

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

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

SEAN SMITH

DOCKET TG-190488

ORDER 04

ORDER APPROVING SETTLEMENT;
CLASSIFYING RESPONDENT AS A
SOLID WASTE CARRIER; IMPOSING
AND SUSPENDING PENALTIES

BACKGROUND

- 1 On October 20, 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., which was later rescheduled for November 25, 2019, at 9 a.m. The Complaint alleged that Sean Smith (Sean Smith or Company) violated RCW 81.77.040 on two occasions by advertising and offering to transport solid waste for compensation without first obtaining from the Commission a certificate of public convenience and necessity required for such operations.
- 2 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 Sean Smith be held in default pursuant to RCW 34.05.440(2) and WAC 480-07-450(1).
- 3 The Commission granted Staff's motion, and also found that Sean Smith operated as a solid waste collection company without the required Commission-issued certificate. Further, the Commission ordered Sean Smith to pay a \$2,000 penalty for two (2) violations of RCW 81.77.040. Finally, the Commission ordered Sean Smith to cease and desist from future unauthorized operations.
- 4 On December 3, 2019, Sean Smith filed with the Commission a Motion to Vacate Default Order. On December 6, 2019, the Commission entered Order 03, Vacating Default Order; Reopening Proceeding for Further Process (Order 03).
- 5 Order 03 instructed Commission staff (Staff) to take one of the following actions:

- File with the Commission a settlement agreement that resolves all of the issues in this proceeding;
- 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.

6 On March 13, 2020, Staff filed a settlement agreement on behalf of the parties (Settlement).

7 As part of the Settlement, the Company admits that it violated RCW 81.77.040 on two occasions by advertising and offering to haul solid waste for compensation without holding a certificate from the Commission required to conduct such operations. The parties agree that the Commission should enter an order classifying Sean Smith as a solid waste collection company and requiring the Company to cease and desist hauling solid waste unless and until the Company applies for and receives a certificate from the Commission.

8 The parties further agree that the Commission should assess a penalty of \$1,000 for each violation alleged in the Complaint, for a total penalty of \$2,000, and that it should suspend a \$1,500 portion of the penalty for a period of two years, and then waive it, subject to the condition that Sean Smith refrains from providing all forms of solid waste service that require a certificate from the Commission. Finally, the parties agree that the Company should pay the remaining \$500 portion of the penalty in five consecutive monthly installments of \$100, the first of which will be due on the first day of the first calendar month following the month in which the Commission enters this Order, or May 1.

9 Jeff Roberson, Assistant Attorney General, Lacey, Washington, represents Staff. Sean Smith, Post Falls, Idaho, represents the Company *pro se*.

DISCUSSION AND DECISION

1 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.

2 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.

3 We approve the Settlement without condition. Because Sean Smith admits to the two violations alleged in the Complaint, the Commission classifies Sean Smith as a solid waste collection carrier and orders the Company to cease and desist such conduct, as required by RCW 81.04.510.

4 We find that the \$2,000 penalty, a \$1,500 portion of which is suspended for two years subject to the condition the Company complies with the cease and desist order, is reasonable, both in terms of the \$500 penalty the Company must pay according to the terms of the installment plan agreed to in the Settlement, and in terms of the substantial suspended amount it must pay if it fails to comply with the Order.

5 The terms of the Settlement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. The Settlement supports the Commission’s goal of deterring illegal operations and permits the Company to pay a reduced penalty contingent on the Company refraining from prohibited operations for two years, unless it obtains the required certificate, which provides an incentive for ongoing compliance. Given these factors, we find the Settlement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

- 6 (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 the disputed issues in this docket.
- 7 (2) Sean Smith is classified as a solid waste carrier within the state of Washington.
- 8 (3) Sean Smith is ordered to immediately cease and desist providing all forms of solid waste collection services in the state of Washington without first obtaining a certificate from the Commission.
- 9 (4) Sean Smith is assessed a penalty of \$2,000 for two violations of RCW 81.77.040. A \$1,500 portion of the penalty is suspended for a period of two years from the effective date of this Order subject to the condition that Sean Smith complies with the terms of this Order.
- 10 (5) Sean Smith must pay the \$500 portion of the penalty that is not suspended in five equal monthly installments of \$100. The first payment is due on May 1.
- 11 (6) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective April 1, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
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 (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 that is essential to a decision, but unavailable and not reasonably discoverable 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 480-07-610(9) 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 does not 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