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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the)
Penalty Assessment) Docket No. TG-143802 and
Against, Bobby Wolford) Docket No. TG-151573
Trucking.)

Hearing, Volume I
Pages 1-72

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

9:35 A.M.

APRIL 27, 2016

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A P P E A R A N C E S

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* * * * *

1	EXAMINATION INDEX		
2	PAM SMITH		PAGE
3	Mr. Casey.		8
4	Ms. Alvord.		13
5	Mr. Casey.		16
6	ROBERT WOLFORD		
7	Ms. Alvord.		30
8	Mr. Casey.		37
9	Ms. Alvord.		41
10	SCOTT MILLER		
11	Ms. Alvord.		42
12	Mr. Casey.		46
13	DAVID PRATT		
14	Mr. Casey.		50
15	Ms. Alvord.		59

18	EXHIBIT INDEX		
19	EXHIBITS FOR IDENTIFICATION		PAGE
20	Exhibit PS-1	Investigation Report	10
21	Exhibit NW-1	Declaration of Neil Williams	24

1 OLYMPIA, WASHINGTON; APRIL 27, 2016

2 9:35 A.M.

3 --o0o--

4
5 JUDGE PEARSON: Let's go ahead and be on the
6 record. My name is Rayne Pearson. I'm the
7 administrative law judge presiding over today's brief
8 adjudicative proceeding. Today is Wednesday, April
9 27th, 2016, and the time is approximately 9:35 a.m.

10 On February 24th, 2016, the Commission
11 issued an order instituting special proceeding and
12 complaint seeking to impose penalties against Bobby
13 Wolford Trucking and Salvage, Inc. d/b/a Bobby Wolford
14 Trucking and Demolition, Inc. in Docket TG-151573. The
15 complaint alleges that Bobby Wolford Trucking
16 transported solid waste on 170 separate occasions in
17 violation of Commission rules and that those same
18 actions also violated the Commission's order in Docket
19 TG-143802, which directed the company to cease and
20 desist operating -- transporting solid waste without the
21 required permission issued certificate.

22 So as Mr. Casey stated when we were off the
23 record, Commission Staff did file a motion requesting
24 that these two dockets be consolidated and be heard
25 together at today's brief adjudicative proceeding. So

1 does the Company have any objection to consolidating
2 these dockets?

3 MS. ALVORD: No objection.

4 JUDGE PEARSON: Okay. Then dockets
5 TG-143802 and TG-151573 are consolidated.

6 So I will take appearances and hear from the
7 parties in just a moment. As I stated off the record, I
8 want to divide the hearing kind of into two parts this
9 morning. So first we'll address the violations, which
10 means we will just be looking at the facts of the case.
11 And then in the second part, we can talk about the
12 penalty amount, get a penalty recommendation from Staff
13 and then hear anything from the Company about factors
14 that go to mitigation of the penalty amount.

15 So before we get started, I would like to
16 ask the parties to waive the requirement that the
17 Commission issue an order within ten days of this
18 proceeding. It typically works better if I issue an
19 order within ten days of receiving the transcript so
20 that I have that available to me when I am making my
21 decision. So does either party have any objection to
22 that?

23 MR. CASEY: No objection from Staff.

24 MS. ALVORD: No objection.

25 JUDGE PEARSON: Okay. Thank you. So

1 because Staff initiated both enforcement actions, we'll
2 have Staff go first this morning.

3 So does anyone have any questions before we
4 get started?

5 MS. ALVORD: No.

6 MR. CASEY: No, Your Honor.

7 JUDGE PEARSON: Okay. So, Mr. Casey, if you
8 just want to enter a short appearance.

9 MR. CASEY: Yes, my name is Christopher
10 Casey. I'm assistant attorney general representing
11 Commission Staff and my address is on record with
12 Commission.

13 JUDGE PEARSON: Okay. Thank you.

14 And, Ms. Alvord, I did see that you entered
15 a notice of appearance in the older docket, but let's
16 just go ahead and take a full appearance now on the
17 record.

18 MS. ALVORD: My name is Elizabeth Alvord. I
19 represent Bobby Wolford Trucking.

20 JUDGE PEARSON: Okay. Can you spell your
21 last name for the court reporter.

22 MS. ALVORD: A-l, v as in Victor, o-r-d.

23 JUDGE PEARSON: And can you give us your
24 address, phone number, and email address.

25 MS. ALVORD: Yes. 221 Lake Avenue West,

1 Kirkland, Washington 98033. My phone number is
2 425-505-1865, my email address is
3 EAlvordattorney@yahoo.com.

4 JUDGE PEARSON: Thank you. Okay.
5 Mr. Casey, you may proceed when you're ready.

6 MR. CASEY: Thank you, Your Honor.

7 Today we're here to resolve three key
8 issues, whether Bobby Wolford Trucking conducted
9 business subject to regulation under Title 81, whether
10 Bobby Wolford Trucking violated RCW 81.77.040 by hauling
11 solid waste for compensation without first having
12 obtained from the Commission a certificate of public
13 convenience and necessity, and whether Bobby Wolford
14 Trucking violated the settlement agreement approved
15 without condition by the Commission in Docket TG-143802.

16 Today's Staff will provide evidence
17 demonstrating the essential facts necessary to
18 demonstrate all three, and we will put on testimony from
19 Pam Smith, who's a compliance investigator -- was a
20 compliance investigator for the Commission and that's
21 it.

22 JUDGE PEARSON: Okay. So did you want to
23 call Ms. Smith?

24 MR. CASEY: Yes, I would like to call
25 Ms. Smith to the stand.

EXAMINATION BY CASEY / SMITH

1

2 PAM SMITH, witness herein, having been
3 first duly sworn on oath,
4 was examined and testified
5 as follows:

6 MR. CASEY: So quickly, as I mentioned off
7 the record, we have -- we largely have stipulated with
8 the Company to the essential facts in this case. And
9 they for the most part, except for the number of
10 violations, do not dispute the -- is my understanding
11 that they do not dispute the essential facts in this
12 case. And so I will just have some questions for Pam
13 Smith about her investigation report.

14 JUDGE PEARSON: Okay.

15

16 EXAMINATION

17 BY MR. CASEY:

18 **Q. Ms. Smith, please state your full name and spell**
19 **it for the record.**

20 A. Pam Smith, S-m-i-t-h.

21 **Q. And what is your current occupation?**

22 A. I'm a -- currently a program specialist with the
23 Department of Transportation.

24 **Q. And have you previously worked for the Utilities**
25 **and Transportation Commission?**

EXAMINATION BY CASEY / SMITH

1 A. Yes, during this investigation, I was a
2 compliance investigator with the transportation safety
3 section.

4 **Q. How long were you employed by the Commission?**

5 A. Almost 26 years.

6 **Q. And what were your duties as a compliance**
7 **investigator?**

8 A. I conducted investigations into the operating
9 and safety practices of regulated transportation
10 companies and investigated companies that appeared to be
11 operating without authority.

12 **Q. And had you ever investigated Bobby Wolford**
13 **Trucking?**

14 A. Yes.

15 **Q. Did you document your investigation?**

16 A. Yes, there was an investigation report in 2014.

17 **Q. And was that the only time you investigated**
18 **Bobby Wolford Trucking?**

19 A. No, the current investigation that we're here
20 today.

21 **Q. And did you document that investigation?**

22 A. Yes, I did.

23 **Q. So you have investigated Bobby Wolford Trucking**
24 **on two separate occasions and each of those**
25 **investigations were documented by a Staff investigation**

EXAMINATION BY CASEY / SMITH

1 **report?**

2 A. Yes.

3 **Q. Okay. And your investigation report that --**
4 **your investigation report has been -- is on file with**
5 **the Commission in both dockets, Docket TG-151573 and**
6 **TG-143802?**

7 A. Yes.

8 **Q. And do you know if those investigation reports**
9 **were served with the complaints in each docket?**

10 A. Yes.

11 **Q. And was the -- and do you have any changes to**
12 **your report?**

13 A. No.

14 **Q. Was your report true and correct to the best of**
15 **your knowledge?**

16 A. Yes.

17 MR. CASEY: So we would like to move the
18 current investigation report from Docket TG-151573 into
19 evidence today.

20 JUDGE PEARSON: Okay. Ms. Alvord, do you
21 have any objection?

22 MS. ALVORD: I have no objection.

23 JUDGE PEARSON: Okay. So I will turn my
24 microphone back on and will admit that and mark it as
25 Exhibit PS-1.

EXAMINATION BY CASEY / SMITH

1 MR. CASEY: And, Judge Pearson, I am happy
2 to go through some of the essential facts with Pam if
3 you like, but because we stipulate largely to those
4 facts, I can -- we can move on to the supplemental
5 information that Ms. Alvord would like to discuss. I
6 can also have Pam discuss the number of violations,
7 which seems to be the one place we have a little bit of
8 disagreement.

9 JUDGE PEARSON: Okay. Why don't we do that.

10 MR. CASEY: Okay.

11 BY MR. CASEY:

12 **Q. So, Ms. Smith, in your report, how many -- how**
13 **many violations or how many hauls did you determine that**
14 **Bobby Wolford Trucking did of waste from the pier**
15 **demolition project to the Cathcart facility?**

16 A. Well, I documented 170. I contacted Snohomish
17 County, the Cathcart facility, and they provided records
18 of 170 loads that were transported to their facility.

