

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

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

PAUL HENRICKSON,
D/B/A CONCRETE AND MORE

DOCKET TG-190793

ORDER 03

VACATING DEFAULT ORDER;
REOPENING PROCEEDING FOR
FURTHER PROCESS

BACKGROUND

- 1 On October 1, 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 the Company in Bothell, Washington.
- 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 Concrete and More 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 Concrete and More operated as a solid waste collection company without the required Commission-issued certificate. Further, the Commission ordered Concrete and More to pay a \$2,000 penalty for two (2) violations of RCW 81.77.040. Finally, the Commission ordered Concrete and More to cease and desist from future unauthorized operations.

6 On December 11, 2019, Concrete and More filed with the Commission a Motion to Vacate Default Order (Motion).¹ In its Motion, Concrete and More denied that it received the Notice rescheduling the proceeding to November 25, 2019, and denied that its operations are subject to Commission regulation.

DISCUSSION AND DECISION

7 We grant Concrete and More'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. Companies are also afforded the opportunity to schedule a hearing for a later date to offer evidence that their operations are not subject to Commission regulation.

8 Affording Concrete and More the opportunity to discuss its current and past conduct with Staff will necessarily include valuable technical assistance from Staff about what Concrete and More can and cannot do without a Commission-issued certificate. In addition, affording Concrete and More the opportunity to contest that its operations are regulated by the Commission is consistent with due process in light of the fact that the special proceeding was rescheduled from its original date and the Company denies receiving notice of that change. 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;

¹ Concrete and More styled its filing as a Petition for Administrative Review, but requested in its filing that Order 02 be vacated. Although the Company's filing could be construed as a petition for administrative review of the Commission's finding that the Company is subject to Commission regulation, vacating Order 02 renders that issue moot at this juncture because the matter will be reopened for further proceedings, including a formal classification proceeding, if necessary. We find that this approach is most consistent with the requirement in WAC 480-07-395(4) that we construe pleadings and motions with a view to effect justice among the parties. The rule further provides that the Commission will consider pleadings and motions based primarily on the relief they request and will not rely solely on the name of the document.

- 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) Paul Henrickson, d/b/a Concrete and More'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 16, 2019.

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge