

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against

MAKE A WAY LLC

DOCKET TG-210898

ORDER 02

APPROVING SETTLEMENT
AGREEMENT

BACKGROUND

- 1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine if Make A Way LLC (Make A Way or Company) has engaged, and continues to engage, in business as a solid waste carrier that transports solid waste for compensation within the state of Washington without possessing the certificate required for such operations.
- 2 **Procedural History.** On March 8, 2022, the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing, pursuant to RCW 81.04.510, initiating this Docket on its own motion. The Complaint alleges that Make A Way violated RCW 81.77.040 by:
 - (1) offering on at least one occasion to transport solid waste within the State of Washington; and
 - (2) advertising for solid waste services within the State of Washington on at least one occasion

without the necessary certificate required for such operations. On the same date, the Commission issued a *Subpoena and Subpoena Duces Tecum for Production of Documents (Subpoenas)* to the Company commanding David Mulholland, Company owner, to appear before the Commission at a special proceeding scheduled to convene virtually at 9:30 a.m. on March 29, 2022, and to bring the documents specified in the *Subpoenas*.

- 3 **Hearing Waiver.** On March 21, 2022, David Mulholland filed with the Commission a signed hearing waiver indicating that the Company waives its right to a hearing in this

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

matter. The Company requests the Commission base its decision on the written documents submitted by the parties.

4 **Settlement Agreement.** On March 28, 2022, Commission staff (Staff) filed a settlement agreement (Settlement) on behalf of the parties that resolves all the contested issues in this proceeding.

5 **Appearances.** Kathryn McPherson, Compliance Investigator, Lacey, Washington, represents Staff.¹ David Mulholland, Olympia, Washington, represents the Company, *pro se*.

DISCUSSION

6 **Applicable Law.** WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed Settlement without condition.
- Approve the proposed Settlement subject to conditions.
- Reject the proposed Settlement.

¹ In adjudications, the Commission’s regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

7 **Settlement.** As part of the Settlement, Make A Way admits that it has been operating as a solid waste carrier in the state of Washington without the required certificate. The Company also admits that it offered to transport solid waste on at least one occasion and advertised to transport solid waste on at least one occasion.

8 Also, as part of the Settlement, Make A Way has agreed to permanently shut down and cease operations as a solid waste carrier, as defined by WAC 480-70, without first obtaining a certificate from the Commission.

9 The parties agree that the Company will pay a \$2,000 penalty and, on the condition that the Company honors its pledge of compliance by permanently staying out of the industry without first obtaining a permit from the Commission, agree that a \$1,000 portion of the penalty should be suspended for two years, then waived.

10 The parties agree that the Company will pay the remaining \$1,000 portion of the penalty in five monthly installments of \$200 each as described in paragraph 4 of the Settlement.

11 **Decision.** The Commission approves the Settlement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Make A Way admits that its conduct violated Commission statutes and rules has agreed to cease and desist all unpermitted operations unless and until it obtains a certificate from the Commission. The Settlement supports the Commission's goal of compliance by permitting the Company to pay a reduced penalty of \$1,000, and suspending, then waiving, the \$1,000 remainder of the penalty conditioned on the Company complying with the terms of this Order and timely paying the remaining \$1,000 portion of the penalty.

12 The terms of the Settlement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Accordingly, we find that the Settlement is consistent with the public interest and should be approved as filed.

FINDINGS AND CONCLUSIONS

13 (1) The Commission is an agency of the State of Washington vested by statute with authority to regulate persons engaged in the business of transporting solid waste

for compensation over public roads in Washington.

- 14 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Make A Way.
- 15 (3) Make A Way waived its right to a hearing in this matter.
- 16 (4) The Settlement proposed by the parties is not complex and is unopposed.
- 17 (5) The Settlement is not contrary to law or public policy, and it reasonably resolves all issues in this proceeding.
- 18 (6) The Settlement agreement is consistent with the public interest.
- 19 (7) The Commission should approve the Settlement without condition and order the penalty amount, conditions, and other terms as proposed by the parties in the Settlement.

ORDER

THE COMMISSION ORDERS:

- 20 (1) The Settlement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of all issues in this proceeding.
- 21 (2) Make A Way LLC is classified as a solid waste carrier within the state of Washington.
- 22 (3) Make A Way LLC is ordered to immediately cease and desist operations as a solid waste carrier within the state of Washington without first obtaining the required certificate from the Commission.
- 23 (4) Make A Way LLC is assessed a penalty of \$2,000. A \$1,000 portion of the penalty is suspended for a period of two years from the date of this Order, and waived thereafter, provided that (1) Make A Way LLC refrains permanently from further operations as a solid waste carrier in the state of Washington without first

obtaining the required certificate from the Commission, and (2) Make A Way LLC timely pays the \$1,000 portion of the penalty is that is not suspended according to the terms set out in the Settlement.

- 24 (5) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective March 28, 2022.

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable with due diligence at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-825(1) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).

APPENDIX A