

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

BOBBY WOLFORD TRUCKING &
SALVAGE, INC. d/b/a BOBBY
WOLFORD TRUCKING &
DEMOLITION, INC.

DOCKET TG-151573
(*Consolidated*)

ORDER 03

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

BOBBY WOLFORD TRUCKING &
SALVAGE, INC. d/b/a BOBBY
WOLFORD TRUCKING &
DEMOLITION, INC.

Docket TG-143802
(*Consolidated*)

ORDER 04

FINAL ORDER MODIFYING
INITIAL ORDER

BACKGROUND

- 1 On February 26, 2015, the Washington Utilities and Transportation Commission (Commission) entered Order 02, Initial Order Approving Settlement Agreement in Docket TG-143802 (TG-143802 Order 02). That order assessed penalties against Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. (Bobby Wolford Trucking or Company) for operating as a solid waste carrier without the required Commission-issued certificate. Specifically, the Commission assessed a \$41,186.30 penalty, \$21,186.30 of which was suspended for a period of one year on the condition that Bobby Wolford Trucking complied with the Order, which expressly prohibits the Company from providing solid waste collection services regulated by the Commission.
- 2 On February 24, 2016, the Commission entered Order 01 in Docket TG-151573, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties (Complaint) and Notice of Brief Adjudicative Proceeding. In the Complaint, Commission staff (Staff) alleges that Bobby Wolford Trucking violated TG-143802 Order 02 a total of 170 times, and that those violations form the basis of the Complaint.

- 3 The Commission conducted a brief adjudicative proceeding in both dockets on April 27, 2016, before Administrative Law Judge Rayne Pearson. The Company stipulated to the violations, which limited the scope of the hearing to Staff's recommended penalties and the Company's request for mitigation. Staff recommended that the Commission (1) impose the \$21,186.30 suspended penalty for violation of TG-143802 Order 02 and (2) assess the maximum penalty of \$1,000 per violation for each of the violations alleged in the Complaint for a total penalty of \$170,000, and suspend \$85,000 of that amount for a period of two years, and then waive it, subject to the condition that the Company refrains from conducting business as a solid waste carrier without first obtaining a Commission-issued certificate. Bobby Woldford Trucking urged the Commission not to impose any penalties based on the Company's good faith belief that its actions did not violate applicable law.
- 4 On May 16, 2016, the Commission entered Order 02/03 in the consolidated dockets (Initial Order). The Commission in that order classified Bobby Woldford Trucking as a solid waste carrier within the state of Washington and ordered the Company to immediately cease and desist providing all forms of solid waste collection services without Commission authority. The Commission imposed the suspended \$21,186.30 of the \$41,186.30 penalty assessed in TG-143802 Order 02 and assessed an additional penalty of \$50,000 for 170 violations of RCW 81.77.040, the entirety of which is suspended for a period of two years and then waived if the Company complies with the Initial Order.
- 5 On June 3, 2016, Staff filed petitions for administrative review of the Initial Order. Staff asserts that the suspended \$50,000 penalty is unreasonably low and will not provide a sufficient incentive for the Company to comply with its legal obligations. Staff urges the Commission to review and amend paragraphs 35 and 41 of the Initial Order to adopt Staff's original recommendation of a \$170,000 penalty, \$85,000 of which would be suspended for two years and then waived if the Company refrains from operating as a solid waste carrier and pays the remaining portion of the penalty that is not suspended.
- 6 The Company did not file a response.

7 Christopher Casey, Assistant Attorney General, Olympia, represents Staff. Elizabeth Alvord, In-house Counsel, Seattle, represents Bobby Wolford Trucking.

DISCUSSION AND DECISION

8 We agree with Staff that the Company’s conduct calls for a larger penalty than the Initial Order assesses. The evidentiary record supports the Administrative Law Judge’s determination that Bobby Wolford Trucking “knew or should have known that the scope of work requested by Pacific Pile was nearly identical to the scope of work that gave rise to the violations cited in [TG-143802] Order 02.”¹ The Commission deals more harshly with companies that repeatedly violate the same statute or rule.² A penalty of \$50,000 for 170 violations is not significantly more harsh than the prior penalty of \$41,186.20 for 191 violations, and suspending the entirety of the \$50,000 is more lenient than the suspension of all but \$20,000 of the prior penalty.

9 The latest violations, however, do not warrant the statutory maximum penalty of \$1,000 per violation that Staff recommends. The Commission generally imposes the maximum penalty only when the conduct underlying the violations threatens public safety or demonstrates a complete disregard for the law.³ The violations at issue here present neither circumstance. We are sympathetic to Staff’s concerns that the Company’s conduct caused economic harm to the certificated waste collection company and its customers, but our primary objective in any enforcement proceeding is to ensure compliance with applicable statutes and rules. We are not willing to impose the maximum statutory penalty absent evidence that such action is the minimum necessary to provide Bobby Wolford Trucking with sufficient incentive to comply with the law.

10 The Commission previously penalized the Company \$41,186.20 for 191 violations of RCW 81.77.040, or approximately \$215 per violation. That penalty was not sufficient to deter Bobby Wolford Trucking from again violating that statute. For this second set of violations, therefore, we find that doubling the prior assessment to \$430 per violation for a total of \$73,100 is an appropriate penalty. This is a substantial amount, particularly when the Company also must pay the previously suspended \$21,186.30 of the penalty

¹ Initial Order ¶ 27.

² Docket A-120061, Enforcement Policy ¶15 at 9 (Jan. 7, 2013) (Enforcement Policy).

³ See, e.g., *WUTC v. Ride the Ducks of Seattle, LLC d/b/a Seattle Duck Tours*, Docket TE-151906, Order Approving Settlement Agreement (May, 2016) (requiring the maximum penalty for safety violations but approving a lesser penalty for record-keeping violations).

assessed in TG-143802 Order 02 as a result of the same violations. Accordingly, we will suspend \$35,000 of the \$73,100 we assess in this Order for two years on the condition that Bobby Wolford Trucking commits no additional violations of RCW 81.77.040 and otherwise complies with the terms of the orders in these dockets. We also put the Company on notice that if it repeats these violations in the future, it should expect the financial penalties to be significantly higher than those assessed in this Order.

ORDER

THE COMMISSION ORDERS That

- 11* (1) The Commission modifies paragraphs 35 and 41 in Order 02 in Docket TG-143802/Order 03 in Docket TG-151573 to assesses a penalty of \$73,100 against Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc., for 170 violations of RCW 81.77.040. The Commission suspends \$35,000 of that amount for a period of two years from the effective date of this Order on the condition that Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc., complies with the terms of the orders in these dockets. The \$38,100 portion of the penalty that is not suspended is due and payable within 10 days of the date of this Order.
- 12* (2) No party requested review of any other provisions of Order 02 in Docket TG-143802/Order 03 in Docket TG-151573, and the Commission has not reviewed those provisions on its own motion. With the exception of paragraphs 35 and 41, therefore, Order 02 in Docket TG-143802/Order 03 in Docket TG-151573 is a final order by operation of law.

- 13 (3) The Commission delegates to the executive director and secretary authority to resolve issues of compliance with the terms of the orders in these dockets.

DATED at Olympia, Washington, and effective June 17, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.