

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper)	DOCKET TG-120308
Carrier Classification of, and Complaint)	(Consolidated)
for Penalties against:)	
)	ORDER 05
MCAULIFFE AUTO SALES, INC.)	
D/B/A MALTBY CONTAINER &)	
RECYCLING)	
.....)	
)	
In the Matter of the Penalty Assessment)	DOCKET TG-140512
Against)	(Consolidated)
)	
MCAULIFFE AUTO SALES, INC.)	ORDER 03
D/B/A MALTBY CONTAINER &)	
RECYCLING)	PREHEARING CONFERENCE
)	ORDER; NOTICE OF HEARING
)	(Set for January 21-22, 2015)
In the Amount of \$27,100)	
)	
.....)	

1 **NATURE OF PROCEEDINGS.** Docket TG-120308 involves a special proceeding the Washington Utilities and Transportation Commission initiated 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.

2 Docket TG-140512 involves a penalty assessment the Commission issued 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.

3 **CONFERENCE.** The Washington Utilities and Transportation Commission
(Commission) convened a prehearing conference in this docket at Olympia,
Washington on July 8, 2014, before Administrative Law Judge Gregory J. Kopta.

4 **APPEARANCES.** Alan B. Bakalian, Zeno Bakalian PC, Kirkland, Washington
represents Maltby. James K. Sells, Attorney Law Law, Gig Harbor, Washington
represents Washington Refuse and Recycling Association (WRRRA). Sara A. Kelly
and Polly L. McNeill, Summit Law Group, PLLC, Seattle, Washington represents
Waste Management of Washington, Inc. (Waste Management). Donald L. Anderson,
Eisenhower & Carlson, PLLC, Tacoma, Washington represents Lauts, Inc. d/b/a
Lautenbach Industries, Inc. (Lauts). Jennifer Cameron-Rulkowski, Assistant Attorney
General, Olympia, Washington, represents the Commission's regulatory staff
(Commission Staff or Staff).¹ Contact information provided at the conference for the
parties' representatives is attached as Appendix A to this order.

5 **PETITIONS FOR INTERVENTION.** On July 2, 2014, WRRRA, Waste
Management, and Lauts filed their respective petitions to intervene. Maltby objected
to the petitions on the grounds that none of these parties have a substantial interest in
the issues presented to the Commission for resolution. Staff and the petitioning
parties disagreed, contending that this case presents legal issues that directly impact
their interests. The Commission agrees that the petitioning parties have demonstrated
a substantial interest in the resolution of the legal issues presented. The Commission,
therefore, overruled the objection and granted all of the petitions for intervention.

6 **CONSENT TO ELECTRONIC SERVICE.** All parties have consented to service
electronically. The Commission, therefore, may serve only electronic copies of
notices and orders in these dockets to the party and representative email addresses on
file with the Commission.

7 **PROTECTIVE ORDER.** The parties ask that the Commission enter a protective
order in this docket under RCW 34.05.446, RCW 80.04.095, WAC 480-07-420 and

¹ 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.

WAC 480-07-423 to protect the confidentiality of proprietary information. The request was granted and a protective order will be entered in this docket.

- 8 **DISCOVERY.** The parties asked that the discovery rules be available in this docket, under WAC 480-07-400. The matter is one that qualifies for discovery, and the discovery rules, WAC 480-07-400 – 425, are available.
- 9 **PROCEDURAL SCHEDULE.** The parties agreed on a procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B.
- 10 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and submit all proposed cross-examination exhibits on January 12, 2015. The Commission requires three (3) copies of the fully unredacted version of exhibits. The Commission also requires two (2) copies of a redacted set of any confidential exhibits so that these can be made available by the Commission in response to a public records request or posted to the Commission's web pages.
- 11 Except as otherwise agreed between parties, proposed cross-examination exhibits must be served on all parties at the time they are filed with the Commission. Two copies must be furnished to the party sponsoring the witness the party intends to cross examine with the exhibits. Cross-examination exhibits must be organized into sets that are **tabbed, labeled, and grouped** according to the witness the party intends to cross examine with the exhibits. Cross-examination exhibits not conforming to these requirements may be rejected. Parties may waive the right to service of cross-examination exhibits in whole or in part. This may be appropriate, for example, when a proposed exhibit has been previously furnished during the discovery process.
- 12 **LIST OF EXHIBITS AND WITNESSES.** . Each party must file a list of its cross-examination exhibits and a list of witnesses it plans to call during the hearings. Both lists must be filed with the Commission and served on all parties on January 12, 2015.
- 13 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter commencing on **Wednesday, January 21, 2015, at 9:30 a.m., and continuing through January 22, 2015, if needed,** in the Commission's

Headquarters, Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

- 14 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an original plus two (2) copies of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 15 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 16 An electronic copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to [<records@utc.wa.gov>](mailto:records@utc.wa.gov). Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.
- 17 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Parties may submit documents electronically to the Commission on the filing deadline to expedite the filing process, but must file an original, plus two (2) paper copies, of the documents with the Commission by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. WAC 480-07-145(6). Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/efiling) or by e-mail to records@utc.wa.gov. Finally, to perfect filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding administrative law judge and advisory staff identified on Appendix A to this Order as well as to the parties to the proceeding.
- 18 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving

disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1355.

- 19 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective July 10, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKETS TG-120308 and TG-140512**

PARTY	REPRESENTATIVE	PHONE	E-MAIL
McAuliffe Auto Sales, Inc d/b/a Maltby Container & Recycling	Tony McAuliffe P.O. Box 1565 Snohomish, WA 98291		maltbycontainer@hotmail.com
	Allan B. Bakalian Zeno Bakalian P.S. 4020 Lake Washington Blvd. NE, Suite 100 Kirkland, WA 98033-7862	425-822-1511	abakalian@zenobakalian.com
Washington Refuse and Recycling Association	4160 – 6 th Avenue SE, Suite 205 Lacey, WA 98503		
	James K. Sells Attorney at Law PMB 22 3110 Judson Sreet Gig Harbor, WA 98335	360-981-0168	jamesells@comcast.net
Waste Management of Washington, Inc.	Andrew M. Kenefick 720 4 th Avenue, Suite 400 Kirkland, WA 98033-8136		akenefick@wm.com
	Sara A. Kelly Summit Law Group, PLLC 315 Fifth Avenue S Suite 1000 Seattle, WA 98104	206-676-7070	sarak@summitlaw.com
	Polly L. McNeill	206-676-7040	pollym@summitlaw.com
Lauts, Inc. d/b/a Lautenbach Industries, Inc.	4731 Lost Creek Road Bellingham, WA 98229		
	Donald L. Anderson Eisenhower & Carlson, PLLC 1200 Wells Fargo Plaza 1201 Pacific Avenue Tacoma, WA 98402		danderson@eisenhowerlaw.com
Commission Staff	Jennifer Cameron-Rulkowski Assistant Attorney General 1400 S. Evergreen Park Drive SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1186	jcameron@utc.wa.gov

APPENDIX B
PROCEDURAL SCHEDULE
DOCKETS TG-120308 and TG-140512

EVENT	DATE
Staff Profile Direct Testimony	Sept. 25, 2014
Intervenor and Company Response Testimony and Exhibits	Nov. 6, 2014
Company Rebuttal Testimony and Exhibits; Intervenor Cross-Answering Testimony and Exhibits	Dec. 4, 2014
Cross Examination Exhibits and Lists of Witnesses & Exhibits Filing Deadline	Jan. 12, 2015
Evidentiary Hearing	Jan. 21 – 22, 2015
Briefs	Feb. 26, 2015