

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment)	DOCKET TG-121205
Against)	
)	ORDER 01
PULLMAN DISPOSAL SERVICE,)	
INC.,)	INITIAL ORDER APPROVING
)	SETTLEMENT AGREEMENT
In the Amount of \$2,300)	SUBJECT TO CONDITION
)	
.....)	

- 1 ***Synopsis.** This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective as described in the notice at the end of this Order. If this Initial Order becomes final, the parties’ proposed Settlement Agreement will be approved and the penalty assessed against Pullman Disposal Service, Inc., will be mitigated from \$2,300 to \$1,150 subject to the condition that the difference of \$1,150 is suspended pending the Company’s satisfaction of the requirement in the Settlement Agreement to pay a \$1,150 mitigated penalty within 30 days of approval of the Settlement Agreement.*

- 2 **Penalty.** On July 26, 2012, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment TG-121205 against Pullman Disposal Service, Inc. (Pullman Disposal or Company) in the amount of \$2,300. Following a self-reported overcharge, the Commission alleged multiple violations of Washington Administrative Code (WAC) 480-70-236(1), which states that a company cannot assess rates and charges for solid waste collection service that are higher, lower, or different from those contained in its tariff.

- 3 On August 3, 2012, Pullman Disposal filed with the Commission an application for mitigation, admitting the violation and seeking a hearing before an administrative law judge. Pullman Disposal did not include a reason for seeking reduction in the penalty.

- 4 On August 16, 2012, the Commission issued a Notice Denying Request for Hearing and Notice of Opportunity to Submit Reason(s) in Support of Application for Mitigation. The Commission required Pullman Disposal to provide a written statement of the reasons it believes the penalty should be reduced and set a deadline of August 23, 2012.

5 On August 22, 2012, Pullman Disposal provided a written statement setting out the reasons it believed mitigation to be appropriate. The Company explained that it changed billing software in summer 2011 and had to transfer large amounts of data, including rates, from the old to the new system. During this process, the Company accidentally doubled the rate charged to recycling customers with eight-yard dumpsters. Pullman Disposal discovered the incorrect rate approximately ten months later, corrected the error, credited all affected customers, and made the Commission aware of its mistake. The Company seeks mitigation of the \$2,300 penalty based upon its self-detection and self-reporting of this incorrect recycling rate.

6 Commission Staff (Staff) supported the request for a hearing in order to facilitate settlement discussions with Pullman Disposal.

7 **Hearing.** Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determined that a brief adjudicative proceeding (BAP) was appropriate for determining whether the penalty should be mitigated and what actions might be necessary to ensure that Pullman Disposal complies with its regulatory obligations. On September 12, 2012, the Commission issued a Notice of Brief Adjudicative Proceeding and set October 11, 2012, at 1:30 p.m. as the time for the parties to make oral statements concerning their positions.

8 **Settlement.** On September 28, 2012, the parties notified the Commission that they had reached a full settlement in principle and indicated they would be reducing their agreement to writing prior to the scheduled hearing date. On October 2, 2012, the Commission issued a Notice Canceling Hearing and Requiring Parties to File Settlement Documents, requiring the filing by October 10, 2012.

9 On October 10, 2012, the parties filed their Settlement Agreement and supporting narrative. As part of the Settlement Agreement, Pullman Disposal agrees to pay a monetary penalty in the amount of \$1,150 and admits that it violated Commission rules by charging 23 customers twice the proper rate for approximately 10 months.¹ To demonstrate its commitment to future compliance with Commission statutes and rules, Pullman Disposal also agrees to immediately institute internal practices to double-check its data entry for rates.²

¹ Settlement Agreement, ¶¶ 9-10, and Narrative, ¶ 8.

² Settlement Agreement, ¶ 11; Narrative, ¶ 8.

10 **Evaluation of Settlement.** 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.

11 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.

12 **Commission Decision.** With one exception, 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. Pullman Disposal admits to multiple violations of WAC 480-70-236(1), commits to improvements in internal practices to ensure future compliance with Commission rules and statutes, and receives a reduction in the amount of the original penalty. Staff achieves its goal of bringing the Company into compliance with its legal obligations without undue financial impact to the business, and ensures the Company implements measures designed to improve billing accuracy.

13 The Settlement Agreement as presented, however, includes no remedy if Pullman Disposal fails to comply with its commitment to pay the \$1,150 mitigated penalty when due. To ensure that the Company honors this commitment and to reduce the possibility of future proceedings to enforce the Settlement Agreement, the Commission will approve the Settlement Agreement subject to the condition that \$1,150 of the original \$2,300 penalty assessment will be suspended subject to Pullman Disposal fulfilling its obligation in the Settlement Agreement to pay the \$1,150 mitigated penalty within 30 days of final approval of the Settlement Agreement. If Pullman Disposal fails to comply with this obligation, the entirety of

the \$2,300 original penalty assessment will immediately be due and payable. Upon satisfaction of this obligation, the Commission will waive the suspended portion of the original penalty assessment.

ORDER

THE COMMISSION ORDERS:

- 14 (1) The Settlement Agreement between Pullman Disposal Services, Inc., and Commission Staff, attached to this Order and incorporated by reference, is approved as the resolution of all disputed issues in this docket, subject to the condition that \$1,150 of the original \$2,300 penalty assessment is suspended pending satisfaction of the requirement in the Settlement Agreement that payment of the \$1,150 mitigated penalty within 30 days of the date on which this Order becomes final. Failure to satisfy this requirement will result in the entirety of the original penalty assessment of \$2,300 being immediately due and payable. Upon satisfaction of this requirement, the Commission will waive the suspended portion of the original penalty assessment.
- 15 (2) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective October 23, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
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 **seven (7)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250