

**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 06
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 04
D/B/A MALTBY CONTAINER &)	
RECYCLING	)	ORDER COMPELLING
	)	RESPONSE TO DATA REQUEST
In the Amount of \$27,100	)	AND IMPOSING PENALTIES
	)	FOR VIOLATIONS OF
.....	)	DISCOVERY RULES

BACKGROUND

- 1 Docket TG-120308 involves a special proceeding the Washington Utilities and Transportation Commission (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 On July 10, 2014, the Commission entered Order 05/03, Prehearing Conference Order, establishing a procedural schedule and making discovery available pursuant to the Commission's discovery rules, WAC 480-07-400 – 425.
- 4 On October 20, 2014, Commission Staff (Staff) filed a Motion to Compel Discovery Responses (Motion). Staff represents that it served data requests on Maltby on September 17, 2014, and responses were due October 1. Staff contends that it received no responses or other communication from the Company about the data requests by the due date or several days thereafter. On October 13, Counsel for Staff left a voice mail message with counsel for Maltby regarding the overdue responses, and Maltby's counsel responded via email that he would send responsive documents on October 14. He did not provide those documents on that date, nor did he contact Staff's counsel again prior to the date Staff filed the Motion.
- 5 On October 21, 2014, the Commission issued a notice requiring a response to the Motion by October 24 and scheduling a telephonic hearing for October 28, 2014.
- 6 On October 24, 2014, Maltby filed its response to the Motion. The Company stated that on that date, it provided responses and objections to the data requests at issue and that the Commission should deny the Motion as moot.
- 7 On October 28, 2014, the Commission conducted a hearing on the Motion. Staff orally amended the Motion, asking the Commission to compel responses to three data requests to which Maltby provided partial or no substantive response. The Company responded that it has no documents responsive to two of the three data requests and maintained its objections to providing documents in response to the third request that it is irrelevant and seeks documents that Staff can obtain from another, less burdensome source. As for the delay in responding to the data requests, Maltby's counsel explained that he had a death in his family, the Company was having personnel issues, and "some things are more important than responding to discovery requests."

DISCUSSION

- 8 The Commission confirms the rulings made from the bench at the hearing. The Commission accepts counsel's representation that Maltby has no documents that are responsive to Staff Data Request Nos. 3 and 4 and therefore will not compel any further response to those requests. By failing to timely object to Staff Data Request

No. 5, however, Maltby has waived its objections,¹ and the Commission thus compels the Company to provide a full response to Staff Data Request No. 5.

- 9 The Commission further finds unacceptable Maltby's refusal to provide *any* response to Staff's data requests until Staff filed a motion to compel. It may be that "some things are more important than responding to discovery requests" as Maltby's Counsel stated, but none of his excuses justify his refusal to inform Staff counsel of the reasons for the Company's failure to timely respond – or his decision not to communicate at all with opposing counsel except for a brief email making a promise to provide responsive documents that he did not keep.
- 10 The actions of Maltby's Counsel as a representative of the Company demonstrate a fundamental lack of respect for, as well as disregard of, Commission rules, processes, and limited resources. As a result, Staff's Counsel filed a Motion she should not have needed to file, and the Commission noticed and conducted a hearing that should not have been necessary, all at the expense of Washington ratepayers. The Commission will not tolerate such conduct.
- 11 Companies and their officers, agents, and employees are subject to penalties of up to \$1,000 for every violation of a Commission order, rule, direction, or requirement, and in the case of a continuing violation, each day's continuance of the violation is a separate and distinct offense.² Maltby's refusal to respond or object to Staff's data requests within ten business days after service of those requests is a violation of WAC 480-07-405(6) & (7) and Order 05/03 authorizing discovery under the Commission's procedural rules, and each day the Company did not respond is a separate violation. Maltby finally provided a response on October 24, 2014, which was 23 days after the response was due, resulting in 23 violations of the rule and order. The Commission assesses a penalty of \$100 for each violation, resulting in a total penalty of \$2,300.
- 12 In consideration of the circumstances presented, the Commission will suspend all but \$500 of the assessed penalty on condition that Maltby fully complies with WAC 480-07-400 – 425 and any related Commission orders throughout the remainder of this proceeding. If the Company commits any additional violation of those rules or corresponding Commission orders in these dockets, the suspended portion of the penalty will be immediately due and payable in addition to any penalties the Commission may assess for that additional violation.

¹ WAC 480-07-405(6)(a).

² RCW 81.04.380 & RCW 81.04.387.

ORDER

THE COMMISSION ORDERS:

- 13 (1) McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling must provide a response to Staff Data Request No. 5 by November 10, 2014.
- 14 (2) The Commission assesses against McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling a penalty of \$2,300 for 23 violations of WAC 480-07-405(7)(a) and (7)(b).
- 15 (3) The Commission mitigates the assessed penalty to \$500 conditioned on McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling's compliance with WAC 480-07-400 – 425 and any related orders throughout the remainder of this proceeding. If McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling violates any provision in these rules or a related order before the date these dockets are closed, the \$1,800 suspended amount will become immediately due and payable in addition to any penalties the Commission assesses for that future violation.
- 16 (4) The \$500 penalty amount that is not suspended is due and payable by November 14, 2014.

Dated at Olympia, Washington, and effective November 4, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge