

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

SEAN SMITH

DOCKET TG-190488

SETTLEMENT AGREEMENT

**I. OVERVIEW**

1 Staff of the Washington Utilities and Transportation Commission (Staff) and Mr. Sean  
Smith (collectively the Parties) enter into the following settlement agreement (Agreement)  
to resolve all issues in Docket TV-190488, which concerns the proper carrier classification  
of, and complaint for penalties against, Mr. Smith.

2 This docket arose from Staff’s investigation into whether Mr. Smith violated RCW  
81.77.040, which forbids the transport of solid waste for compensation without first  
obtaining authority to do so from the Commission.

3 This Agreement is a “full settlement” as defined in Washington Administrative Code  
(WAC) 480-07-730(1). All parties have entered into the Agreement and it resolves all issues  
raised in Docket TV-190488.

4 This Agreement is subject to the review by the Washington Utilities and Transportation  
Commission (Commission) to determine whether it complies with the applicable legal  
requirements and whether approval of the Agreement is consistent with the public interest.

## II. BACKGROUND

5 On April 18, 2019, Staff discovered a Facebook Marketplace advertisement posted by Mr.  
Smith. That posting advertised the transport of solid waste over the public highways of  
Washington for compensation.

6 The discovery caused Staff to begin an investigation into whether Mr. Smith was violating  
the public service laws, specifically RCW 81.77.040, which requires a person to obtain a  
certificate of convenience and public necessity before operating for the hauling of solid  
waste. Operating for the hauling of solid waste includes advertising, soliciting, offering, or  
entering into agreements to transport solid waste for compensation.

7 In the course of its investigation, Staff learned that Mr. Smith did not have a certificate of  
convenience and public necessity authorizing him to advertise for such transport.

8 Staff contacted Mr. Smith on May 23, 2019, and obtained a quote for the transport of solid  
waste for compensation. Specifically, Mr. Smith offered to transport eight bags of solid  
waste for \$150.

9 On October 20, 2019, the Commission served Order 01 in this docket to institute a special  
proceeding under RCW 81.04.510 to determine whether Mr. Smith was engaging in conduct  
requiring authority from the Commission, or whether he had engaged in such operations.

The Commission in Order 01 also complained against Mr. Smith, seeking penalties for his alleged violations of RCW 81.77.040.

10 The parties have conferred in an attempt to settle this matter. They have agreed to terms and now enter into this Agreement to memorialize their settlement.

### III. TERMS OF AGREEMENT

11 Violations: Mr. Smith admits to having committed two violations of RCW 81.77.040.

Specifically, Mr. Smith admits that he posted on Facebook Marketplace the advertisement to transport solid waste for compensation viewed by Staff on April 18, 2019, and also that he offered to transport solid waste for compensation on May 23, 2019.

12 Classification: The Commission will classify Mr. Smith as a solid waste collection company based on the conduct underlying the two violations he admits to in this Agreement.

13 Cease and Desist Order: The Commission will enter an order requiring Mr. Smith to cease and desist from further violations of RCW 81.77.040.

14 Suspended monetary penalty: The Commission will impose on Mr. Smith a penalty of \$1,000 for each of the violations of RCW 81.77.040, for a total penalty of \$2,000. The Commission will suspend \$1,500 of the penalty for a period of two years, contingent upon Mr. Smith's compliance with the public service laws and the cease and desist order entered as a result of this Agreement. The Commission will waive the suspended portion of the penalty after this two-year period if Mr. Smith refrains from further violations of RCW 81.77.040.

15 Payment plan: Mr. Smith will pay the \$500 portion of the penalty not suspended over a five-month period. Mr. Smith's first payment will be due on the first day of the first calendar month following the month in which the Commission enters an order approving the payment

plan. The remaining four payments will be due on the first day of each of the four successive months.

### III. GENERAL PROVISIONS

- 16 Public interest: The Parties submit that this Agreement promotes the public interest, and that it is appropriate for the Commission's acceptance without conditions.
- 17 Effective date: This Agreement is effective on the service date of a final Commission order approving this Agreement, or on the date that an initial order approving this Agreement becomes a final order, whichever occurs first.
- 18 Advocacy: The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.
- 19 Publications: The Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements) and (2) to include in any news release or announcement a statement that Staff's recommendation to approve the Agreement is not binding on the Commission itself.
- 20 Construction: This Agreement shall not be construed against any party solely because that party was a drafter of the Agreement.
- 21 Other proceedings: This Agreement is for settlement purposes only and shall have no precedential or preclusive effect in other proceedings.

- 22 Rejection or conditional approval of the Agreement by the Commission: In the event this Agreement does not become effective, this Agreement shall be null and void, with no binding effect on the Parties and with no precedential or preclusive effect on the Parties regarding the continued litigation in Docket TV-190488. In the event that the Commission rejects all or any portion of this Agreement, or accepts the settlement upon conditions not proposed in this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the Commission. Written notice must be served within 10 business days of service of the Order rejecting part or all of this Agreement or imposing conditions not proposed in this Agreement. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and the Parties agree to cooperate in developing a procedural schedule to resolve the disputed issues in this docket.
- 23 Settlement discussions: The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission order fully adopting those terms.
- 24 Final agreement: The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein.
- 25 Counterparts: The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. A signed signature page sent by facsimile or email is as effective as an original document.

26 Authorized representatives: Each person signing this Agreement warrants that he or she has authority to bind the party that he or she represents.


DATED this 13 day of ~~January~~ <sup>March</sup>, 2020.  
SEAN SMITH

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON  
Attorney General

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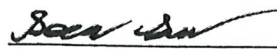
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DATED this 11<sup>th</sup> day of <sup>March</sup> January, 2020.  
SEAN SMITH

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

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