

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

JOINT NARRATIVE IN SUPPORT OF
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 Staff of the Washington Utilities and Transportation Commission (Staff) and Mr.
Sean Smith have settled all issues in Docket TG-190488, wherein the Washington Utilities
and Transportation Commission (Commission) complained against Mr. Smith, alleging that
he on two occasions operated for the hauling of solid waste for compensation without first
obtaining a certificate of public convenience and necessity from the Commission.

2 This Narrative explains the parties' settlement agreement (Agreement) and is
intended to provide the evidentiary basis necessary for Commission approval of the
Agreement. Nothing in this narrative modifies any of the terms of the Agreement.

II. PROPOSAL FOR REVIEW

3 The parties contend that a formal settlement hearing and the opportunity for public
comment are unnecessary in this case. *See* WAC 480-07-740(2)(e). The parties agree that
this narrative, together with all previously-docketed materials, supports full Commission
approval of the Agreement. If the Commission requires further evidentiary support, the
parties will present one or more witnesses each to testify in support of the Agreement and to
answer questions concerning its terms, costs, and benefits. *See* WAC 480-07-740(3)(b).

III. APPLICABLE LAW

4 No “solid waste collection company” may “operate for the hauling of solid waste for compensation without first having obtained from the [C]ommission a certificate declaring that public convenience and necessity require such operation.” RCW 81.77.040. A person or entity operates for the hauling or solid waste by transporting solid waste over the public highways of Washington for compensation, or by advertising, soliciting, offering, or entering into agreements to provide that service. *Id.*

IV. AGREED STATEMENT OF THE CASE

5 On July 9, 2019, the Commission, acting through its advocacy Staff, filed a formal complaint against Mr. Smith alleging that he violated RCW 81.77.040 by operating for the hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity from the Commission. Specifically, the Commission alleged that Mr. Smith advertised to transport solid waste for compensation and offered to transport solid waste for compensation in a series of messages exchanged between Mr. Smith and Staff using Facebook’s Messenger service. A more detailed description of Staff’s allegations appears in the Declaration of Kathryn McPherson, which is publicly available in this docket.

6 The parties have engaged in settlement negotiations and settled on the terms discussed below.

V. DESCRIPTION OF SETTLEMENT AGREEMENT

7 The parties agreed to the following terms:

- Admission of liability: Mr. Smith admits that he committed two violations of RCW 81.77.040 as alleged in Staff's complaint.
- Classification. The Commission will enter an order classifying Mr. Smith as a solid waste collection company based on his stipulation to the two violations of RCW 81.77.040.
- Cease and desist. The Commission will enter an order requiring Mr. Smith to cease and desist from operating for the hauling of solid waste for compensation unless and until he first obtains a certificate of public convenience and necessity from the Commission authorizing him to do so.
- Monetary penalty. The Commission will impose a total penalty of \$1,000 per violation, for a total penalty of \$2,000. The Commission will suspend \$1,500 of the penalty for a period of two years, subject to Mr. Smith's compliance with the public service laws and the cease and desist order entered as a result of the settlement. If Mr. Smith refrains from further violations, the Commission will waive the suspended portion of the penalty after two years.
- Payment plan. The Commission will enter an order approving a payment plan allowing Mr. Smith to make monthly payments of \$100 per month for a period of five consecutive months.

VI. STATEMENT OF IMPACT ON THE PUBLIC INTEREST

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The parties contend that their Agreement advances the public interest in two significant ways. First, the Agreement satisfies the public's interest in compliance with the law by incenting Mr. Smith's compliance with the public service laws. Second, the Agreement resolves issues raised in this docket without the needless expenditure of public

and private resources. The Commission, accordingly, should find that approval of the Agreement is in the public interest.

9 First, the public’s primary interest in any regulatory proceeding like this one, and therefore the Commission’s, *see* RCW 80.01.040(2); RCW 81.01.010, is compliance with the law. The Agreement both strongly incents Mr. Smith’s compliance with the law and provides Staff with tools to verify that compliance. The Agreement results in the imposition of the maximum penalty provided by law, but suspends a significant portion of that penalty contingent upon Mr. Smith’s compliance with the public service laws. This arrangement should ensure Mr. Smith’s future compliance with the laws governing the hauling of solid waste so as to avoid paying the significant suspended portion of the penalty. Further, Mr. Smith has agreed to classification as a solid waste collection company, allowing Staff to use the Commission’s power to obtain information from jurisdictional carriers to verify Mr. Smith’s compliance.

10 Second, if the Commission adopts the Agreement, the parties will benefit by avoiding the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. The public will similarly benefit if this dispute concludes without further expenditure of public resources.

VII. CONCLUSION

11 The Commission has formally expressed its support for negotiated resolutions of enforcement actions. A Commission rule states, “The commission supports parties’ informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest.” WAC 480-07-700. For the reasons stated above, the parties contend that their Agreement is lawful and consistent with the public interest.

The parties respectfully request that the Commission approve the Agreement in full.


DATED this 13 day of ~~January~~^{March} 2020.

SEAN SMITH

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON
Attorney General

SEAN SMITH
Phone: (509) 263-5348
Email: imonly4death1@yahoo.com



JEFF ROBERSON, WSBA #45550
Assistant Attorney General
Attorney for Commission Staff
Phone: (360) 664-1188
Email: jeff.roberson@utc.wa.gov

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Assistant Attorney General
Attorney for Commission Staff
Phone: (360) 664-1188
Email: jeff.roberson@utc.wa.gov