

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

WESTSIDE WASTE, LLC

DOCKET TG-190672

ORDER 01

ORDER INSTITUTING SPECIAL
PROCEEDING; COMPLAINT
SEEKING TO IMPOSE
PENALTIES; NOTICE OF
PREHEARING CONFERENCE
(Set for November 18, 2019,
at 10 a.m.)

1 The Washington Utilities and Transportation Commission (Commission), on its own
motion, and through its regulatory staff (Staff), alleges as follows:

I. PARTIES

2 The Commission is an agency of the state of Washington authorized by statute to regulate
the rates, services, facilities, and practices of public service companies, including solid
waste collection companies.

3 Westside Waste, LLC, (Westside Waste or Company) is a Washington limited liability
company. The Washington Secretary of State's records list Mr. Gary Van Laar as
Westside Waste's registered agent and governing person.

4 Westside Waste is a public service corporation that currently holds a Commission-issued
common carrier permit (Number CC067848) that allows it to engage in business as a
motor freight carrier of general commodities.

II. BACKGROUND

5 The following allegations are based on the Staff Investigation Report filed in this docket.

6 In July 2017, Westside Waste filed with the Commission an application for a permit to
operate as a motor freight common carrier.

- 7 In September 2017, Staff spoke with Mr. Van Laar by phone to assist him with determining whether Westside Waste needed a common carrier permit, as it had applied for, or a solid waste certificate to carry on operations.
- 8 During the call, Staff informed Mr. Van Laar that Westside Waste would need a solid waste certificate in order to transport materials, even recyclable materials, to dispose of them at a landfill or transfer station.
- 9 During that same call, Staff explained the process of applying for a solid waste certificate. Mr. Van Laar decided that Westside Waste would not go through that process and informed Staff that the Company would confine its activities to hauling recyclable materials to recycling centers, and would thus only need common carrier authority.
- 10 In May 2019, Staff received an informal complaint stating that Westside Waste was preparing to transport a drop box containing roofing materials from an address in Birch Bay to a disposal site.
- 11 Staff contacted Westside Waste shortly after receiving the complaint. When asked about the drop box, Mr. Van Laar explained that Westside Waste would be transporting it to the transfer station in Arlington. Staff informed Mr. Van Laar that it would be unlawful for Westside Waste to transport the drop box to a solid waste facility because Westside Waste lacked a solid waste certificate. Staff explained that Westside Waste's common carrier permit only authorized the Company to transport recyclable materials to a recycling center or a buy-back center.
- 12 A few days after that phone call, Staff made a site visit to the address in Birch Bay. Staff discovered a drop box with Westside Waste's logo on it filled with roofing material and commingled solid waste at the site.
- 13 On June 3, 2019, Staff again called Mr. Van Laar to discuss the disposal of the drop box. Mr. Van Laar stated that Westside Waste had transported the box to a private solid waste facility. Staff informed Mr. Van Laar that Westside's permit did not authorize such transport. Staff again informed Mr. Van Laar that Westside Waste could only take recyclable materials to a recycling center, and that it could not bring materials to solid waste facilities or transfer stations for disposal without a solid waste certificate.
- 14 During the call, Mr. Van Laar stated that he understood that he could not transport materials to a transfer station without potentially subjecting Westside Waste to penalties for violations of the public service laws.
- 15 During the same phone call, Staff urged Westside Waste to apply for a solid waste certificate.