19 **Q. Okay. And was that the only evidence you**
20 **reviewed in terms of the number of -- the number of**
21 **loads?**

22 A. No, Bobby Wolford Trucking, in a data request,
23 provided reports of 164 loads.

24 **Q. And did you compare and contrast the evidence**
25 **provided by the Company and the evidence provided by the**

EXAMINATION BY CASEY / SMITH

1 **Cathcart facility?**

2 A. Yes, I looked at the records that Bobby Wolford
3 provided and then the Cathcart facility records and
4 matched them up with license plate numbers of Bobby
5 Wolford Trucking.

6 **Q. And so you said there was only a discrepancy in**
7 **terms of -- was it six violations?**

8 A. Actually, when I went through using license
9 plate numbers, the five -- there was five loads that
10 Bobby Wolford Trucking did not -- or four loads that
11 they didn't provide me the last four that the Snohomish
12 County facility did. But when I looked at those, they
13 had the same license plate numbers that had been used
14 and also the truck identification on -- is on Appendix
15 K, showed Wolford trucks. So there could be one -- one
16 or two maybe.

17 **Q. And after reviewing all of the evidence, why did**
18 **you ultimately determine that there were 170 violations?**

19 A. In my judgment, I felt that the Cathcart
20 facility records were more accurate.

21 **Q. And the temp records from the Cathcart facility,**
22 **are those the kind of records that a disposal facility**
23 **like the Cathcart facility would normally keep?**

24 A. Yeah, they keep all of those.

25 **Q. Okay.**

EXAMINATION BY ALVORD / SMITH

1 A. Tracking.

2 **Q. Okay. Thank you.**

3 MR. CASEY: Because we have agreement to the
4 facts outside of that issue, I have no further
5 questions.

6 JUDGE PEARSON: Okay. Ms. Alvord, do you
7 have any questions for Ms. Smith?

8 MS. ALVORD: I do.

9 JUDGE PEARSON: Okay.

10 MS. ALVORD: Thank you.

11

12 E X A M I N A T I O N

13 BY MS. ALVORD:

14 **Q. Ms. Smith, did the Utilities and Transportation**
15 **Commission receive an initiating complaint that launched**
16 **the investigation against Bobby Wolford Trucking from**
17 **the outside? Did it receive an informal complaint?**

18 A. Yes, we received a phone call. I received a
19 phone call.

20 **Q. So was that complaint only in a form of a phone**
21 **call and not a written complaint?**

22 A. No, a lot of our complaints come through phone
23 calls or emails, so I received a phone call from the
24 solid waste company.

25 **Q. And which solid waste company complained?**

EXAMINATION BY ALVORD / SMITH

1 A. It was from Rubatino.

2 **Q. And is it your understanding that Rubatino**
3 **Refuse Removal territory is Snohomish County?**

4 A. I don't know if it's just Snohomish County. I
5 know that they do have territory in Snohomish County.

6 **Q. Are you familiar with the statutory requirements**
7 **for outside complaints to be received by the UTC in that**
8 **the statute requires that complaints be made in writing**
9 **and not be taken by phone calls?**

10 A. That I don't believe -- informal complaints can
11 be taken via phone call.

12 **Q. So you're not familiar with that statute?**

13 MR. CASEY: Objection. Point of
14 clarification. Which statute are you talking about?

15 MS. ALVORD: I'm referring to RCW 80.04.110,
16 paragraph 1-A. This statute requires that complaints
17 that are made by the public other than the Commission
18 itself, by petition or complaint in writing. It
19 requires that the complaint be made in writing.

20 MR. CASEY: Yeah. Your Honor, it's my
21 understanding that it's formal complaints.

22 JUDGE PEARSON: That's correct. And so just
23 as a point of clarification for you, we do have WACs
24 that talk about informal complaints and how those can be
25 made, and we do accept complaints over the phone,

EXAMINATION BY ALVORD / SMITH

1 through our website, in an email. So that relates only
2 to a very specific circumstance where an outside party
3 might want to come in and formally complain against a
4 regulated entity.

5 MS. ALVORD: Okay.

6 BY MS. ALVORD:

7 Q. Was it only Rubatino Refuse Removal that
8 complained against Bobby Wolford Trucking?

9 A. That is what instigated the complaint. I didn't
10 receive any other phone calls.

11 Q. So you didn't receive a complaint from Republic
12 Services, for example, a complaint against Bobby Wolford
13 Trucking?

14 A. No.

15 Q. In your investigation, did you also discover
16 that Allen Shearer Trucking provided end dumps for the
17 Mukilteo pier removal project?

18 A. No.

19 Q. Did you investigate Allen Shearer --

20 A. No.

21 Q. -- Trucking?

22 Did you inquire in your investigation with any
23 agency or private company if other trucking companies
24 were involved in the Mukilteo pier removal?

25 A. No, I did not.

EXAMINATION BY CASEY / SMITH

1 MS. ALVORD: That's all the questions I
2 have.

3 JUDGE PEARSON: Thank you.

4 Mr. Casey, do you wish to redirect or are
5 you good?

6 MR. CASEY: Just one or two questions.
7

R E D I R E C T E X A M I N A T I O N

8
9 BY MR. CASEY:

10 Q. Ms. Smith, there was a settlement agreement
11 approved by the Commission in Docket TG-143802 for
12 violation of operating as a solid waste hauler without a
13 permit. In that previous docket, which has been
14 consolidated with this one, when the Commission accepted
15 that settlement agreement, did they direct Staff to do a
16 follow-up investigation on Bobby Wolford Trucking?

17 A. Yes, they were under review for one year from
18 the time of the settlement agreement.

19 Q. And the 170 hauls that we are talking about
20 today, did that occur within one year of that
21 settlement -- when that settlement agreement was
22 approved by the Commission?

23 A. Yes.

24 MR. CASEY: Thank you. No further
25 questions.

1 JUDGE PEARSON: Thank you.

2 MS. ALVORD: No questions.

3 JUDGE PEARSON: Okay. Ms. Alvord, I think,
4 then, what we should do now is have you go ahead and
5 present your case, and we will wait maybe and get
6 Staff's penalty recommendation at the conclusion of her
7 case in case some facts come up that may change Staff's
8 mind.

9 MS. ALVORD: To begin, I have some displays
10 here that I am using for demonstrative evidence only.
11 Not for substantive evidence. I don't expect to request
12 they be admitted into evidence, but I would like to use
13 these for illustrative purposes if that's permissible.

14 JUDGE PEARSON: Mr. Casey, do you have any
15 objection?

16 MR. CASEY: I have no objection.

17 JUDGE PEARSON: Okay. That's fine.

18 MS. ALVORD: I don't have an easel, so I am
19 going to be the human easel for this.

20 JUDGE PEARSON: Okay.

21 MS. ALVORD: Or maybe I'll set it down here.
22 And I have provided copies to counsel, smaller pictures
23 that depict what I am showing here.

24 So the first photograph here, Your Honor, is
25 a representative picture of the many employees that work

1 for Bobby Wolford Trucking. The next photographs depict
2 and -- and also Staff -- or Mr. Casey has copies of
3 these, as well -- depict the Mukilteo pier removal
4 itself. These were taken from a local newspaper and who
5 took pictures of the actual removal. So here are these
6 photographs. I don't know if that helps down there
7 but -- I am sorry.

8 JUDGE PEARSON: If you could just show me
9 before you set them down.

10 MS. ALVORD: Sure.

11 JUDGE PEARSON: Okay. Thank you.

12 MS. ALVORD: Yes, you're welcome.

13 The last photograph is a picture of a Bobby
14 Wolford end dump trailer and what that looks like.

15 JUDGE PEARSON: Thank you.

16 MS. ALVORD: So a little background
17 information, Your Honor, which I think is so important
18 in this case. Bobby Wolford Trucking is a small company
19 that's located in tiny Maltby, Washington. For nearly
20 40 years, Bobby Wolford has employed citizens of Western
21 Washington, provided jobs, and supported families in the
22 Maltby, Woodinville, and Snohomish, King County area.

23 For nearly four decades of service to
24 Western Washington, Bobby Wolford has only been a
25 subject of formal complaint with the UTC twice in four

1 decades. That's a pretty startling statistic, and it
2 goes to show that Bobby Wolford has a commitment and
3 respect for the Commission and its rules and
4 regulations.

5 More specifically to this particular case,
6 in early 2015, Pacific Pile & Marine, a Washington
7 company, was awarded a contract with the Washington
8 State Department of Transportation to demolish the
9 Mukilteo pier. And it shows you in the pictures down
10 here what that -- pretty much what that looks like. In
11 fact, that's pictures of Pacific Pile & Marine
12 demolishing the pier.

13 This was a huge project and it required lots
14 and lots of planning. No small part of this planning
15 was determining the safest, most efficient way to remove
16 an estimated 7,000 tons of creosote-soaked timber.
17 That's 4 percent -- this is a statistic that came from
18 the same newspaper that provided these photographs --
19 that's about 4 percent of all the creosote in Puget
20 Sound.

