

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PENINSULA SANITATION SERVICE,
INC.,

Respondent.

DOCKET TG-190476

COMPLAINT FOR PENALTIES

AND

NOTICE OF BRIEF ADJUDICATIVE
PROCEEDING; SETTING TIME FOR
ORAL STATEMENTS

(Set for August 20, 2019, at 9:30 a.m.)

1 The Washington Utilities and Transportation Commission (“Commission”) on its own
motion and through its Staff alleges as follows:

I. PARTIES

2 Complainant, the Commission, is an agency of Washington State authorized by state law to
regulate the rates, services, facilities, and practices of public service companies, including
motor freight carriers, household goods carriers, and solid waste collection companies under
the provisions of Title 81 of the Revised Code of Washington (RCW).

3 Respondent, Peninsula Sanitation Service, Inc. (Peninsula or Company), is a corporation that
is registered and conducts business in the state of Washington.

II. BACKGROUND

4 The Commission has information from which it believes and therefore alleges that Peninsula
violated provisions of Title 81 RCW and Washington Administrative Code (WAC) 480-70
by assessing drive-in fees to customers outside of the Company’s tariffed rates and by
failing to include accrued interest when refunding customer deposits for service.

5 RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting
forth any act or omission by Peninsula that violates any law, order, or rule of the
Commission. The Commission may impose financial penalties of up to \$1,000 per day for
each violation committed by the Company. At the brief adjudicative proceeding the
Commission notices here, the Commission will consider its Complaint against Peninsula
alleging violations of law as specified below and whether to impose penalties.

- 6 The following facts, set forth in Commission staff's (Staff) Investigation Report, establish probable cause for the Commission to complain against Peninsula and to seek penalties in accordance with applicable law.
- 7 In January 2019, Staff conducted an investigation to determine if Peninsula was in compliance with the laws and rules outlined in RCW 81.77, WAC 480-70, and Peninsula's Tariff No. 16, Certificate No. G-011 (Tariff) on file with the Commission. This investigation focused on: (1) Peninsula's practice of charging customers deposits in order to establish service; (2) Peninsula's practice of charging customers drive-in fees outside of the Company's tariffed rates; and (3) customer complaints. During this investigation, Staff documented 669 violations of RCW 81.28.080 and WAC 480-70-236(2), as well as 12 violations of WAC 480-70-411(6).¹
- 8 On January 9, 2019, Staff issued a data request to Peninsula requesting copies of its procedures relating to customer deposits for service as well as customer refunds. Staff also requested that Peninsula provide a list of all customers who had been charged a drive-in fee between June 1, 2016, and January 1, 2019. Lastly, Staff requested a copy of the Company's consumer complaint record between January 1, 2018, and January 1, 2019.
- 9 On January 16, 2019, Peninsula produced an Excel spreadsheet listing its customer deposit records from June 2017 through November 2018. The document indicates that 12 customers were charged a deposit fee for service, along with the deposit date, customer name, account number, service address, deposit amount, the date on which the deposit was applied, and the reason for requiring the deposit. After reviewing the available information, Staff found that the Company discontinued its practice of requiring deposits based on a customer's service address. Furthermore, according to Company records, the deposits collected were applied to customer accounts within the allowable timeframe under WAC 480-70-411. However, Staff found 12 instances in which the Company failed to include accrued interest when refunding customer deposits, in violation of WAC 480-70-411(6).
- 10 On January 17, 2019, Peninsula produced an Excel spreadsheet documenting 12,824 distinct drive-in charges assessed by the Company, generally ranging from \$1.70 to \$7.36 per month, impacting 669 individual customers during the timeframe reviewed. Peninsula's Tariff, Item 80, specifies the rate the Company may charge for drive-in service. Item 80 specifies that Peninsula is required to charge customers drive-in fees according to a tiered, rather than flat, rate. Item 75 of Peninsula's Tariff sets forth the services for which the

¹This investigation was a follow-up to an informal consumer complaint filed in March 2016 (Washington State Complaint No. CAS-08516-C3W0J0), in which a Peninsula customer complained that the Company charged the consumer a deposit based on their service address, without an opportunity to establish credit and thereby avoid paying a deposit. In response to the customer complaint, the Company stated it would discontinue the practice of requiring a deposit based on a consumer's service address.