- 16 On June 6, 2019, Mr. Van Laar called to request an application for a solid waste certificate, which Staff provided. Staff then closed its investigation into the May 2019 complaint after Mr. Van Laar stated that Westside would not transport solid waste without the necessary certificate.
- 17 On July 1, 2019, Staff received another complaint about Westside Waste. The complainant alleged that Westside Waste had hauled materials to the North County Transfer Station in Arlington, Washington, and provided photographs of Westside Waste's vehicle at the facility.
- 18 On July 11, 2019, Staff spoke with Mr. Van Laar about the complaint. He stated that Westside Waste had hauled what Mr. Van Laar considered construction debris and he asserted that Westside Waste's common carrier permit should have allowed him to transport the materials.
- 19 On July 17, 2019, Staff requested that Snohomish County provide it with data concerning Westside Waste's use of the county's transfer stations between January 3, 2019, and July 17, 2019.
- 20 On July 18, 2019, Snohomish County responded to Staff's request and provided data showing that Westside Waste had transported solid waste to Snohomish County transfer stations 82 times between June 6, 2019, when Mr. Van Laar stated he would not haul solid waste without a certificate, and July 17, 2019.
- 21 On July 22, 2019, Staff received a third complaint about Westside Waste. The complainant alleged that Westside Waste had transported solid waste to the North County transfer station and provided photographs showing Westside Waste's vehicle at the solid waste pit.
- 22 On July 25, 2019, Staff received a fourth complaint about Westside Waste. The complainant alleged that Westside Waste had hauled materials to the North County transfer station and provided photographs of Westside Waste's vehicle dumping solid waste at the facility.
- 23 On August 5, 2019, Westside Waste submitted an application for a solid waste certificate to the Commission. Mr. Van Laar signed the application as Westside Waste's governing person. In doing so, he signed the section acknowledging that the submission of an application does not grant operating authority to the applicant.
- 24 On August 6, 2019, Staff observed a white truck towing a black dump trailer dispose of roofing material at the North County transfer station. The truck used Westside Waste's account with Snohomish County to pay the tipping fees. Staff asked the driver where the

load had come from, and he identified a roofing company for which Westside Waste hauled loads.

- 25 When Staff contacted the roofing company, it stated that it owned the drop box, but not the truck. Staff learned that Mr. Van Laar was the registered owner of the truck from a search of the Department of Licensing's records.
- 26 Snohomish County records indicate that the truck registered to Mr. Van Laar hauled a second load to a county transfer station on August 6, 2019, this time the Airport transfer station. The driver used Westside Waste's account to pay the tipping fee associated with the disposal of that load as well.
- 27 On August 19, 2019, Staff requested that Snohomish County provide it with data about Westside Waste's use of the County's transfer stations between June 3, 2019, and August 6, 2019.
- 28 Snohomish County's response to Staff's second data request shows that between June 3, 2019, and August 6, 2019, Westside Waste hauled solid waste to Snohomish County's facilities 113 times.
- 29 Westside Waste does not hold a certificate of convenience and public necessity issued by the Commission authorizing it to operate for the hauling of solid waste for compensation on public highways within Washington.

II. JURISDICTION

- 30 The Commission has jurisdiction over the subject matter of this complaint under chapter 34.05 RCW, RCW 80.01.040, RCW 80.01.060, RCW 81.01.010, RCW 81.04.010, RCW 81.04.020, RCW 81.04.110, RCW 81.04.380, RCW 81.04.460, RCW 81.04.510, RCW 81.77.040, and WAC 480-70-081.

IV. APPLICABLE LAW

- 31 The Commission regulates public service corporations pursuant to a delegation of authority from the legislature. RCW 80.01.040(2); RCW 81.01.010.
- 32 Solid waste collection companies are public service corporations, *see* RCW 81.04.010(11), subject to regulation by the Commission. RCW 80.01.040(2), RCW 81.01.010, RCW 81.77.010-.210.
- 33 Under state law, the term "solid waste collection company" means every person . . . owning controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, except septic tank

pumpers, over any public highway in [Washington] as a ‘common carrier’ or as a ‘contract carrier.’” RCW 81.77.010(7).

- 34 The term “common carrier,” as used within chapter 81.77 RCW, means “any person who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules.” RCW 81.77.010(3).
- 35 The term “person” includes corporations. WAC 480-70-041.
- 36 The term “solid waste” includes “all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, [and] abandoned vehicles.” RCW 70.95.030(22); RCW 81.77.010(9). The term does not include recyclable materials “except for source separated recyclable materials collected from residences.” RCW 70.95.030(22); RCW 81.77.010(9).
- 37 Under state law, “[a] solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the Commission a certificate declaring that public convenience and necessity require such operation.” RCW 81.77.040.
- 38 The Commission may file a complaint upon 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. RCW 81.04.110.
- 39 The Commission may institute a special proceeding to determine whether a person is conducting business requiring operating authority, or has performed or is performing any act requiring Commission approval without first securing that approval. RCW 81.04.510. Whether the person has done so is a question of fact for the Commission. RCW 81.04.510.
- 40 If the Commission determines at a special proceeding that a person is operating or has operated without the necessary authority, it must order them to cease and desist. RCW 81.04.510.
- 41 Any solid waste collection company operating without the certificate required by RCW 81.77.040 is subject to a penalty of up to \$1,000 per violation. RCW 81.04.380.