21 By August of 2015, Pacific Pile & Marine was
22 ready to go ahead with the demolition and they began
23 searching for companies that could handle the transport
24 of these piers, and Pacific Pile contacted Bobby Wolford
25 directly for two reasons. The first reason is that

1 Bobby Wolford had end dump trailers, and I'll explain in
2 a few minutes why end dump trailers were so important in
3 this project.

4 And secondly, because -- and we'll present
5 this evidence here shortly -- Snohomish County, through
6 Bernard Myers, who is a Snohomish County official,
7 provided to Pacific Pile & Marine specific authority to
8 contract with whomever they wished. So for those two
9 reasons, Bobby Wolford accepted the job.

10 Logistically, this is how this works.
11 Because the Mukilteo pier is located in Snohomish
12 County, the demolition materials were -- had to be --
13 per Snohomish County rules, had to be taken to a
14 Snohomish County transfer station. But in this
15 particular case, because the piles that were being
16 removed were so gigantic, the City of Mukilteo got
17 involved and said, hey, we don't want you trucking those
18 pilings through the City of Mukilteo because they were
19 worried about the negative impact on traffic, so they
20 insisted, the City of Mukilteo, that Pacific Pile &
21 Marine barge those big pilings down to their staging
22 facility in Seattle, Duwamish, where Pacific Pile &
23 Marine had the small staging area where they could
24 offload the pilings and then transport them all the way
25 back up to Snohomish County so Snohomish County could

1 get their dump fees, I presume.

2 So -- and it might help to look at these
3 pictures, Your Honor, but just picture these pilings.
4 This was holding up a big pier. These are gigantic,
5 long creosote-soaked timbers and Pacific Pile & Marine
6 was very adamant, as was WSDOT and the City of Mukilteo
7 that those pilings be removed in one piece. And the
8 reason why they wanted to do that was because they were
9 so soaked with creosote, there was a concern about
10 contamination. If they chopped them up, you know, would
11 that seep into the land, would it dump out, okay. So
12 they wanted to remove them in one piece and that's
13 exactly what they did.

14 So when they barged those down to Seattle,
15 they considered the staging facility, which was very
16 small and tight, and the fact that they wanted to
17 transport those pilings in one piece and Pacific Pile &
18 Marine recognized the only way, the only safe and
19 efficient way they could get those pilings off the barge
20 and transported up to Snohomish County was if they used
21 end dump trailers.

22 Here is a picture of an end dump trailer
23 here and I don't know if you're familiar with what they
24 look like in real life, Your Honor. In fact, I should
25 have a guy standing next there, but end up trailers are

1 eight feet high and these end dump trailers are 33 feet
2 long. They're big and the other important feature of
3 these particular types of trailers is that, like the
4 name says, they can dump off their end. So they're easy
5 to transload. You don't have to get an excavator in
6 there to offload them and again risk creosote flaking
7 off and all of that, okay. So they dump directly.

8 So this is why they wanted to use end dump
9 trailers and why they really needed to. Plus, the only
10 other way to get those out of there would be if -- what
11 they use is Rabanco cans, which are these big containers
12 that they -- you know, materials are dumped into and
13 then put on trains and taken to Roosevelt. But that
14 wasn't an option in this case because there wasn't
15 enough room at the staging facility to put in a Rabanco
16 can at that point, at that point. And because the end
17 dump trailers could transload those long pilings in one
18 piece, okay. So that's the practical reason why Pacific
19 Pile & Marine came to Bobby Wolford Trucking.

20 Now you say, well, why didn't they go to the
21 local solid waste hauler? I don't have privilege of the
22 information of what, you know, Pacific Pile, what phone
23 calls they made or didn't make or whatever they did.
24 But we do know that Republic Services does not have end
25 dump trailers. They couldn't have provided that service

1 and, in fact, Republic Services would have had to
2 subcontract with somebody like Bobby Wolford Trucking in
3 order to do -- use end dumps to make this job safe and
4 efficient.

5 So for practical purposes, even if Pacific
6 Pile & Marine contacted Republic, they would have hired
7 us anyway to do the job. So because they needed end
8 dump trailers, that's why they went to us and the
9 question arose, well, how do we have the authority to do
10 that? And this is important because it shows that we
11 did not -- Bobby Wolford Trucking did not have the
12 intent of wrongdoing. It did not have the intent of
13 violating its permit. 40 years of a clean record shows
14 that we have complied -- my clients complied over and
15 over with rules and regulations set forth by the UTC.

16 I've supplied to Mr. Casey the declaration
17 of Neil Williams, who is the project manager for Pacific
18 Pile & Marine. May I approach?

19 JUDGE PEARSON: Sure.

20 MS. ALVORD: This declaration sets forth
21 what I am about to describe in terms of Pacific Pile &
22 Marine's --

23 JUDGE PEARSON: Are you offering this into
24 evidence?

25 MS. ALVORD: I am, Your Honor. I am

1 offering this into evidence.

2 JUDGE PEARSON: Mr. Casey, do you have --

3 MR. CASEY: This is the declaration of Neil
4 Williams?

5 JUDGE PEARSON: Right.

6 MR. CASEY: I don't object. I just would
7 ask Your Honor to give it the appropriate weight for
8 what it is. It's a declaration of someone who is not
9 here today and cannot be cross-examined.

10 JUDGE PEARSON: Right, and I agree. So I
11 will admit it into evidence with the caveat that I will
12 only afford it the weight that I can given that he is
13 not available today to testify to the contents of
14 declaration.

15 MS. ALVORD: Yes, and I would add that it
16 is -- the declaration is signed under penalty of
17 perjury.

18 JUDGE PEARSON: Right, and so I will admit
19 that and mark it as NW-1.

20 MS. ALVORD: Thank you.

21 So if we take -- if we look at this
22 declaration of Mr. Williams, who, again, is the project
23 manager for Pacific Pile & Marine and specifically on
24 this project, the Mukilteo pier removal, we find that
25 Pacific Pile & Marine -- now, we're talking about how

1 did Bobby Wolford feel comfortable with the authority to
2 go forward with using his end dumps. Pacific Pile &
3 Marine provided Bobby Wolford with an email, which is
4 part of the declaration from Bernard Myers, a Snohomish
5 County official, who said to Pacific Pile & Marine, you
6 can use any contractor to deliver the material to the
7 transfer station.

8 So here's an email from a Snohomish County
9 official directing Pacific Pile & Marine that they can
10 use any contractor to haul the Pacific pilings -- or I'm
11 sorry, the pier pilings from Seattle to the transfer
12 station. Bobby Wolford Trucking had no reason to doubt
13 the Snohomish County's authority. It had no reason to
14 distrust that authority. When we receive a phone call,
15 our dispatcher takes that phone call and he makes a --
16 pretty much a split-second decision. When we questioned
17 that, we said, what authority can you provide us that we
18 can provide this service for the public. And they said
19 Snohomish County and here's the proof of it.

20 So when Wolford took that in, they go, okay.
21 That seems authoritative enough, we understand that, and
22 we will move ahead. That's where they got the authority
23 and that where's where they reasonably believed that
24 they had the authority.

25 So for two reasons, just to reiterate why

1 Wolford did this or why Wolford took this job on is that
2 Snohomish County assured them they could use any
3 contractor, Pacific Pile, and Pacific Pile needed end
4 dumps. Republic Services didn't have end dumps, that
5 was their territory, and Wolford did.

6 There are essentially five reasons why there
7 shouldn't be any penalty assessed in this case, Your
8 Honor. Would you like me to proceed with that at this
9 point?

10 JUDGE PEARSON: Sure. Did you have any
11 witnesses that you were going to put on today?

12 MS. ALVORD: Yes.

13 JUDGE PEARSON: Okay.

14 MS. ALVORD: I can put them first if you'd
15 prefer.

16 JUDGE PEARSON: If it goes to number of
17 hauls, I would like to address that.

18 MS. ALVORD: It doesn't go to the number of
19 hauls.

20 JUDGE PEARSON: Okay. It goes to penalty
21 mitigation?

22 MS ALVORD: Yes.

23 JUDGE PEARSON: Okay. And were you going to
24 address the dispute over the number of hauls?

25 MS ALVORD: We'll concede that it's 170.

1 JUDGE PEARSON: Okay. Yes, so if you want
2 to proceed with the five reasons, that's fine.

3 MS. ALVORD: Okay. So there are five
4 reasons why there shouldn't be a penalty assessed in
5 this case, Your Honor. The first reason is Pacific Pile
6 & Marine instructed Wolford Trucking that Snohomish
7 County granted them specific authority to use any
8 contractor.

9 The second reason why no penalty should be
10 assessed is that Wolford Trucking was serving an
11 important public need by providing the end dumps when
12 the designated solid waste hauler, Republic Services,
13 for that area, could not provide end dumps and would
14 have had to have subcontracted with Bobby Wolford or
15 other end dump providers anyway.

16 The third reason is the solid waste hauler,
17 Republic, for that area -- oh, I'm sorry. The solid
18 waste hauler in Snohomish County, which would have been
19 Mr. Rubatino, who also -- who was the complainant in
20 this particular case, doesn't have end dumps either.
21 There was no local solid waste hauler that had end dumps
22 that could do this service.