Company can charge customers a flat rate. Item 75 covers many of the Company's services, but does *not* include Item 80, drive-in charges.

- 11 On May 16, 2019, Staff spoke with Company personnel and inquired about Peninsula's method for determining which customers are charged drive-in fees. The Company stated that customers who requested service to an address designated as a "lane" were charged a drive-in fee, because such roads are considered private. Conversely, addresses designated as a "road," "place," "street," or "avenue" were not charged drive-in fees. Peninsula asserted that because the "lanes" are maintained by homeowners or developers, they are private roads, enabling the Company to charge drive-in fees to consumers on those roads.
- 12 "Private road" is defined by rule as "a road not normally available for use by the public."²
- 13 Peninsula's Tariff does not define "drive-in," however, Item 80 of the Company's Tariff states that driveways are not considered improved access roads commonly available for public use. Staff chose four additional solid waste companies under tariff and reviewed Item 80 for those companies. None of the companies reviewed by Staff charge drive-in fees if a driveway provides access to multiple residences or multiple accounts.
- 14 On May 21, 2019, Staff went to Peninsula's facility and received a tour as well as a route map of the Company's Ilwaco service locations. To better understand how the drive-in charges were applied, Staff drove to several locations that had been charged drive-in fees. Staff found that, when Peninsula charges customers a drive-in fee, it does so on a flat-rate basis (*i.e.*, the first customer on a designated "drive-in" road is charged the same as the last) rather than the tiered-rate basis required under its Tariff. Staff also found that many, if not most, of the roads designated by the Company as "private" drive-ins are actually accessible to the public (*e.g.*, delivery trucks, mail trucks, etc.) with no restrictions (with the exception of a single gated community). The Company also admitted to Staff that it has not measured any drive-in to charge rates in accordance with its Tariff.

III. JURISDICTION

- 15 The Commission has jurisdiction over the subject matter of this Complaint under RCW 80.01.040, RCW 80.01.060, RCW 81.01.010, RCW 81.04.020, RCW 81.04.110, RCW 81.04.160, RCW 81.04.460, RCW 81.04.510, chapter 81.77 RCW, chapter 81.80 RCW, and chapter 34.05 RCW.

² WAC 480-70-041.

IV. APPLICABLE LAWS AND REGULATIONS

16 Solid waste collection companies are common carriers.³ For the purposes of Title 81 RCW, every common carrier is a public service company and therefore subject to Commission regulation.⁴ Peninsula is a common carrier and public service company providing solid waste collection service in Washington, and is subject to regulation by the Commission including regulation as to rates and service.

17 RCW 81.28.080 provides that:

A common carrier subject to regulation by the commission as to rates and service shall not charge, demand, collect, or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares, and charges applicable to such transportation as specified in its schedules filed and in effect at the time ...⁵

18 Additionally, WAC 480-70-236 provides that:

- (1) No company may provide solid waste collection service until it files, and the commission approves, a tariff.
- (2) No company may assess rates and charges for solid waste collection service that are higher, lower, or different from those contained in its approved tariff.
- (3) No company may accept a payment for service provided that is higher, lower, or different from the rates and charges contained in its approved tariff.⁶

19 Furthermore, WAC 480-70-411 requires companies that collect customer deposits to pay interest on those deposits at an interest rate and time period set by rule.⁷

20 Any solid waste collection company that violates or fails to comply with any provisions of Title 81 RCW or any order, rule, direction, or requirement of the Commission is subject to a penalty of up to \$1,000 per violation.⁸

21 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission.⁹

³ RCW 81.04.010(11).