V. CAUSE OF ACTION

- 42 The Commission alleges that Westside Waste violated RCW 81.77.040 a total of 113 times between June 3, 2019, and August 6, 2019, by transporting solid waste for

compensation over the public highways of Washington state without first obtaining a certificate of convenience and public necessity from the Commission authorizing it to do so.

VI. REQUEST FOR RELIEF

- 43 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380, assess penalties of up to \$1,000 for each violation of RCW 81.77.040.
- 44 Staff requests that the Commission order Westside Waste to cease and desist from transporting solid waste until it has obtained a certificate of convenience and public necessity authorizing it to operate for the hauling of solid waste.
- 45 Staff further requests that the Commission order such other or further relief as is appropriate under the circumstances.

VII. PROBABLE CAUSE

- 46 Based on a review of Staff's investigation report and all supporting documents, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this complaint.

VIII. NOTICE OF PREHEARING CONFERENCE

- 47 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission will also follow its procedural rules in WAC 480-07 in this proceeding.
- 48 The Commission finds there is good cause to hear this matter on shortened notice. *See* WAC 480-07-440(1)(a) and RCW 34.05.434.
- 49 **THE COMMISSION GIVES NOTICE That it will hold a prehearing conference in this matter at 10 a.m. on November 18, 2019, in the Commission's Richard Hemstad Hearing Room, located at 621 Woodland Square Loop SE in Lacey, Washington.**
- 50 The purpose of the prehearing conference is to consider requests for intervention, resolve scheduling matters including establishing dates for distributing evidence, identify the issues in the proceeding, and determine other matters to assist the Commission in resolving the matter, as listed in WAC 480-07-430.

- 51 **INTERVENTION:** Persons who wish to intervene should file a petition to intervene in writing at least three business days before the date of the prehearing conference. *See* WAC 480-07-355(a). The Commission will consider oral petitions to intervene during the conference, but strongly prefers written petitions to intervene. Party representatives must file a notice of appearance with the Commission no later than the business day before the conference. *See* WAC 480-07-345(2). Parties with more than one representative must identify one individual as the “lead” for purposes of official service. Any party or witness in need of an interpreter or other assistance should fill out the form attached to this notice and return it to the Commission. The Commission will set the time and place for any evidentiary hearings at the prehearing conference, on the record of a later conference or hearing session, or by later written notice.
- 52 **THE COMMISSION GIVES NOTICE** that any party who fails to attend or participate in the prehearing conference 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.
- 53 The names and mailing addresses of all known parties and their known representatives are as follows:

Carrier: Westside Waste, LLC
Gary Van Laar,
Governor and Registered Agent
1805 249th St. NE
Arlington, WA 98223
westsidewastellc@gmail.com

Complainant: Washington Utilities and Transportation Commission
621 Woodland Park Loop SE
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Jeff Roberson
Office of the Attorney General
621 Woodland Park Loop SE
P.O. Box 40128
Olympia, WA 98504-7250
(360) 664-1188
jeff.roberson@utc.wa.gov

- 54 Administrative Law Judge Rayne Pearson, from the from the Commission's Administrative Law Division, will preside during this proceeding.¹
- 55 The Commission will give parties notice of any other procedural phase of the proceeding in writing or on the record, as appropriate during this proceeding.

DATED at Lacey, Washington, and effective November 8, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Administrative Law Judge

Inquiries may be addressed to :

Mark L. Johnson
Executive Director and Secretary
621 Woodland Square Loop S.E.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

¹ Judge Pearson can be reached by email at rayne.pearson@utc.wa.gov or by phone at (360) 664-1136.

NOTICE

PLEASE NOTE: Hearing facilities are accessible to interested people with disabilities. Smoking is prohibited. 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, 621 Woodland Square Loop SE, 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 No.: (____)_____