

**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

ORDER 03

APPROVING SETTLEMENT
AGREEMENT

BACKGROUND

- 1 **Nature of Proceeding.** On May 9, 2023, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Instituting Special Proceeding; Complaint Seeking to Impose Penalties; Notice of Prehearing Conference (Order 01). Order 01, among other things, alleged that Somers Sunrise Enterprises, LLC, (Somers Sunrise or Company) violated the Revised Code of Washington (RCW) 81.80.70(1) and RCW 81.77.040 a total of 90 times between July 1, 2022, and January 31, 2023, by transporting solid waste for compensation over the public highways of Washington without first obtaining a certificate of convenience and public necessity from the Commission.
- 2 **Procedural History.** The Commission convened a prehearing conference in this docket on May 17, 2023, before Administrative Law Judge (ALJ) Gregory J. Kopta. On May 23, 2023, the Commission entered Order 02, Prehearing Conference Order, granting intervention to Waste Management of Washington, Inc., (Waste Management), authorizing discovery, and establishing a procedural schedule including an evidentiary hearing on July 18, 2023.
- 3 **Suspension of Procedural Schedule.** On June 26, 2023, the Commission's regulatory staff (Commission Staff or Staff)¹ contacted the presiding ALJ on behalf of the parties to

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

indicate that they had reached a settlement in principle, and to request the Commission suspend the procedural schedule to allow time for the parties to memorialize their settlement and file a request to proceed on a paper record. On June 27, 2023, the Commission issued a Notice Suspending Procedural Schedule and Notice Canceling Evidentiary Hearing granting the parties' request.

4 **Settlement Agreement.** On June 27, 2023, Staff filed a settlement agreement (Settlement) on behalf of the parties that resolves all the contested issues in this proceeding.

5 **Motion and Testimony.** On July 10, 2023, Staff filed the testimony of Kathryn McPherson in support of the Settlement. Staff also filed a Motion for a Decision on a Paper Record. No other party responded to the Motion or filed testimony.

6 **Appearances.** Roger Somers represents Somers Sunrise, *pro se*. Josephine Strauss, Assistant Attorney General, Olympia, Washington, represents Staff. Walker Stanovsky, Davis Wright Tremaine LLP, Seattle, Washington, and Ame Wellman Lewis, Senior Legal Counsel, represent Waste Management.

DISCUSSION

7 **Applicable Law.** 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." 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.

8 **Settlement.** As part of the Settlement, Somers Sunrise admits that on 90 occasions between July 1, 2022, and January 31, 2023, the Company hauled solid waste to a Grant County landfill for compensation without holding a certificate of public convenience and necessity from the Commission resulting in 90 violations of RCW 81.77.040.

9 Also, as part of the Settlement, the parties agreed that the Commission should classify Somers Sunrise as a solid waste collection company and require the Company to cease

and desist from operating as such a company without obtaining the required certificate from the Commission.

- 10 The parties agree to the Commission assessing a penalty of \$90,000 against Somers Sunrise for the 90 violations of RCW 81.77.040, \$81,000 of which will be suspended for two years so long as the Company complies with the cease-and-desist order, after which that amount will be waived. Staff will assess the Company's compliance with that order in 6-, 12-, 18-, and 24-month intervals, and Somers Sunrise will cooperate with those compliance reviews.
- 11 The parties agree that the Company will pay the \$9,000 portion of the penalty assessment that is not suspended in six consecutive monthly installments of \$1,500, beginning on the first day of the first month following the effective date of the Settlement.
- 12 **Supporting Testimony.** The testimony of Kathryn McPherson supports the Settlement. McPherson describes Staff's investigation that resulted in the complaint filed against the Company, as well as the Settlement resolving that complaint. She explains that the Settlement is in the public interest because it will result in Somers Sunrise no longer acting as a solid waste collection company without Commission authorization. The penalty and suspension of most of that amount for two years, she testifies, is in the public interest because it provides the appropriate incentive for the Company to adhere to its legal obligations to the ultimate benefit of Washington consumers. She also confirms that Staff will conduct the periodic compliance reviews agreed to in the Settlement.
- 13 **Decision.** The Commission approves the Settlement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Somers Sunrise admits that its conduct violated Commission statutes and rules and has agreed to cease and desist all unpermitted operations unless and until it obtains a certificate from the Commission. The Settlement supports the Commission's goal of compliance by assessing a penalty of \$90,000 for 90 statutory violations and by permitting the Company to pay \$9,000 of that amount and suspending, then waiving, the \$81,000 remainder of the penalty conditioned on the Company complying with the terms of this Order.

14 The terms of the Settlement are consistent with the public interest and reasonably resolve all issues in this proceeding. Accordingly, the Commission should approve the Settlement as filed.

FINDINGS AND CONCLUSIONS

15 (1) The Commission is an agency of the State of Washington vested by statute with authority to regulate persons engaged in the business of transporting solid waste for compensation over public roads in Washington.

16 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Somers Sunrise.

17 (3) The Settlement is consistent with the public interest and reasonably resolves all issues in this proceeding.

18 (4) The Commission should approve the Settlement without condition and order the penalty amount, conditions, and other terms as proposed by the parties in the Settlement.

ORDER

THE COMMISSION ORDERS:

19 (1) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of all issues in this proceeding.

20 (2) Somers Sunrise Enterprises LLC is classified as a solid waste carrier within the state of Washington.

21 (3) Somers Sunrise Enterprises LLC is ordered to immediately cease and desist operations as a solid waste collection company within the state of Washington without first obtaining the required certificate from the Commission.

- 22 (4) The Commission assesses a penalty of \$90,000 against Somers Sunrise Enterprises LLC for 90 violations of RCW 81.77.040. An \$81,000 portion of the penalty is suspended for a period of two years from the date of this Order, and waived thereafter, provided that (1) Somers Sunrise Enterprises LLC refrains from operations as a solid waste collection company in the state of Washington without first obtaining the required certificate from the Commission, and (2) Somers Sunrise Enterprises LLC timely pays the portion of the penalty that is not suspended. The portion of the penalty that is not suspended is due and payable in six consecutive monthly installments of \$1,500, on the first day of each month (or first business day thereafter) beginning on the first day of the first month following the effective date of this Order.
- 23 (5) 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 July 26, 2023.

/s/ Gregory J. Kopta
Gregory J. Kopta
Administrative Law Judge

NOTICE TO THE 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 (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters 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 with due diligence at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-825(1) 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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).

Exhibit A
Settlement Agreement