets for hearing and determination pursuant to WAC 480-07-320.
- 12 **THE COMMISSION GIVES NOTICE That it will hold a hearing in this matter before Administrative Law Judge Gregory J. Kopta at 9:30 a.m., on Wednesday, July 16, 2014, in Room 139, First Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

DATED at Olympia, Washington, and effective May 14, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING  
Executive Director and Secretary