23 Fourthly, this is Republic Services'
24 territory and they had no issue with Wolford Trucking
25 performing this service. It was their right to complain

1 about Wolford's service but they didn't. Ms. Smith
2 testified that it was Rubatino that complained against
3 Bobby Wolford, and Mr. Rubatino had no right to complain
4 against Wolford since it wasn't his territory.

5 Fifthly, there is an issue concerning the
6 origin and the form of the complaint, but as Your Honor
7 explained that, I guess the Commission can take informal
8 complaints.

9 So finally, I think overall in light of all
10 those particular facts, Snohomish County's authority --
11 and even if Snohomish County didn't have the real
12 authority to grant that to Mr. -- to Bobby Wolford
13 Trucking, Bobby Wolford Trucking took that from both
14 Pacific Pile and from Snohomish County authority to not
15 distrust them. It was a reasonable reliance on that.
16 And because we were providing a public service that no
17 other solid waste hauler could provide.

18 If penalties are assessed against Wolford in
19 the amount that the Commission is seeking, from a
20 practical standpoint, we're looking at the possibility
21 that Bobby Wolford Trucking would be put out of business
22 and that 50 people with their families will be out of
23 work. In 40 years, Wolford Trucking has only
24 encountered formal complaints from the UTC twice. We're
25 asking the Court to keep this in mind as it determines

1 whether or not a penalty should be assessed.

2 We respectfully request that no penalties be
3 assessed in light of the fact that there was no intent
4 to circumvent the rules or regulations of the UTC. When
5 they contacted us and told us to stop hauling, we
6 immediately stopped, my client immediately stopped
7 hauling and promptly requested of the UTC for a
8 temporary solid waste certificate, which they refused to
9 give us. I don't know the reason why they refused to
10 give us, but it was refused. Very shortly after that,
11 we immediately applied for a solid waste certificate for
12 the specific purpose of using end dump trailers. That
13 particular application is currently pending before the
14 Commission now.

15 In light of all of this and the totality of
16 the efforts that Wolford has gone through, in light of
17 its very, very clean record over four decades, in light
18 of the fact that a penalty will very likely crush this
19 company and 50 people lose jobs, we're asking the Court
20 to deny any penalty be imposed against Wolford Trucking.

21 With that, I have two witnesses.

22 JUDGE PEARSON: Okay. Who would you like to
23 call first?

24 MS. ALVORD: Bobby Wolford.

25 JUDGE PEARSON: Okay. If you would please

1 stand and raise your right hand.

2

3 ROBERT WOLFORD, witness herein, having been
4 first duly sworn on oath,
5 was examined and testified
6 as follows:

7

8 JUDGE PEARSON: You may have a seat. If you
9 could pull the microphone close to you and push the
10 button. When the light comes on, that means the
11 microphone is on. You don't have to hold it down.
12 There you go.

13

14 E X A M I N A T I O N

15 BY MS. ALVORD:

16 Q. Would you state your name for the record?

17 A. Robert C. Wolford.

18 Q. Mr. Wolford, what is your position at Bobby
19 Wolford Trucking?

20 A. Owner.

21 Q. You're the owner.

22 How long has Bobby Wolford Trucking been in
23 existence?

24 A. 40-plus years.

25 Q. Are you familiar with the Mukilteo pier project?

1 A. Yes.

2 **Q. How are you familiar with that?**

3 A. We were contacted by Pacific Pile as a
4 subcontractor to haul their material.

5 **Q. Okay. Did they say why they needed -- what**
6 **particularly they needed from Bobby Wolford Trucking?**

7 A. Needed open-topped 33-foot end dumps.

8 **Q. Okay. And why did they need end dumps?**

9 A. Because they were craning the material into the
10 open top and it had to be contained because it was
11 creosote and tarped.

12 **Q. Okay.**

13 A. And we had that equipment.

14 **Q. Okay. To your knowledge, does Republic Services**
15 **have end dump trailers?**

16 A. No, they do not.

17 **Q. Does Rubatino Refuse Removal have end dump**
18 **trailers?**

19 A. No, they have little 30-yard roll-offs.

20 **Q. Did Pacific Pile & Marine -- was there other**
21 **reasons why they needed end dump trailers concerning the**
22 **facility?**

23 A. Yes, so we could unload at the other end.

24 **Q. And what about the configuration of the facility**
25 **in Seattle?**

1 A. It was small at that time and could only
2 accommodate like a 33-foot end dump.

3 **Q. Okay. How big are end dump trailers?**

4 A. 33 feet long and have like 6-and-a-half-foot
5 sides, 7-foot sides.

6 **Q. About 96 inches, would you say?**

7 A. Mm-hmm.

8 **Q. To your knowledge, did Wolford agree to provide**
9 **end dump service for Pacific Pile & Marine?**

10 A. Yes.

11 **Q. Did Bobby Wolford Trucking believe it had the**
12 **authority to provide that service to Pacific Pile &**
13 **Marine?**

14 A. Yes, it's the kind of materials we haul daily.

15 **Q. On what basis -- what was -- the email that**
16 **Wolford reviewed from Snohomish County, was this one of**
17 **the reasons why you believed you had the authority to**
18 **haul that?**

19 A. Yes.

20 **Q. Did you have any reason to doubt Snohomish**
21 **County's authority to -- that you could -- that any**
22 **contractor could make this haul?**

23 A. No, they control the waste up in Snohomish
24 County.

25 **Q. To your knowledge, did anyone else, any other**

1 **trucking company provide end dump service for the**
2 **Mukilteo pier removal?**

3 A. I wasn't on that job, but I heard Allen Shearer
4 was there.

5 **Q. Okay.**

6 A. And he has high cube end dumps like I do.
7 There's only about three or four of us in the industry
8 that have this equipment.

9 **Q. Okay. Did Bobby Wolford Trucking provide safe**
10 **and efficient service for Pacific Pile in removing the**
11 **pier pilings?**

12 A. Yes, we had a safety program we put all our
13 drivers through, hard hats, and vests and proper
14 equipment.

15 **Q. Do you believe that Bobby Wolford Trucking,**
16 **because of its end dump service, provided a public need**
17 **in this instance?**

18 A. Definitely.

19 **Q. How so?**

20 A. We had that equipment and we provided the
21 service they needed with safe equipment.

22 **Q. Okay.**

23 A. And we're in the service business. When we get
24 a call like that, we take care of them.

25 **Q. Okay. Did -- at some point, did the Utilities**

1 **and Transportation Commission contact Bobby Wolford**
2 **Trucking and tell them to stop hauling for Pacific Pile**
3 **& Marine?**

4 A. Yeah, when we were just about done with the
5 project.

6 Q. Okay. And what did Bobby Wolford Trucking do
7 when the Utilities and Transportation Commission told
8 them to stop?

9 A. We stopped.

10 Q. Okay. Then what did it do?

11 A. Applied for some authority, some temporary
12 permit.

13 Q. Okay.

14 A. Or temporary authority to get this job done.

15 Q. Okay. And did the Utilities and Transportation
16 Commission grant that temporary authority?

17 A. No.

18 Q. What did Bobby Wolford Trucking do next in terms
19 of authority?

20 A. We applied for a specialized authority just
21 using end dumps to help the garbage or --

22 Q. Right.

23 A. -- the industry.

24 Q. Yeah, and is that particular application pending
25 before the Commission now?

1 A. Yes.

2 Q. Okay. You mentioned that you've been in
3 business for 40-plus years.

4 A. Yes.

5 Q. How many employees would you say have worked for
6 Bobby Wolford in 40 years?

7 A. Hundreds.

8 Q. How many employees do you have now?

9 A. 40-plus.

10 Q. Do they support families?

11 A. Yes.

12 Q. In 40 years, how many times have you received a
13 formal complaint from the Utilities and Transportation
14 Commission?

15 A. None to my knowledge.

16 Q. Other than this one and last year?

17 A. Yes.

18 Q. Okay.

19 A. And may I say, those two were the two biggest
20 contracts we've ever done. They were both in Snohomish
21 County and then, again, on both instances, they required
22 specialized equipment. One was the fast track Boeing
23 job we did with Democon and Hoffman Construction, and we
24 were the biggest guys to have -- well, we supplied like
25 five end dumps for that program, too.

1 Q. Mr. Wolford, do you recall when you entered into
2 a settlement agreement with the Utilities and
3 Transportation Commission last year?

4 A. Yes.

5 Q. Did you pay a penalty for that? Did you pay an
6 amount, a penalty amount, as a result of that settlement
7 agreement?

8 A. I believe so.

9 Q. Do you recall how much that was?

10 A. No.

11 Q. Would the amount \$20,000 resonate with you?

12 A. Yes.

13 Q. At least 20,000?

14 A. Yes.

15 Q. Okay. Mr. Wolford, if a penalty is assessed in
16 this case, what impact would that have on Bobby Wolford
17 Trucking?

