

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TV-140643
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 02
)	
v.)	
)	INITIAL ORDER APPROVING
STARVING STUDENTS, INC.,)	SETTLEMENT AGREEMENT
)	SUBJECT TO CONDITIONS
)	
Respondent.)	
.....)	

BACKGROUND

1 On September 8, 2014, the Washington Utilities and Transportation Commission (Commission) issued a complaint (Complaint) against Starving Students, Inc. (Starving Students or Company) alleging that the Company committed 873 violations of Commission rules and state laws. The Complaint seeks monetary penalties in addition to customer refunds of \$11,289.68. On October 6, 2014, the Commission conducted a prehearing conference and set a procedural schedule.

2 On November 3, 2014, the Commission’s regulatory staff (Staff)¹ notified the Commission that the parties had reached a settlement in principle. On December 26, 2014, Staff filed a settlement agreement on behalf of the parties (Settlement Agreement). On January 5, 2015, Staff requested that the Commission cancel the scheduled hearing. In the Settlement Agreement, Starving Students admits that it violated RCW 81.80.132, WAC 480-15-630, WAC 480-15-490, WAC 480-15-710, and Tariff 15-C, Items 85, 95, 115, and 230.²

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² The Settlement Agreement contains a scrivener’s error, citing violations of WAC 480-110. Those violations have been correctly cited as violations of WAC 480-15 throughout this Order.

- 3 Starving Students also agrees to refund its customers a total of \$11,289.68 in excess charges. The refunds will be made over a four month period, concluding on May 31, 2015. The parties agree that the Commission should assess a penalty of \$7,300, a \$3,650 portion of which should be suspended for a period of one year on the condition that Starving Students substantially complies with RCW 81.80.132, WAC 480-15-630, WAC 480-15-490, WAC 480-15-710, and Tariff 15-C, Items 85, 95, 115, and 230. Staff will conduct a follow-up investigation within one year and provide a recommendation regarding whether the Commission should waive or impose the suspended portion of the penalty. Starving Students agrees to pay the \$3,650 penalty in four quarterly installments of \$912.50 each, due by January 30, 2015, April 30, 2015, July 31, 2015, and October 30, 2015.
- 4 Starving Students has implemented, and agrees to complete, a Remedial Action Plan to address the violations identified in Staff's investigation report and ensure compliance going forward. Consistent with the Remedial Action Plan, representatives of Starving Students, including Brett Larson and Brian Vanduren, attended the Commission-hosted household goods training class on November 12, 2014.
- 5 Michael Fassio, Assistant Attorney General, Olympia, Washington, represents the Staff. Berta A. Blen, General Counsel, Los Angeles, California, represents Starving Students.

DISCUSSION AND DECISION

- 6 WAC 480-07-750(1) states in part: "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

7 With two exceptions, the Settlement Agreement reasonably resolves all issues in this proceeding, and its terms are consistent with law and public policy. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Starving Students admits to violations of RCW 81.80.132, WAC 480-15-630, WAC 480-15-490, WAC 480-15-710, and Tariff 15-C, Items 85, 95, 115, and 230. Starving Students also agrees to implement a Remedial Action Plan, agrees to refund customers who were overcharged, and receives a reduction in the amount of the original penalty conditioned on future compliance. Staff achieves its goal of bringing the Company into compliance with its legal obligations and ensures the Company implements measures designed to prevent recurring violations.

8 The Settlement Agreement as presented, however, includes no adequate remedy if Starving Students fails to issue customer refunds. Although we have no reason to believe the Company intends to forgo compliance with this term, the Agreement inadvertently creates a financial incentive to do just that. To ensure the Company honors its commitment, the Commission will approve the Settlement Agreement subject to the condition that any portion of the \$11,289.68 in customer refunds that remains unpaid by May 31, 2015, will become immediately due and payable to the Commission on June 1.³ In addition, the \$3,650 suspended portion of the penalty will also become immediately due and payable. Our strong preference, of course, is for

³ For example, if the Company makes \$5,000 in refund payments by May 31, 2015, the balance of \$6,289.68 will become due and payable to the Commission on June 1, 2015.

the customers to receive the benefit of those refunds. Attaching this condition provides additional incentive for the Company to realize that outcome.

- 9 The suspended portion of the penalty, \$3,650, remains otherwise conditioned on the terms set forth in the Settlement Agreement, with two modifications. First, if Starving Students fails to timely pay one installment, the remaining balance will become immediately due and payable. Second, if the Company fails to pay the penalty by the date it becomes due in full – either immediately upon a missed installment, or October 30, 2015, whichever applies – the \$3,650 suspended portion of the payment will become immediately due and payable without further order by the Commission.

ORDER

THE COMMISSION ORDERS:

- 10 (1) The Settlement Agreement between Starving Students, Inc. and Commission Staff, attached as Exhibit A to, and incorporated into, this Order, is approved as the final resolution of the disputed issues in this docket subject to the conditions set out in this Order.
- 11 (2) Starving Students, Inc. must refund a total of \$11,289.68 to customers who were improperly charged, as set out in the refund credit schedule in Attachment A to the Settlement Agreement. If Starving Students fails to issue any portion of the refunds by May 31, 2015, the remaining balance unpaid as of that date will become due and payable to the Commission on June 1, 2015, without further order by the Commission.
- 12 (3) Starving Students, Inc. is assessed a penalty of \$7,300, a \$3,650 portion of which is suspended for a period of one year from the effective date of this Order conditioned on Starving Students, Inc. complying with the terms of this Order. The \$3,650 that remains due and payable shall be paid in four quarterly installments of \$912.50 each, due by January 30, 2015, April 30, 2015, July 31, 2015, and October 30, 2015.

- 13 (4) If Starving Students, Inc. fails to pay any installment by 5:00 p.m. on the date it is due, the unpaid balance will immediately become due and payable without further order by the Commission. If Starving Students, Inc. fails to pay the penalty by the date it becomes due in full – either immediately upon a missed installment, or October 30, 2015, whichever applies – the \$3,650 suspended portion of the penalty will become immediately due and payable without further order by the Commission. If Starving Students, Inc. fails to issue any portion of the \$11,289.68 in customer refunds by May 31, 2015, the \$3,650 suspended portion of the penalty will become immediately due and payable without further order by the Commission.
- 14 (5) Within one year from the date of this Order, Commission Staff shall conduct a review of the operations of Starving Students, Inc. to determine its compliance with applicable statutes and rules. If Starving Students, Inc. has substantially complied with applicable statutes and rules, the Commission will waive the penalty. If Starving Students, Inc. has not substantially complied with applicable statutes and rules, the suspended \$3,650 portion of the penalty will become immediately due and payable.
- 15 (6) Within 10 days of the date of this Order, Starving Students, Inc. must file notification with the Commission if it accepts the conditions imposed by the Commission.
- 16 (7) The hearing scheduled for January 13, 2015, at 9:30 a.m. is cancelled.
- 17 (8) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective January 12, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

**Exhibit A
Settlement Agreement**