

**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

STAFF MOTION FOR A DECISION ON
A PAPER RECORD

1 The parties in this matter have reached an agreement to settle all issues outlined in the complaint filed in this docket. With the filing of this motion and the testimony of Kathryn McPherson, along with the previously filed Settlement Agreement signed by all parties, Staff views the record as complete. Given that fact, holding the evidentiary hearing set for July 18, 2023, is an inefficient use of the Commission’s and parties’ time and resources. Staff, accordingly, requests that the Commission cancel the settlement hearing, admit the pre-filed testimony, decide this matter based on a paper record, and approve the Settlement because it complies with applicable laws and is consistent with the public interest.¹

I. BACKGROUND

2 In April 2023, the Utilities and Transportation Commission (UTC) issued a complaint against Somers Sunrise Enterprises LLC (Somers Sunrise) for penalties and to determine the classification of Somers Sunrise. The Complaint detailed the investigation conducted by Staff witness Kathryn McPherson of the UTC (Staff), which uncovered facts that Somers Sunrise was illegally operating as a solid waste carrier. As stated in Ms. McPherson’s pre-filed testimony, Somers Sunrise transported solid waste for compensation without obtaining a Certificate of Convenience and Necessity authorizing it to do so.²

¹ WAC 480-07-740-750.

² Testimony of Kathryn McPherson (“McPherson Testimony”) at 3:4-10.

3 In May 2023, Waste Management of Washington, Inc. (Waste Management)
requested permission to intervene in this matter. Waste Management sought intervention on
the grounds that it had reason to believe that Somers Sunrise was illegally operating in
Waste Management’s service territory. Waste Management was granted intervenor status at
the Pre-Hearing Conference.

4 Staff, Waste Management, and Somers Sunrise (each a “party” and collectively “the
parties”), through their authorized representatives, entered into a settlement agreement
(Settlement) resolving all issues in Docket TG-230191. The Settlement Agreement,
executed by all parties, was filed with the Commission in late June 2023. The Settlement is a
“full settlement” as defined in WAC 480-07-730(1) because it is entered into by all parties
and resolves all issues raised in Docket TG-230191.

II. ARGUMENT

5 A decision on a paper record is proper in this instance as a hearing on the settlement
will be of no more assistance than the information thus far filed in the record.

6 Generally, the Commission reviews “all settlements to determine whether they
comply with applicable legal requirements and whether approval of the agreements is
consistent with the public interest.”³ The Commission may approve a settlement that is
“lawful, supported by an appropriate record, and consistent with the public interest in light
of all the information available to the commission.”⁴ Each party must offer to present one or
more witnesses to testify in support of the settlement.⁵ The rules permit the Commission to

³ WAC 480-07-740.

⁴ WAC 480-07-750(2).

⁵ WAC 480-07-740(3)(b).

conduct a hearing if it believes “that a hearing will assist the commission” in deciding whether to approve or adopt the settlement.”⁶

7 In this case, a hearing to determine the appropriateness of the settlement is not necessary as a paper record is sufficient and a hearing will not provide further insight. Staff has submitted pre-filed testimony by investigator Kathryn McPherson to accompany this motion. Investigator McPherson testifies to the terms of the settlement and why it is in the public interest. Investigator McPherson is suitable to provide this testimony as she was the investigator in charge of the Somers Sunrise investigation, made the initial recommendations for classification proceeding and penalties, and assisted with settlement negotiations.

8 All other facts and evidence have already been submitted to the record via the Complaint filed by the Commission. The Complaint contains the evidence of Staff’s interactions with Somers Sunrise, as well as the evidence of Somers Sunrise’s illegal waste hauling activities. There is no additional information that can be entered during a hearing to bolster the record.

9 The settlement entered into by the parties meets the requirements of WAC 480-07-750(2), is a full settlement, and should be accepted without conditions.⁷ The Settlement Agreement contains requirements that Somers Sunrise cease and desist operating its unlawful solid waste business.⁸ Somers Sunrise admits to all 90 incidents of illegal hauling in the Agreement, and it agrees to pay a penalty of \$90,000, \$9,000 of which is due immediately in accordance with the terms of the settlement, and \$81,000 to be suspended

⁶ WAC 480-07-740(2)(c).

⁷ WAC 480-07-750(2)(a).

⁸ McPherson Testimony at 4:4-5.

pending continued compliance.⁹ Staff supports the remaining \$81,000 of the requested penalty being suspended in order to incent compliance. Somers Sunrise agrees to submit to periodic reviews over the next two years to ensure compliance with the agreement and Washington law.¹⁰

10 The payment terms are in the public interest as they ensure compliance with law while adequately penalizing a violating party.¹¹

11 The Settlement Agreement incents compliance by stating that the Commission may pursue the suspended portion of the \$90,000 penalty (\$81,000) if Somers Sunrise is found to have fallen out of compliance.¹² This includes if Somers Sunrise starts operating for the hauling of solid waste for compensation in Washington state without the proper authority.

III. CONCLUSION

12 The Commission should issue its decision on a paper record, as a hearing will not assist the Commission further in reviewing the Settlement.

DATED this 10th day of July, 2023.

Respectfully submitted,

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⁹ *Id.* at 4:1-9.

¹⁰ *Id.* at 6:1-3.

¹¹ *Id.* at 5:13-21.

¹² *Id.* at 4:22-5:2.