

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

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

SEAN SMITH

DOCKET TG-190488

ORDER 03

VACATING DEFAULT ORDER;
REOPENING PROCEEDING FOR
FURTHER PROCESS

BACKGROUND

- 1 On October 20, 2019, 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. Order 01 set the special proceeding for November 26, 2019, at 9 a.m.
- 2 On October 20, 2019, the Commission personally served, via legal messenger, the Complaint and Order Instituting Special Proceeding and Subpoenas on a person over the age 18 at Sean Smith's residence in Post Falls, Idaho.
- 3 On October 24, 2019, the Commission served via email a Notice Rescheduling Special Proceeding for November 25, 2019, at 9 a.m.
- 4 On November 25, 2019, the hearing convened as scheduled in Lacey, Washington, before Administrative Law Judge Rayne Pearson. Commission staff (Staff) was the only party to appear at the hearing. Staff moved that Sean Smith be held in default pursuant to RCW 34.05.440(2) and WAC 480-07-450(1).
- 5 The Commission granted Staff's motion, and also found that Sean Smith operated as a solid waste collection company without the required Commission-issued certificate. Further, the Commission ordered Sean Smith to pay a \$2,000 penalty for two (2) violations of RCW 81.77.040. Finally, the Commission ordered Sean Smith to cease and desist from future unauthorized operations.
- 6 On December 3, 2019, Sean Smith filed with the Commission a Motion to Vacate Default Order (Motion). In his Motion, Sean Smith explained that he was out of town when the Complaint and Subpoenas were served at his residence, and that he never received the Notice rescheduling the proceeding. Sean Smith acknowledged that the Company's past conduct violated Commission rules, and provided assurances that the Company has ceased all unpermitted operations.

DISCUSSION AND DECISION

7 We grant Sean Smith's Motion and vacate Order 02. The Commission's ultimate goal in any enforcement proceeding is to obtain compliance with Commission laws and rules. Companies who appear at group classification proceedings, such as the hearing that occurred on November 25, 2019, are afforded the opportunity to negotiate agreed orders with Commission staff (Staff). Such orders typically include a penalty, a significant portion of which is suspended on condition of future compliance, as well as a commitment from the company that it will cease and desist all illegal operations.

8 Affording Sean Smith the opportunity to discuss his current and past conduct with Staff will necessarily include valuable technical assistance from Staff about what Sean Smith can and cannot do without a Commission-issued certificate. In addition, affording Sean Smith the opportunity to reach an agreed penalty amount with Staff, a portion of which will likely be suspended conditioned on the Company's agreement to cease and desist illegal operations, will provide a strong incentive for the Company to comply with Commission rules going forward. Accordingly, we find that vacating Order 02 is in the public interest, and conclude that proceeding should be reopened for further process.

9 Within 30 days of the date of this Order, Staff must do one of the following:

- File with the Commission a settlement agreement that resolves all of the issues in this proceeding;
- File with the Commission a stipulated initial order agreed to and signed by the parties for the presiding officer's approval and signature;
- File with the Commission a letter providing a status update of the parties' negotiations; or
- File with the Commission a letter recommending the matter be set for hearing.

ORDER

10 (1) Sean Smith's Motion to Vacate Default Order 02 is GRANTED, and Order 02 is VACATED.

11 (2) This proceeding is reopened for further process. Within 30 days of the date of this Order, Commission Staff must take one of the actions identified in paragraph 9 of this Order.

- 12 (3) 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 December 6, 2019.

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge