

**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 TV-190793

STAFF'S RESPONSE TO MR.
HENRICKSON'S MOTION TO
DISMISS

I. INTRODUCTION

1 Paul Henrickson moves to dismiss the complaint filed against him by the
Commission's staff (Staff), alleging that the Commission lacks jurisdiction because it
commanded him to appear for hearing in Olympia and he lives in Snohomish County. The
Commission should deny that motion because it has subject matter jurisdiction over this
matter.

II. RELIEF REQUESTED

2 Staff respectfully requests that the Commission deny Mr. Henrickson's motion to
dismiss.

III. STATEMENT OF FACTS

3 In late 2019, Staff complained against Mr. Henrickson for violations of chapter 81.77
RCW.¹ Specifically, Staff alleged that Mr. Henrickson both advertised and offered to
transport solid waste over the public highways for compensation without first obtaining a
certificate of convenience and public necessity from the Commission.² The Commission set

¹ See generally *In re Determining the Proper Carrier Classification of and Complaint for Penalties Against Paul Henrickson d/b/a Concrete and More*, Docket TV-190793, Order 01 (Oct. 11, 2019).

² *Id.* at 5 ¶¶ 23-24.

the matter for hearing and ordered Mr. Henrickson to appear before it in Lacey.³ Given the ongoing COVID-19 pandemic, the Commission has provided for telephonic hearings for more recent proceedings.⁴

4 On November 10, 2020, Mr. Henrickson emailed the presiding administrative law judge (ALJ) to file a motion “[t]o dismiss for lack of jurisdiction.”⁵ Mr. Henrickson explained “I am nowhere near Olympia. This is filed in the wrong court.”⁶ The presiding ALJ that same day denied that motion after construing it a motion to dismiss based on improper venue, reasoning that the “Commission has jurisdiction over the provision of solid waste collection services in all of Washington state.”⁷

5 Mr. Henrickson renewed his motion after the prehearing conference held in this matter on November 17, 2020. He again emailed the presiding ALJ and referred to the fact that he was initially required to appear in Olympia for hearing, stating that “[o]n that basis only this matter lacks jurisdiction.”⁸

IV. STATEMENT OF ISSUES

6 Should the Commission deny Mr. Henrickson’s motion to dismiss?

V. EVIDENCE RELIED UPON

7 Staff relies on the record in this docket.

³ *Id.* at 5 ¶ 27.

⁴ *E.g.*, Tr. (Nov. 17, 2020) at 24-44.

⁵ Email from Paul Henrickson to Rayne Pearson, Docket TV-190793, Docket Entry No. 14 (Nov. 10, 2020).

⁶ *Id.*

⁷ Email from Rayne Pearson to Paul Henrickson, Docket TV-190793, Docket Entry No. 14 (Nov. 10, 2020).

⁸ Email from Paul Henrickson to Rayne Pearson, Docket TV-190793, Docket Entry No. 16 (Nov. 17, 2020).

VI. ARGUMENT

8 The Commission should deny Mr. Henrickson’s motion to dismiss because the legislature has given the Commission jurisdiction to adjudicate Staff’s complaint against him.

9 When ruling on a motion to dismiss, the Commission “consider[s] the standards applicable” to a motion to dismiss under CR 12(b)(6) and 12(c).⁹ Those standards require that the Commission grant a motion to dismiss “‘sparingly and with care,’ and, as a practical matter, ‘only in the unusual case in which the plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.’”¹⁰

10 Whether a tribunal has subject matter jurisdiction turns on the type of controversy rather than the particular facts of a given case. “Subject matter jurisdiction refers to a court’s ability to entertain a type of case, not to its authority to enter an order in a particular case.”¹¹ Corollary to this, “[a] tribunal lacks subject matter jurisdiction only if it ventures to decide a “type of controversy” over which it lacks authority.¹²

11 No insuperable bar to relief exists here¹³ because the Commission possesses authority to decide the controversy at issue. The legislature authorized the Commission to adjudicate controversies arising under the public service laws.¹⁴ And the legislature specifically authorized the Commission to adjudicate whether persons are engaging in

⁹ WAC 480-07-380.

¹⁰ *Kinney v. Cook*, 159 Wn.2d 837, 154 P.3d 206 (2007) (quoting *Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988)).

¹¹ *Buecking v. Buecking*, 179 Wn.2d 438, 448, 316 P.3d 999 (2013).

¹² *Singletary v. Manor Healthcare Corp.*, 166 Wn. App. 774, 271 P.3d 356 (2012).

¹³ *Cf. Young v. Clark*, 149 Wn.2d 130, 65 P.3d 1192 (2003) (“When a court lacks subject matter jurisdiction in a case, dismissal is the only permissible action the court may take.”).

¹⁴ RCW 81.04.110, .120.

business subject to regulation under the public service laws without the required permit.¹⁵ Staff's complaint, which alleges that Mr. Henrickson engaged in conduct regulated under chapter 81.77 RCW without first obtaining the requisite certificate of convenience and public necessity, falls squarely within the reach of the Commission's quasi-adjudicative power. It has jurisdiction to decide this matter.

VII. CONCLUSION

12 The Commission should deny Mr. Henrickson's renewed motion to dismiss.

DATED this 23rd day of November 2020.

Respectfully submitted,

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¹⁵ RCW 81.04.510.