18 A. I will probably shut the company down. I am 69
19 years old and I don't need these headaches.

20 Q. Would 40-plus people lose their jobs?

21 A. Yes.

22 MS. ALVORD: That's all the questions that
23 I have for Mr. Wolford.

24 JUDGE PEARSON: Mr. Casey, do you have any
25 questions for Mr. Wolford?

EXAMINATION BY CASEY / WOLFORD

1 MR. CASEY: I do. I have several.

2

3 E X A M I N A T I O N

4 BY MR. CASEY:

5 Q. So, Mr. Wolford, do you acknowledge that this
6 project was very similar to the Boeing project that was
7 the subject of the previous investigation?

8 A. It was similar, yes, in that they're both fast
9 track and specialized equipment was needed.

10 Q. And did they both involve hauling construction
11 or demolition debris?

12 A. Yes, that's what I star in.

13 Q. And prior to taking on this project with Pacific
14 Pile, did you contact the UTC or Commission or
15 Commission Staff?

16 A. Prior to taking this job on you say?

17 Q. Yes.

18 A. No.

19 Q. No.

20 And when you -- when Commission Staff told you
21 to stop and you applied for a temporary permit, is it
22 true that you asked that permit to be applied
23 retroactively to this job?

24 A. Staff did it so I believe so.

25 MR. CASEY: So I will just reference the

EXAMINATION BY CASEY / WOLFORD

1 Court to the letter from Ms. Alvord in Appendix E of the
2 investigation report.

3 MS. ALVORD: I am sorry, I may object to
4 that. What letter are you talking about? What's the
5 date of that, October...

6 MR. CASEY: October 6th.

7 MS. ALVORD: Okay. I believe, Your Honor,
8 if I may, that particular letter, if you read at the
9 bottom it said that it was subject to Evidence Rule 408,
10 which means it cannot -- it was for settlement purposes
11 only and not to be admitted in evidence in a legal
12 proceeding.

13 MR. CASEY: My understanding is one, I
14 believe this letter was even filed with the Commission,
15 the Commission's records center in docket -- in the
16 previous docket. It was received by record's management
17 on October 9th at 8:25 a.m. and this is a public record.
18 It's publicly available on -- through the Commission's
19 docket search, and also we were not engaged in
20 settlement. The investigation had not begun.

21 JUDGE PEARSON: And most importantly, the
22 rules of evidence still apply. The administrative
23 proceedings under the APA.

24 BY MR. CASEY:

25 Q. So, Mr. Wolford, you said that -- said these are

EXAMINATION BY CASEY / WOLFORD

1 the kinds of materials you haul daily and that you --
2 you stopped when Commission Staff asked you to stop?

3 A. On that job, yes.

4 Q. And you said that you were just about done with
5 the project?

6 A. Yes.

7 Q. So the project was not complete?

8 A. Right.

9 Q. And so are you aware of who finished the
10 project?

11 A. Yes.

12 Q. And who finished the project?

13 A. Washington State Trucking.

14 Q. And are you aware that -- do you know if
15 Republic Services took on any aspect of that project
16 once you were done?

17 A. Yes, they provided containers, and Washington
18 State Trucking has tractors like mine and they pulled
19 them.

20 Q. And prior to starting this project, did you
21 contact Republic Services?

22 A. No, that was all arranged through Snohomish
23 County, that part of it, when they transloaded up in
24 Cathcart, at the facility where we dumped.

25 Q. Mr. Wolford, were you aware that there was a

EXAMINATION BY CASEY / WOLFORD

1 suspended penalty assessment of just over \$21,000
2 remaining from the previous complaint and settlement
3 agreement with Staff?

4 A. Yes.

5 Q. And you were aware that the Commission, in
6 accepting that settlement agreement, had ordered you to
7 cease and desist providing services that require permit
8 authority from the Commission?

9 A. Yes.

10 Q. And you were aware that Staff was going to
11 conduct a follow-up investigation to ensure -- to
12 determine whether you complied with the terms of the
13 settlement agreement?

14 A. Yes.

15 Q. And you were aware that if you violated the
16 terms of the settlement agreement, that suspended
17 penalty would become imposed?

18 A. Yes.

19 MR. CASEY: I have no further questions for
20 Mr. Wolford.

21 JUDGE PEARSON: Thank you.

22 Do you have any re-direct?

23 MS. ALVORD: Just a short re-direct, Your
24 Honor.

25 JUDGE PEARSON: Okay.

R E D I R E C T E X A M I N A T I O N

BY MS. ALVORD:

Q. Mr. Wolford, does Washington State Trucking have a solid waste certificate of which you know?

A. No.

Q. You mentioned that the job wasn't finished and that Washington State Trucking finished the job? The trucking job?

A. That's what I heard.

Q. How was Washington State Trucking without end dumps able to finish the job?

A. They reconfigured their loading facility in Duwamish so they could accommodate the big 48-foot cans, Rabanco cans.

MS. ALVORD: Thank you. That's all I have.

JUDGE PEARSON: Thank you.

MS. ALVORD: I have an additional witness.

JUDGE PEARSON: Okay. And what is his name?

MS. ALVORD: This is Scott Miller.

JUDGE PEARSON: If you could stand and raise your right hand.

EXAMINATION BY ALVORD / MILLER

1 SCOTT MILLER, witness herein, having been
2 first duly sworn on oath,
3 was examined and testified
4 as follows:

6 E X A M I N A T I O N

7 BY MS. ALVORD:

8 Q. Would you state your name for the record.

9 A. Scott Miller.

10 Q. Mr. Miller, do you work for Bobby Wolford
11 Trucking?

12 A. Yes, I do.

13 Q. What is your position there?

14 A. I'm the estimator and project manager.

15 Q. How long have you worked for Bobby Wolford
16 Trucking?

17 A. Going on six years.

18 Q. Okay. Are you familiar with the Mukilteo pier
19 removal project?

20 A. Yes.

21 Q. How are you familiar with that?

22 A. We provided services for them and through my
23 dispatch.

24 Q. Okay. And what did you learn from your
25 dispatch? What was the reason why Wolford Trucking got

EXAMINATION BY ALVORD / MILLER

1 involved with the project?

2 A. Well, we have the email from the County that --
3 giving us permission to haul on that job, so that's what
4 did.

5 Q. Okay. And do you recall what Pacific Pile &
6 Marine specifically wanted from Bobby Wolford Trucking,
7 what kind of service?

8 A. High cubed end dumps.

9 Q. Why did they need high cube end dumps?

10 A. Well, to keep the creosote contained and
11 transported in a safely manner.

12 Q. Are you -- do you have any personal knowledge or
13 are you familiar with whether local solid waste haulers
14 have end dump trailers?

15 A. No, they do not.

16 Q. So to your knowledge, Republic Services does not
17 have end dump trailers?

18 A. Correct.

19 Q. To your knowledge, does Rubatino Refuse Removal
20 have end dump trailers?

21 A. No.

22 Q. Why did -- in addition to the creosote issue,
23 was there another reason why Pacific Pile & Marine
24 needed end dump trailers?

25 A. Well, for their facility, to get in and out of

EXAMINATION BY ALVORD / MILLER

1 their facility. They were the perfect size to transport
2 the pilings.

3 Q. Okay. To your knowledge, did anyone other than
4 Bobby Wolford Trucking provide end dump service on this
5 project?

6 A. Allen Shearer.

7 Q. Okay. To your knowledge, does Mr. Shearer have
8 a solid waste certificate?

9 A. No, not to my knowledge.

10 Q. Did Bobby Wolford Trucking to your knowledge
11 provide safe and efficient transport of the
12 creosote-soaked timbers from Seattle to Cathcart?

13 A. Absolutely.

14 Q. Do you believe that Bobby Wolford Trucking
15 provided a public service in this instance?

16 A. Yeah.

17 Q. And you believe that because why?

18 A. Well, that's what he does and nobody else had
19 the specialized equipment. It was --

20 Q. Okay.

21 A. -- kind of made for this job.

22 Q. Okay. In the time that you've worked for Bobby
23 Wolford Trucking, have -- are you familiar with any time
24 that other than now that Bobby Wolford has been the
25 subject of a formal complaint from the UTC?

EXAMINATION BY ALVORD / MILLER

1 A. No.

2 Q. Is it the policy of Bobby Wolford Trucking to
3 honor the rules and regulations of the Utilities and
4 Transportation Commission?

5 A. Absolutely.

6 Q. Do you believe there was any intent on Bobby
7 Wolford Trucking's behalf to circumvent the rules and
8 regulations of Utilities and Transportation Commission?

9 A. No. And, again, we were given permission
10 through the County to provide the service.

11 Q. Did you rely on that authority?

12 A. Absolutely.

13 Q. Okay.

14 MR. WOLFORD: Same with the Boeing job.

15 BY MS. ALVORD:

16 Q. If a penalty is assessed in this case,
17 Mr. Miller, against Bobby Wolford Trucking, what do you
18 think the impact would be?

19 A. It will be devastating to Wolford Trucking.

20 Q. Do you think people will lose jobs?

21 A. Absolutely.

22 MS. ALVORD: Thank you. That's all I have.

23 JUDGE PEARSON: Mr. Casey.

24

25

EXAMINATION BY CASEY / MILLER

E X A M I N A T I O N

1
2 BY MR. CASEY:

3 Q. Mr. Miller, are you aware that to -- for a
4 company to haul solid waste for compensation, State law
5 requires a solid waste permit?