⁴ See RCW 80.01.040(2); RCW 81.01.010.

⁵ RCW 81.28.080.

⁶ WAC 480-70-236(1)-(3).

⁷ WAC 480-70-411(6).

⁸ RCW 81.04.380.

⁹ RCW 81.04.110.

V. COMPLAINT

22 The Commission, through its Staff, re-alleges the allegations contained in paragraphs 1 through 21, above.

VI. REQUEST FOR RELIEF

23 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380, assess penalties of up to \$1,000 against Peninsula for each violation of RCW 81.28.080 and WAC 480-70-236(2).

24 Staff further requests that Peninsula be ordered to bill its customers drive-in fees as specified in its Tariff.

25 Staff further requests that Peninsula be ordered to revise its Tariff to be consistent with similar solid waste companies with respect to drive-in fees: if a driveway provides access to multiple residences or accounts, no drive-in fee will be assessed.

26 Staff further requests that Peninsula be ordered to file a general rate case to socialize its drive-in charges as a normal function of operation and performing solid waste service to its customers.

27 Staff further requests that the Commission, pursuant to its authority under RCW 81.04.380, assess penalties of up to \$1,000 against Peninsula for each violation of WAC 480-70-411(6).

28 Staff further requests that the Commission require Peninsula to calculate interest payments as described in WAC 480-70-411(6) for each of the 12 affected customers, and apply a credit or provide a refund to those customers' accounts as appropriate.

29 Finally, Staff requests that the Commission order such other or additional relief as is appropriate under the circumstances.

VII. PROBABLE CAUSE

30 Based on a review of the Staff Investigation Report documenting the violations alleged above, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

VII. ORDER AND NOTICE SETTING BRIEF ADJUDICATIVE PROCEEDING

31 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission schedules a hearing on its own initiative and determines that a brief adjudicative proceeding is appropriate to

determine whether the Commission should assess penalties against the Company for the violations alleged in this Complaint.

32 **THE COMMISSION GIVES NOTICE: That it will conduct a brief adjudicative proceeding in these matters at 9:30 a.m. on August 20, 2019, in the Commission's Hearing Room, 621 Woodland Square Loop S.E., Lacey, Washington, 98503.**

33 The record in this case will consist of any documents regarding the matters that are considered by or prepared for the presiding officer for the brief adjudicative proceeding and a transcript of any oral statements given at the hearing, which statements will be given under oath.

34 Written notice of any other stage in the proceeding or other formal proceedings that the Commission may deem appropriate will be given during the course of this case. The Commission will provide at its offices in Lacey, Washington, copies of documents in the current record for use by the parties or others who may want to review them.

35 Parties wishing to submit any other documents for consideration at the brief adjudicative proceeding must file with the Commission a list enumerating and describing any such documents **no later than August 13, 2019**, and bring an original and four (4) copies to the hearing. Filing shall be in accordance with WAC 480-07-140.

36 **THE COMMISSION GIVES NOTICE: That any party who fails to attend or participate in the brief adjudicative proceeding set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

37 The names and mailing addresses of all parties and their known representatives are shown as follows:

Respondent: Peninsula Sanitation Service, Inc.
P.O. Box A
Ilwaco, WA 98624-0166
pss@willapabay.org

Representative: Unknown

Complainant: Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Representative: Daniel J. Teimouri
Assistant Attorney General
P.O. Box 40128
Olympia, WA 98504-0128
daniel.teimouri@utc.wa.gov

38 Administrative Law Judge Andrew J. O'Connell, from the Commission's Administrative Law Division, will preside during this proceeding.¹⁰

DATED at Olympia, Washington, and effective July 17, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Director

Inquiries may be addressed to:

Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

¹⁰ Judge O'Connell may be reached at andrew.j.oconnell@utc.wa.gov or (360) 664-1285.

Service Date: July 17, 2019

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Mark L. Johnson, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter?

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone: _____