

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

PAUL HENRICKSON,
D/B/A CONCRETE AND MORE

DOCKET TG-190793

ORDER 04

PREHEARING CONFERENCE ORDER;
NOTICE OF BRIEF ADJUDICATIVE
PROCEEDING

(Set for January 22, 2021, at 1:30 p.m.)

- 1 **NATURE OF PROCEEDING.** The Washington Utilities and Transportation Commission (Commission) initiated a special proceeding in the above-referenced docket to determine if Paul Henrickson, d/b/a Concrete and More, (Concrete and More) is engaged in business as a solid waste collection carrier without possessing the certificate required for such operations.
- 2 On October 11, 2019, the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing (Order 01). On the same date, the Commission issued a *Subpoena and Subpoena Duces Tecum For Production of Documents* (Subpoenas) to Concrete and More commanding Paul Henrickson to appear before the Commission at a special proceeding scheduled to convene at 9 a.m. on November 26, 2019.
- 3 On October 24, 2019, the Commission issued a Notice Rescheduling Special Proceeding and Notice of Substitution of Presiding Officer (Notice). The Notice rescheduled the special proceeding for November 25, 2019, at 9 a.m. and assigned Administrative Law Judge Rayne Pearson as presiding officer.
- 4 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 Concrete and More be held in default pursuant to RCW 34.05.440(2) and WAC 480-07-450(1).
- 5 The Commission granted Staff's motion, and also found that Concrete and More operated as a solid waste collection company without the required Commission-issued certificate. Further, the Commission ordered Concrete and More to pay a \$2,000 penalty for two (2) violations of RCW 81.77.040. Finally, the Commission ordered Concrete and More to cease and desist from future unauthorized operations.
- 6 On December 11, 2019, Concrete and More filed with the Commission a Motion to Vacate Default Order (Motion). In its Motion, Concrete and More denied that it received

the Notice rescheduling the proceeding to November 25, 2019, and denied that its operations are subject to Commission regulation.

7 On December 16, 2019, the Commission entered Order 03, Vacating Default Order, Reopening Proceeding for Further Process (Order 03). Order 03 required Commission staff (Staff) to either: (1) file a stipulated initial order agreed to and signed by the parties, (2) file a letter providing a status update of any negotiations, or (3) file a letter recommending the matter be set for hearing.

8 On December 18, 2019, Staff filed a letter in this docket informing the Commission that Staff had been unable to resolve the dispute, and requesting the matter be set for hearing.

9 On October 20, 2020, the Commission issued a Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements set for November 17, 2020.

10 **REQUEST FOR CONTINUANCE.** Concrete and More appeared at the November 17, 2020, brief adjudicative proceeding (BAP) and requested a continuance to allow time for the Company to review the Commission's response to the Company's outstanding requests for public records. Staff did not oppose the Company's request, and the request was granted orally by the presiding administrative law judge.

11 The Commission finds good cause to continue the BAP until a later date to allow Concrete and More sufficient time to review Commission records responsive to its public records requests and to prepare for hearing. Accordingly, the administrative law judge converted the BAP to a prehearing conference to discuss scheduling and other procedural matters.

12 **CONFERENCE.** The Commission convened a virtual prehearing conference in this docket on November 17, 2020, before administrative law judge Rayne Pearson.

13 **APPEARANCES.** Paul Henrickson, owner, represents Concrete and More, *pro se*. Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Commission Staff (Staff).¹

14 **REQUEST TO DEPOSE STAFF'S WITNESS.** At the prehearing conference, Concrete and More requested to depose Staff's witness, Kathryn McPherson, to address her alleged unprofessional behavior, including harassment and prank phone calls. The

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.

presiding administrative law judge denied the Company's request to depose McPherson because its line of inquiry is not relevant to the issues in this proceeding.

- 15 As a threshold matter, Concrete and More is not entitled to depose witnesses in the context of a BAP. The Commission's procedural rules identify classification proceedings as matters suitable for resolution in a BAP,² and the Administrative Procedure Act (APA) identifies BAPs as proceedings that do not warrant the use of discovery.³ Accordingly, the Commission's discovery rules,⁴ including the rule that authorizes witness depositions,⁵ are not available to the parties in this case.
- 16 Moreover, the APA permits presiding officers to decide whether to permit the taking of depositions. Specifically, RCW 34.05.446 provides that "the presiding officer may condition use of discovery on a showing of necessity and unavailability by other means" and will consider the following factors: (a) whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.
- 17 Here, deposing McPherson for the purpose of determining whether she prank called the Company or otherwise acted unprofessionally will neither promote the orderly and prompt conduct of the proceeding nor promote the interests of justice. In addition, the Company will have the opportunity to cross-examine McPherson at the BAP and may pose appropriate questions at that time.
- 18 **PROCEDURAL SCHEDULE.** Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determines that a brief adjudicative proceeding continues to be appropriate for resolving the issues in this docket. At the prehearing conference, the parties agreed to a new hearing date of January 22, 2021.
- 19 **SUBSTITUTION OF PRESIDING OFFICER.** Due to internal scheduling conflicts, the Commission reassigns this matter to administrative law judge Gregory J. Kopta.
- 20 **NOTICE OF BRIEF ADJUDICATIVE PROCEEDING.** The Commission will hold a virtual BAP in this docket on Friday, January 22, 2021, at 1:30 p.m. The Commission will hold this hearing using Microsoft Teams. To participate by phone, please call (253)

² WAC 480-07-601(d).

³ RCW 34.05.482.

⁴ WAC 480-07-400 – 425.

⁵ WAC 480-07-410.

372-2181 and enter the Conference ID: 891 968 184#. To participate via the Microsoft Teams application, use the following link: [Join Microsoft Teams Meeting](#).

21 The record in this case will consist of any documents regarding the matter that are considered by or prepared for the presiding officer for the brief adjudicative proceeding and a transcript of any oral statements given at the hearing, which statements will be given under oath

22 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties wishing to submit any other documents for consideration at the brief adjudicative proceeding must electronically file with the Commission all proposed exhibits, as well as a list enumerating and describing them, no later than 5 p.m. on Friday, January 15, 2021.

23 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Rayne Pearson, Director, Administrative Law Division (360-664-1136).

24 **NOTICE TO PARTIES:** A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.

25 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the brief adjudicative proceeding set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

26 Administrative Law Judge Gregory J. Kopta, from the Commission's Administrative Law Division, is designated to preside at the hearing of these matters.⁶

DATED at Lacey, Washington, and effective November 18, 2020.

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge

⁶ Judge Kopta can be reached by telephone at (360) 250-4875 or by email at gregory.kopta@utc.wa.gov.

NOTICE

Hearing facilities are accessible to persons with disabilities. Smoking is prohibited. If limited English-speaking, hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please fill out and return this form to:

Washington Utilities and Transportation Commission
Attention: Mark L. Johnson
P.O. Box 47250
Olympia, WA 98504-7250

(PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter:

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone (_____) _____