6 A. Correct.

7 Q. As approved by the Commission?

8 A. Yes.

9 Q. And were you aware of the previous complaint
10 investigation settlement agreement with the Commission?

11 A. Right.

12 Q. And were you aware that if the company violated
13 that agreement a 21 -- over \$21,000 penalty which was
14 suspended at the time would be imposed on the company?

15 A. Yes.

16 Q. And prior to agreeing to this job, did you
17 contact Commission Staff?

18 A. Well, no, and it's -- again, it goes back to
19 that email, it was a split -- it's really busy in
20 dispatch. It's a split decision. The phone rings off
21 the hook, there's numerous jobs that go on every day
22 with 30-plus trucks and employees, and it's just a split
23 decision and relying on dispatch and with the email, you
24 know, that's what happened.

25 Q. You mentioned you were familiar with the

EXAMINATION BY CASEY / MILLER

1 settlement agreement?

2 A. Yes.

3 Q. Were you aware that one of the agreed facts in
4 the previous settlement agreement was that when the
5 company took on the hauling for PCI Democon to haul
6 demolition materials for disposal, there was a new
7 dispatcher who did not -- who was inexperienced and did
8 not recognize the problem?

9 A. That's correct.

10 Q. And you are testifying today that, again, this
11 was a -- this was a similar issue and you did not
12 recognize the problem with taking on this job?

13 A. Right. Again, with the email, I mean, it says
14 any hauler and we provided a specialized service. It
15 just made sense.

16 Q. And you also did not contact Republic Services
17 before taking on the job?

18 A. Correct.

19 MR. CASEY: I have no further questions,
20 Your Honor.

21 MS. ALVORD: Just a summary.

22 JUDGE PEARSON: Okay.

23 MS. ALVORD: I think that the crux of this
24 case boils down to something very simple. There was no
25 intent on Bobby Wolford Trucking's behalf to circumvent

1 the rules and regulations of the UTC. Their long
2 history of no trouble with the UTC testifies to that.

3 Secondly, even if Bobby Wolford Trucking
4 was -- you know, should have called the UTC or should
5 have called Republic, that isn't indication of
6 deliberate avoidance. What they did was, and the facts
7 show, they got -- were presented with an email from a
8 county official, which they had reasonable belief and no
9 reason to distrust, had the authority to say that they
10 could haul. Maybe Bobby Wolford Trucking should have
11 called the UTC, maybe they should have done that. But
12 the fact of the matter is they had this to rely on and
13 they relied on it.

14 Now, whether or not that was wrong, is a
15 separate issue. The question -- the issue before the
16 Court is, you know, should be that it was not
17 intentional, and we're talking about an imposition of a
18 penalty. Not whether or not they didn't have the
19 authority, but the imposition of a penalty, and we're
20 asking the Court to consider very strongly the fact that
21 they reasonably relied on Snohomish County's authority.

22 The second thing is that it's clear that
23 Bobby Wolford Trucking was providing a public service
24 that was needed and nobody else could provide. They
25 transported this material safely, they kept the public

1 from contamination of the creosote, and they did so
2 efficiently. When the UTC asked them to stop, we did so
3 immediately. We did not question that authority. We
4 stopped. We complied with every request they made for
5 our documentations, we were completely cooperative with
6 the UTC in every way. We sought to obtain permission
7 from them, formal permission in the terms of a temporary
8 solid waste certificate. We have currently requested a
9 solid waste certificate for end dump service. We have
10 attempted in every way to work with them and to comply
11 with their rules and regulation.

12 I would ask the Court to strongly consider
13 these factors and finally consider the fact that any
14 penalty that is imposed at this point would crush this
15 small company and many people would lose jobs.

16 Thank you.

17 JUDGE PEARSON: Thank you.

18 Mr. Casey, did you wish to address the
19 penalty mitigation?

20 MR. CASEY: Yes, I would like to call
21 Commission -- call as a witness David Pratt, Commission
22 Staff.

23 JUDGE PEARSON: Okay. Mr. Pratt, if you
24 could stand and raise your right hand.

25

EXAMINATION BY CASEY / PRATT

1
2 DAVID PRATT, witness herein, having been
3 first duly sworn on oath,
4 was examined and testified
5 as follows:
6

E X A M I N A T I O N

7
8 BY MR. CASEY:

9 **Q. Mr. Pratt, to start can you please state your**
10 **name and spell it for the record.**

11 A. Yes, my name is David Pratt, David P-r-a-t-t.

12 **Q. And by whom are you employed?**

13 A. I work for the Utilities and Transportation
14 Commission. I am the assistant director for
15 transportation safety.

16 **Q. And what are your duties in that position?**

17 A. I oversee the transportation safety program,
18 which includes motor carrier safety, rail safety, and
19 also a licensing services program which issues the
20 permits to the agency as well as the investigators that
21 investigate noncompliant companies or companies that are
22 operating without permits.

23 **Q. And are you familiar with the previous**
24 **investigation into the operations of Bobby Wolford**
25 **Trucking that were in Docket TG-143802?**

EXAMINATION BY CASEY / PRATT

1 A. Yes, I am.

2 **Q. Did you supervise Ms. Smith's investigation in**
3 **that docket?**

4 A. Yes.

5 **Q. And did you participate in coming to terms with**
6 **the settlement agreement in that docket?**

7 A. Yes, I was involved in that case from the
8 initiation of the investigation through the end of the
9 settlement agreement.

10 **Q. And also the new case in the new complaint that**
11 **was Docket 151573, were you familiar with that Staff**
12 **investigation?**

13 A. Yes, the day the complaint was received from
14 Pam, she came to me and informed me about it and sought
15 direction on what steps she should take.

16 **Q. What was the basis for the penalty assessment in**
17 **the settlement agreement for the 2015 case?**

18 A. In that case, because it was the company's first
19 offense that we had documented, I chose there to pursue
20 to remove the profit that the company made on that. And
21 so we requested financial documentation of how much they
22 were paid for that case, and our penalty which was
23 \$41,186. That was documentation they provided, that was
24 the revenue that was generated from that case, and we
25 felt it was appropriate to take away the reward for

EXAMINATION BY CASEY / PRATT

1 doing a job that was not permitted.

2 **Q. What general factors does Commission Staff**
3 **typically consider when recommending a penalty**
4 **assessment?**

5 A. The Commission has an enforcement policy. It's
6 been filed for the public under Docket A-120061, last
7 updated in January of 2013. That agency enforcement
8 policy directs all agency personnel on how to pursue
9 enforcement. It provides direction on when to pursue
10 enforcement, what factors to look at, and then finally,
11 it has 11 factors that should be considered when
12 determining penalty sizes for compliance cases.

13 **Q. And have you considered those factors with**
14 **regard to this case?**

15 A. Absolutely.

16 **Q. Are there certain relevant facts in this case**
17 **that you would like to emphasize in terms of how they**
18 **relate to some of those factors?**

19 A. Yes, I am prepared to discuss a few of those.

20 **Q. Can you please elaborate.**

21 A. Okay. Thank you.

22 There are 11 factors. They do have some
23 different weighting into them, and so I would like to
24 basically, if I could, just explain what the factor is
25 and tell you what I looked at for that factor.

EXAMINATION BY CASEY / PRATT

1 The first factor is how serious or harmful is
2 the violation to the public. And my response to that is
3 I look at it and I say hauling of solid waste by
4 nonpermitted companies basically undermines -- excuse
5 me, it undermines the entire solid waste system. Our
6 system is very tightly regulated in this state.
7 Carriers are given guaranteed territory in exchange for
8 rate, rate relief, and rate control so that it's a fair
9 and appropriate pricing to the public. And when a
10 carrier does not have a permit, it takes business and
11 funding away from the companies who do have permits and
12 affects their rate cases, it affects their profit and
13 everything that's been approved by the Commission.

14 The second issue is whether or not the violation
15 was intentional, and in this case, I have heard the
16 testimony of Mr. Wolford and Mr. Miller that it was not
17 intentional. But my belief was based on the previous
18 settlement we had in the previous docket. And as they
19 testified that they were aware of it, I was stunned
20 nobody contacted us to talk about it to say we've got
21 this request for a job, we would like to know if this
22 falls within the realm of what we can do. We would have
23 been prepared to discuss it with them and let them know
24 it required a solid waste certificate, and I believed
25 that it was very similar to the facts of the previous

EXAMINATION BY CASEY / PRATT

1 case about hauling demolition debris, and that they said
2 they should have known that they could not haul it and
3 yet they did.

4 The third factor is whether or not the company
5 self-reported the violation and I think that no, they
6 did not self-report it. Again, they didn't reach out to
7 us when they learned of the job. I was a little
8 surprised when they talked about the split-second
9 decision they had to make with a phone call, but then
10 talked about how they reviewed an email later to help
11 them think that the County said they could do it. So it
12 just didn't jive with me for a split-second decision
13 when factors came in later.

14 The fourth factor is whether or not the company
15 was cooperative or responsive. They have been
16 cooperative in responding to our data requests, but I do
17 not believe they were cooperative in honoring the
18 previous settlement agreement that we have.

