

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

Somers Sunrise Enterprises, LLC

DOCKET TG-230191

ORDER 01

ORDER INSTITUTING SPECIAL
PROCEEDING; COMPLAINT
SEEKING TO IMPOSE
PENALTIES; NOTICE OF
PREHEARING CONFERENCE
(Set for May 17, 2023, at 9:30 a.m.)

1 The Washington Utilities and Transportation Commission (Commission), on its own
motion, and through its Commission 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 Somers Sunrise Enterprises, LLC, (Somers Sunrise, or Company) is a Washington
limited liability company, UBI 604-455-229. The Washington Secretary of State's
records for limited liability corporations lists Ogden Murphy Wallace, PLLC, as Somers
Sunrise's registered agent and Roger Somers Jr. as governing person.

II. BACKGROUND

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

5 On December 17, 2021, Staff received an inquiry from Mark Wash, the General Manager
of Consolidated Disposal Services, Inc., reporting that Somers Sunrise was transporting
waste from private orchards in Grant County and the surrounding areas for disposal.

6 Staff searched Commission records and determined that Somers Sunrise did not have the
proper permit to operate for the hauling of solid waste; nor was it permitted to operate as
a common carrier.

- 7 On January 6, 2022, Staff contacted Roger Somers, governing person of Somers Sunrise, to provide technical assistance and explain that RCW 81.77.040 requires a business to obtain a solid waste certificate prior to transporting solid waste.
- 8 On January 10, 2022, Staff sent Somers Sunrise a follow-up letter reiterating the requirements to obtain proper permits to operate.
- 9 Staff next spoke to Somers on June 15, 2022. Somers stated he planned on resuming business operations in the fall and had been unable to contact licensing. Staff sent Somers the correct number for licensing via text.
- 10 Staff did not receive information about Somers Sunrise until February 15, 2023, when Mark Wash submitted a follow-up complaint about Somers Sunrise's continued solid waste operations.
- 11 On February 15, 2023, Staff contacted Jason Collings, the Grant County Solid Waste Supervisor via email requesting transport information regarding Somers Sunrise. Mr. Collings indicated Somers Sunrise had completed 90 transports, for a total of 552.04 tons of waste, between July 1, 2022, and January 31, 2023. Wash sent Commission Staff photos of Somers continued transports to Grant County Landfill.
- 12 The Commission has no records of Somers Sunrise applying for a solid waste certificate to transport solid waste.

II. JURISDICTION

- 13 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

- 14 The Commission regulates public service corporations pursuant to a delegation of authority from the legislature. RCW 80.01.040(2); RCW 81.01.010.
- 15 A common carrier "includes all . . . motor freight carriers . . . [and] solid waste collection companies." RCW 81.04.010(11).

- 16 “A common carrier, contract carrier, or temporary carrier shall not operate for the transportation of property for compensation in this state without first obtaining from the commission a permit for such operation.” RCW 81.80.070(1).
- 17 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.
- 18 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).
- 19 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).
- 20 The term “person” includes corporations. WAC 480-70-041.
- 21 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).
- 22 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.
- 23 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.
- 24 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.

25 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.

26 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

27 The Commission alleges that Somers Sunrise violated RCW 81.80.070(1) and RCW 81.77.040 a total of 90 times between July 1, 2022, and January 31, 2023, 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 conduct such operations.

VI. REQUEST FOR RELIEF

28 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.

29 Staff requests that the Commission order Somers Sunrise to cease and desist from transporting solid waste until it has obtained a certificate of convenience and public necessity authorizing it to haul solid waste.

30 Staff further requests that the Commission order such other or further relief as is appropriate under the circumstances.

VII. PROBABLE CAUSE

31 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

32 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.

33 **THE COMMISSION GIVES NOTICE** That it will hold a virtual prehearing conference in this matter at 9:30, a.m. on May 17, 2023. **To participate by phone, call (253) 215-8782 and enter the Meeting ID: 874 7030 5276# and Passcode 241274#. To attend via Zoom, please use the following link: [Click to join meeting](#).**

34 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.

35 **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.

36 **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.

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

Carrier: Somers Sunrise Enterprises, LLC
Ogden Murphy Wallace, PLLC, Registered Agent
PO Box 1606
Wenatchee, WA 98807-1606
(509)662-1954

Complainant: Washington Utilities and Transportation Commission
621 Woodland Park Loop SE
P.O. Box 47250

Olympia, WA 98504-7250
(360) 664-1160

Representative: Josephine R. K. Strauss
Office of the Attorney General
7141 Cleanwater Dr. SW
Olympia, WA 98504
(360) 709-4850
Josephine.Strauss@utc.wa.gov

38 Administrative Law Judge Gregory Kopta, from the from the Commission's
Administrative Law Division, will preside during this proceeding¹.

39 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 April 19, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael Howard
MICHAEL HOWARD
Administrative Law Judge

Inquiries may be addressed to:

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

¹ Judge Kopta can be reached at gregory.kopta@utc.wa.gov or (360) 664-1355.

NOTICE

Hearings are accessible to persons with disabilities and persons who do not speak English as a first language. 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.

If you need an interpreter, or have other special needs, please provide the information requested below via email to Paige Doyle, paralegal, at paige.doyle@utc.wa.gov.

(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: _____