

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PENINSULA SANITATION SERVICE,
INC.,

Respondent.

DOCKET TG-190476

ORDER 01

APPROVING SETTLEMENT
AGREEMENT

BACKGROUND

- 1 On July 17, 2019, the Washington Utilities and Transportation Commission (Commission) issued a Complaint for Penalties and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements on August 20, 2019, at 9:30 a.m. (Complaint) against Peninsula Sanitation Service, Inc., (Peninsula or Company) for alleged violations of Title 81 RCW and Chapter 480-70 WAC. That brief adjudicative proceeding was rescheduled and then subsequently cancelled pursuant to a joint request filed by Peninsula and Commission staff (Staff).
- 2 On November 6, 2019, the Commission granted a request from the parties to suspend the procedural schedule because the parties had reached a settlement in principle and required the parties to file either a settlement agreement and supporting documentation or a status report of their negotiations by November 20, 2019.
- 3 On November 20, 2019, the Commission granted a request from the parties to extend the deadline for filing the parties' settlement agreement and supporting documentation until December 3, 2019.
- 4 On November 26, 2019, the parties submitted to the Commission their settlement agreement (Settlement Agreement) and joint settlement narrative (Narrative). The parties

then filed a revised version of both the Settlement Agreement and Narrative on December 3, 2019, to correct a ministerial error.

5 The Complaint alleged 681 violations of RCW 81.28.080, WAC 480-70-236(2), or WAC 480-70-411(6) and requested that the Commission assess penalties of up to \$1,000 for each violation. As part of the Settlement Agreement, Peninsula admits that it violated RCW 81.28.080 and/or WAC 480-70-236(2) on 574 occasions and WAC 480-70-411(6) on 12 occasions. In aggregate, the parties agree that the Commission should impose a penalty of \$40,700 for the 586 agreed violations, with \$6,000 of the penalty associated with the violations of WAC 480-70-411(6) mitigated and a \$29,700 portion suspended for a period of two years and then waived on the condition that Peninsula refrains from incurring any additional violations of applicable tariff rules.¹

6 The Settlement Agreement also places conditions on Peninsula. The Company must: revise its tariff with respect to drive-in fees; file a general rate case with the Commission by July 1, 2020; and, cease and desist its non-compliant billing practices with respect to drive-in fees.²

7 Daniel J. Teimouri, Assistant Attorney General, Lacey, Washington, represents Staff. David W. Wiley and Sean Leake, Williams Kastner & Gibbs, PLLC, Seattle, Washington, represent Peninsula.

DISCUSSION AND DECISION

8 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.

¹ Settlement Agreement at 2, ¶¶ 4, 6.

² Settlement Agreement at 3, ¶¶ 7-9.

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.

9 We approve the Settlement Agreement, as revised on December 3, 2019, 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. Peninsula admits that its conduct violated RCW 81.28.080, WAC 480-70-236(2), and WAC 480-70-411(6). The \$40,700 penalty, \$6,000 of which is mitigated to zero and \$29,700 portion of which is suspended, is reasonable, both in terms of the \$5,000 penalty the Company must pay now, and the suspended amount the Company must pay if it fails to comply with this Order and the Settlement Agreement.

10 The terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. The Settlement Agreement supports the Commission's goal of deterring future violations and permits the Company to pay a reduced penalty contingent on the Company complying with this Order and the Settlement Agreement, which provides an incentive for ongoing compliance. The Settlement Agreement explains that the Company's demonstrated cooperation with Staff, subsequent conduct in discontinuing the practice of requiring deposits for service based on a customer's service address, and subsequent conduct in refunding the applicable accrued interest to the 12 impacted customers supports the conclusion that future repeat violations of WAC 480-70-411(6) are unlikely. Given these factors, we find the Settlement Agreement is consistent with the public interest and should be approved as revised on December 3, 2019.

FINDINGS AND CONCLUSIONS

11 (1) The Commission is an agency of the state of Washington vested by statute with the authority to regulate the rates, rules, regulations, and practices of solid waste collection companies.

12 (2) Peninsula is a solid waste collection company subject to regulation by the Commission.

- 13 (3) On July 17, 2019, the Commission issued a Complaint for Penalties and Notice of Brief Adjudicative Proceeding; Setting Time for Oral Statements against Peninsula for alleged violations of Title 81 RCW and Chapter 480-70 WAC.
- 14 (4) On November 26, 2019, the parties filed with the Commission their Settlement Agreement and Narrative. The parties then filed a revised version of both the Settlement Agreement and Narrative on December 3, 2019, to correct a ministerial error.
- 15 (5) The Commission approves settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and the result is consistent with the public interest in light of all the information available to the Commission.
- 16 (6) As part of the Settlement Agreement, Peninsula admits that it violated RCW 81.28.080, WAC 480-70-236(2), or WAC 480-70-411(6) on 586 occasions. The parties agree that the Commission should impose a penalty of \$40,700, \$6,000 of which is mitigated to zero and a \$29,700 portion of which will be suspended for two years, and then waived, provided Peninsula refrains from incurring additional violations of tariff rules.
- 17 (7) These terms are reasonable, both in terms of the \$5,000 penalty the Company must pay now, and the \$29,700 suspended amount the Company must pay if it fails to comply with this Order and the Settlement Agreement.
- 18 (9) The Settlement Agreement is lawful, its terms are supported by an appropriate record, and the result is consistent with the public interest in light of all the information available to the Commission.
- 19 (10) The Commission should approve the Settlement Agreement, as revised on December 3, 2019, without condition.

ORDER

THE COMMISSION ORDERS:

- 20 (1) The Settlement Agreement, as revised on December 3, 2019, 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.

- 21 (2) Peninsula Sanitation Service, Inc., is assessed a penalty of \$40,700, of which \$6,000 is mitigated to zero and a \$29,700 portion of which is suspended for a period of two years from the effective date of this Order and then waived if Peninsula Sanitation Service, Inc., complies with this Order and the Settlement Agreement.
- 22 (3) Peninsula Sanitation Service, Inc., must pay the \$5,000 that is not suspended within 10 days of the effective date of this Order. If Peninsula Sanitation Service, Inc., fails to pay the \$5,000 portion of the penalty within 10 days of the effective date of this Order, the \$29,700 suspended penalty will immediately become due and payable without further order by the Commission.
- 23 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective December 10, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*
ANDREW J. O'CONNELL
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 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