19 The next factor is whether or not the company
20 promptly corrected the violations and remedied the
21 impacts. They did stop the job when -- I am not sure if
22 it was when we told them or it was when we instructed
23 Pacific Pile that Bobby Wolford did not have the proper
24 authority to haul. My understanding was Pacific Pile
25 instructed Mr. Wolford that they were not going to allow

EXAMINATION BY CASEY / PRATT

1 them to continue that job because of that. We talked
2 about 170 violations. That's a pretty substantial
3 number of violations on this.

4 Factor No. 8 is the likelihood of reoccurrence,
5 and this is one that really troubles me because we're
6 talking about a reoccurrence here from a previous case
7 and previous violations and previous settlement
8 agreement. So I believe that penalties will be
9 warranted in this case and probably more substantially
10 than the previous case simply because a \$41,000 penalty
11 with 21 suspended, was not -- evidently was not enough
12 incentive to stop doing this without a permit.

13 Finally, a couple of the other factors are the
14 past performance regarding compliance. I think that's
15 what we have all talked about here today regarding the
16 previous case. The company's existing compliance
17 program. Previously, it was explained to us that a
18 dispatcher did not understand what they could or
19 couldn't do in the previous case and that they were
20 going to educate that dispatcher and make sure that
21 coming forward that they'd be more careful about that.
22 And, again, that didn't seem to occur here, and I am
23 still a little surprised with the previous case and the
24 money that was hanging over them that they didn't
25 question it and didn't reach out to us.

EXAMINATION BY CASEY / PRATT

1 And then finally one of the factors is the size
2 of the company. I have heard today specifically that
3 they have between 40 and 50 employees, they have over 30
4 trucks. When they did submit a solid waste application,
5 they were required to submit some financial information
6 which is filed in the docket and they showed that in
7 2015 they had approximately \$3,000,000 in assets, which
8 showed to me it's a pretty good-sized company. Hires a
9 lot of people.

10 And I will say to comment a little bit about the
11 application, which we take into account, again, back to
12 cooperation, the company did file an application for
13 solid waste authority on October 19th of last year. But
14 we have repeatedly reached out to them to ask them to
15 complete the application. It has not been complete and
16 my understanding is that only about two weeks ago did
17 they finally provide the last of the information that we
18 required. And I will state that they did request
19 extensions of that and we granted it, but even the last
20 extension that I granted to Ms. Alvord, they were late
21 on complying with, but we still accepted it and our
22 financial services staff are actually reviewing that
23 financial information as we're here in the hearing room
24 today. So we have not really had a chance to review
25 that because we just received the information.

EXAMINATION BY CASEY / PRATT

1 MR. PRATT: So based on that, if the Court
2 would like me to make a recommendation on penalties.

3 JUDGE PEARSON: Please.

4 MR. PRATT: So I would like to say before I
5 put numbers out there that I have considered the
6 additional information that was provided today. But I
7 will also say that it really has not swayed me to the
8 fact that the company knew about the previous case, they
9 knew they weren't allowed to haul waste without a
10 permit, and that they did not even make the basic
11 attempt to contact us to ask if this was appropriate
12 under the rules.

13 MS. ALVORD: Your Honor, if I could just
14 interrupt. Would it be more appropriate if I have
15 questions for Mr. Pratt to flush those out before he
16 makes his recommendation?

17 JUDGE PEARSON: No, let's go ahead and let
18 him finish.

19 MR. PRATT: Okay. So based on that, my
20 first recommendation is I believe the company should be
21 ordered to pay the \$21,186.30 that was imposed or
22 suspended in the previous case. That docket stated that
23 if they were found to be hauling solid waste without a
24 permit again that that previous suspended penalty should
25 be immediately due and payable. So I believe that is

EXAMINATION BY CASEY / PRATT

1 due and payable immediately for that.

2 Under this case, we have 170 violations.
3 Statutorily, we can request up to a thousand dollars per
4 violation. In the previous case, we chose to go after
5 the profit they made. In this case, I do not believe
6 that's appropriate here simply because I didn't believe
7 that was enough deterrent, and so I believe the
8 Commission should consider imposing the entire statutory
9 allowable penalty in this case, which is \$170,000, but I
10 would also agree that Commission practice is to suspend
11 a portion of penalties to continue to hold over a
12 company to comply. And while it didn't seem to have the
13 effect we wanted in the last time, I believe we --
14 because this is such a much larger case, that if we have
15 a larger suspended penalty, it might continue to hold
16 Mr. Wolford in compliance in the future.

17 So I would recommend that half of that
18 \$170,000 be suspended, which would leave a resulting
19 \$85,000 penalty under this case, and the 21,186 from the
20 previous case for a total of a penalty of \$106,186.30
21 with \$85,000 suspended, I would request to be suspended
22 for the period of two years to ensure that they stay in
23 compliance. Thank you.

24 JUDGE PEARSON: Thank you, Mr. Pratt.

25 Ms. Alvord.

EXAMINATION BY ALVORD / PRATT

1 MS. ALVORD: I was writing quickly so I --
2 bear with me if I have to go a little slowly with some
3 of my questions.
4

E X A M I N A T I O N

5
6 BY MS. ALVORD:

7 Q. Mr. Pratt, you mentioned that you oversaw
8 Ms. Smith in this investigation?

9 A. Yes.

10 Q. Do you know if Ms. Smith ever investigated other
11 companies that participated in the trucking of
12 the pacific -- of the Mukilteo pier removal?

13 MR. CASEY: Objection. Relevance.

14 JUDGE PEARSON: I don't think that it's
15 relevant and we have already established that on the
16 record today.

17 BY MS. ALVORD:

18 Q. You testified that it's -- that there was only
19 one other time in the history of Bobby Wolford Trucking
20 that the UTC has had a formal complaint against Bobby
21 Wolford Trucking; is that true?

22 A. Yes, it is.

23 Q. You also testified that Bobby Wolford Trucking
24 was cooperative with the Commission by stopping when it
25 asked it to stop hauling; is that correct?

EXAMINATION BY ALVORD / PRATT

1 A. Yes.

2 Q. And that it was cooperative when it request --
3 when Ms. Smith or the Commission requested documentation
4 from Bobby Wolford Trucking?

5 A. Yes.

6 Q. Do you know at what point in the haul that Bobby
7 Wolford was doing, from the time they began transporting
8 the pilings to when they finished, to when UTC stopped
9 it, at what point in those 170 hauls did the UTC know
10 that Bobby Wolford was hauling?

11 A. I don't have the exact numbers in front of me.
12 I might be able to obtain that through the report, but I
13 believe it was -- calendar-wise it was well into the
14 project, probably at least a month into the project
15 before we learned about it, took us a couple weeks to
16 reach out and inquire to Mr. Wolford about what was
17 going on. And then it took us probably another week or
18 so from that point to reach back out to contact Pacific
19 Pile and make sure we had the facts and inform them
20 about Mr. Wolford's lack of solid waste authority.

21 Q. Okay.

22 A. So it was well into the project, yes.

23 Q. Okay. So is it your testimony that the UTC was
24 aware that Bobby Wolford was hauling the material for
25 some weeks before it notified them to stop?

EXAMINATION BY ALVORD / PRATT

1 A. I would say -- well, actually I --

2 **Q. Sure.**

3 A. To be accurate about that, I will let you know
4 that. We learned of the -- well, actually it was much
5 shorter. According to the record here on September 23rd
6 of 2015, we received --

7 **Q. I'm sorry, what are you referring?**

8 A. I'm referring to page 7 of Ms. Smith's
9 investigation report.

10 **Q. Okay.**

11 A. And on September 23rd, 2015, was the date that
12 she received the informal complaint via phone about
13 this. On September 24th, which would be the following
14 day, we sent a letter to Bobby Wolford Trucking asking
15 them to clarify what the job was and that's where we
16 started our investigation.

17 We started gathering the other facts, but
18 Ms. Smith, again, the very next day got the first letter
19 out promptly while she started her investigation. We
20 then did hear back from you representing the company
21 within a couple of weeks.

22 **Q. Okay. Two questions regarding that.**

23 Do you know why Bobby Wolford Trucking -- you
24 said the letter was drafted on September 24th?

25 A. Yes.

EXAMINATION BY ALVORD / PRATT

1 **Q. Do you have a copy of that letter?**

2 A. Yes, it is Appendix E in the report.

3 **Q. Okay.**

4 A. And I'm going to have to turn to the page to
5 find out but I --

6 MR. CASEY: I'm sorry, Appendix D.

7 MR. PRATT: What page?

8 MS. ALVORD: D?

9 MR. CASEY: D, 48.

10 BY MS. ALVORD:

11 **Q. I'm looking -- oh, I will wait for you.**

12 A. Yes, I have it as Appendix D, which is page 48
13 of the report.

14 **Q. It was dated September 24th. Was this done by**
15 **regular mail, do you know, or by certified mail or...**

16 A. Probably by regular mail.

17 **Q. Do you know when Bobby Wolford Trucking received**
18 **that letter?**

19 A. I do not have a proof of receipt of delivery no,
20 but I do have your response letter.

21 **Q. Which was dated what?**

22 A. October 6th.

23 **Q. Okay.**

24 A. That stated you received it and you acknowledged
25 it and provided a response.

EXAMINATION BY ALVORD / PRATT

1 Q. Okay. Does it state anywhere in Ms. -- or in
2 your letter of September 24th, instructing Bobby Wolford
3 to stop hauling?

4 A. It says in the second paragraph that providing
5 solid waste collection services without the proper
6 authority from the UTC is against the law and may
7 subject your company to enforcement action.

8 Q. But that's not my question. My question is did
9 it tell them specifically to stop hauling for Pacific
10 Pile & Marine?

11 A. No, because in our first letter --

12 Q. Okay. That's the only question I had.

13 So by September 24th or earlier, because you
14 wrote the letter, the UTC was aware that Bobby Wolford
15 was hauling?

16 A. The previous day.

17 Q. So --

18 A. Remember I said --

19 Q. -- do you have a phone record for that? Where
20 is the phone record that shows that the complaint was
21 made on September 23rd?

22 A. We don't have a phone record, but I --

23 Q. So we don't know when the call came in?

24 A. We have a document in the report that the phone
25 call came in on September 23rd.

EXAMINATION BY ALVORD / PRATT

1 Q. But where is the proof of that? That may be in
2 your report, but I have no -- where is the documentation
3 that the call came in only the day before?

4 MR. CASEY: Your Honor, Pam Smith testified
5 she had personal knowledge of everything in the report
6 and that was true and correct. So I would say the
7 evidence is documented by Pam Smith's testimony in the
8 report.

9 JUDGE PEARSON: I agree.

10 MS. ALVORD: My point being, Your Honor,
11 that the UTC was well aware of the situation of Bobby
12 Wolford hauling, could have intervened earlier, could
13 have told them to stop and we would have prevented 170
14 hauls.

15 MR. WOLFORD: Same on the Boeing job.

16 MS. ALVORD: And that's my point is that on
17 September 24th, they didn't tell us to stop. They might
18 have, you know, said, hey, we're conducting an
19 investigation, but that didn't mean what we were doing
20 was unlawful. So 170 hauls could have been prevented.
21 That's my point of that line of questioning.

22 MR. PRATT: So is there a question beyond
23 that?

24 MS. ALVORD: Yes.

25

EXAMINATION BY ALVORD / PRATT

1 BY MS. ALVORD:

2 Q. So isn't it true that -- well, let me ask you
3 this.

4 At what point -- at what time did the UTC tell
5 Bobby Wolford to stop, on what date?

6 A. It would have to be in a subsequent letter. The
7 Commission practices to reach out to carriers to give
8 them a chance to clarify the situation to make sure we
9 have our facts straight before we order them to do
10 something. That was the intent of our first letter.

11 After your response from the company
12 approximately a month later, on Appendix F, which is
13 page 51 of it, we responded to your request for a
14 temporary certificate and let you know that it has to be
15 filed in the appropriate way and it has to prove a
16 public interest. And then October 28th, another letter
17 informs you that we're aware of the loads and that we
18 are concerned about this and we are continuing to ask
19 for information.

20 So I don't have the date in front of me, but I
21 do see that it showed that the project started on 8/24,
22 so the project had been underway a month before we
23 contacted Mr. Wolford. So I don't believe we had the
24 chance to stop 170 loads.

25 I also believe when we reached out to you, as

EXAMINATION BY ALVORD / PRATT

1 the attorney who participated in the settlement case
2 from the previous case and told you we had concerns that
3 your client was hauling solid waste, that you should
4 have been aware that that was a violation of the
5 previous settlement agreement and your client should
6 stop.

7 Q. And they did stop; isn't that correct?

8 A. Yes.

9 Q. Okay. All right. Mr. --

10 A. But I will state, I show jobs delivered under
11 here through September 30th.

12 Q. So just a couple of days later?

13 A. Eight days.

14 Q. But, again, the letter that you sent initially
15 didn't say that we were doing something unlawfully. It
16 was merely an inquiry into it?

17 A. Yes.

18 Q. Okay. You mentioned that one of the factors you
19 consider is the serious impact -- the seriousness of the
20 impact this would have on the public Mr. Wolford -- or
21 Bobby Wolford Trucking providing this hauling. You said
22 it undermines the public interest because it might
23 prevent a solid waste hauler, what, from profiting from
24 it; is that correct?

25 A. What I said was it undermines the entire system

EXAMINATION BY ALVORD / PRATT

1 because there's the checks and balances in the system
2 that ensure appropriate rates for the public. And when
3 companies are not allowed to recoup their costs,
4 regulated companies, then they have to raise their
5 rates, which is then not good for the public. We all
6 pay for solid waste hauling. And so nonpermitted
7 carriers take money away from permitted carriers, which
8 causes them to have to raise their rates to recoup it.

9 **Q. You're aware that the pilings in this case were**
10 **creosote-soaked product?**

11 A. Yes.

12 **Q. Okay. And you're also aware, are you, that**
13 **Republic Services does not have end dump trailers?**

14 A. I have heard that, yes.

15 **Q. And that Rubatino Refuse Removal doesn't have**
16 **end dump trailers?**

17 A. Correct.

18 **Q. And that with an end dump trailer, as far as you**
19 **know, there was no -- the materials, that pier pilings**
20 **were transferred or transported from Seattle to Mukilteo**
21 **safely?**

22 A. I have no personal knowledge of that, but I --
23 so I don't know.

24 **Q. Is it the spirit of the RCW 80 and 81, which**
25 **over -- you know, which is statutory authority for the**

EXAMINATION BY ALVORD / PRATT

1 UTC, isn't the spirit of those particular statutes the
2 public interest and what serves the public's safety and
3 efficiency needs? Isn't that really the spirit of those
4 statues?

5 A. Sure.

6 Q. And if by placing those creosote-soaked timbers
7 in end dump trailers was the safest way to transport
8 those materials, wouldn't you agree that that was in the
9 public interest?

10 A. Sure.

11 Q. Are you familiar with the fact -- you saw the
12 email from Mr. Myers of Snohomish County. Did you have
13 conversations with Mr. Myers about this project?

14 A. Not specifically. Ms. Smith did.

15 Q. Okay. You mentioned that Bobby Wolford
16 Trucking, that one of the factors you consider is profit
17 in determining a penalty amount. Do you know if Bobby
18 Wolford made any money on this project?

19 A. No, and what I stated was I -- that was factors
20 I considered in the previous case. So in this case,
21 because I believed it was reoffending from the previous
22 case, I did not even consider the profit. I went right
23 to the statutory penalty amount.

24 Q. So you don't know if Bobby Wolford made any
25 profit on this particular case?

EXAMINATION BY ALVORD / PRATT

1 A. No.

2 MR. WOLFORD: We probably made 150 a load.

3 MS. ALVORD: Okay. Just a moment. You
4 can't interrupt.

5 BY MS. ALVORD:

6 **Q. You mentioned also that you believe that Bobby**
7 **Wolford Trucking has \$3,000,000 in assets?**

8 A. No, I am stating that their solid waste
9 application stated that their current assets were just a
10 little over 3,000,000.

11 **Q. Okay. Do you know how much of those**
12 **\$3,000,000 assets are mortgaged or in loans?**

13 A. I do not have specific information about that
14 because that's really not been my business, my concern.
15 But I can say that according to the financial statement,
16 which is on page 57 in Ms. Smith's report, it says Total
17 Liabilities and Net Worth, and the figure that's in
18 there is \$3,165,000.

19 **Q. Do you know -- when you talk about the solid**
20 **waste application that Bobby Wolford submitted for the**
21 **certificate, it's a fairly intricate application, isn't**
22 **it?**

23 A. Yes.

24 **Q. Requires for significant documentation and**
25 **information?**

EXAMINATION BY ALVORD / PRATT

1 A. Yes.

2 **Q. And we -- and Bobby Wolford Trucking**
3 **specifically requested an extension to complete that**
4 **application?**

5 A. Yes.

6 **Q. And you granted that extension?**

7 A. Yes.

8 MS. ALVORD: That's all the questions I have
9 for Mr. Pratt.

10 JUDGE PEARSON: Okay. Thank you.

11 Mr. Casey, do you have anything further?

12 MR. CASEY: I do not.

13 JUDGE PEARSON: Okay.

14 MS. ALVORD: I'm sorry. I missed the
15 question.

16 JUDGE PEARSON: I just asked if he had
17 anything further and he said he did not.

18 Okay. So is there anything else from either
19 party today?

20 MS. ALVORD: You're itching to talk.

21 We have nothing further, Your Honor. No
22 further evidence.

23 JUDGE PEARSON: Okay. So as I explained at
24 the beginning of the hearing, I will issue an order
25 within ten days of receiving the transcript, which is

1 typically seven to ten days from now. So my guess would
2 be the week of May 16th is when you will see that. And
3 if there's nothing else before we go off the record, I
4 will just thank you for all coming here today and we can
5 be adjourned.

6 MS. ALVORD: Thank you.

7 MR. CASEY: Thank you, Your Honor.

8 (Hearing adjourned at 11:08 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Russell, a Certified Shorthand Reporter
in and for the State of Washington, do hereby certify
that the foregoing transcript is true and accurate to
the best of my knowledge, skill and ability.

Tayler Russell, CCR