

14-1136

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 3<sup>rd</sup> day of October 2014.

CASE NOS. 13-1662-MC-30E, 13-1663-MC-30E, 13-1664-MC-30E, 13-1665-MC-30E, 13-1666-MC-30E, 13-1668-MC-30E, 13-1669-MC-30E, 13-1670-MC-30E, 13-1671-MC-30E, and 13-1672-MC-30E

ALLIED WASTE SERVICES OF NORTH AMERICA, LLC,  
Rule 30E Application for Solid Waste  
Emergency Rate Surcharge under P.S.C. M.C.  
Certificate Nos. F-4865, F-4879, F-5619,  
F 5620, F-7337, F-7439, F-7498, and Permit  
Nos. H-10155, H-10824 and H-10840.<sup>1</sup>

**COMMISSION ORDER**

The Commission denies the petition for reconsideration of Allied Waste Services of North America, LLC (Allied).

**BACKGROUND**

These cases are currently before the Commission on a Petition for Reconsideration filed by Allied to the Commission order of November 14, 2013. In that Order, the Commission allowed a Rule 30E surcharge in two cases related to P.S.C. M.C. Certificate Nos. F-4865 and F-4879, but required an offsetting credit under M.C. Tariff Rule 33.7.f to operate as a refund for previous over-collection by Allied. The Commission denied the applications for a Rule 30E surcharge in the cases regarding P.S.C. M.C. Certificate Nos. F-5619, F 5620, F-7337, F-7439, F-7498, and Permit Nos. H-10155, H-10824 and H-10840. The Commission also found that it was not necessary to make a final ruling on a motion for protective treatment filed by Allied until a request for the information was filed pursuant to the West Virginia Freedom of Information Act (WVFOIA).

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<sup>1</sup> In its November 1, 2013 application, Allied Waste Services of North America, LLC, stated that it was applying for a surcharge for Permit No. H-10864. This designation had previously appeared in cases involving the applicant's predecessor, BFI Waste Systems of America, Inc., and on Allied's tariff relating to a contract for solid waste disposal with the Town of Worthington, Marion County. Commission records indicate, however, that the correct permit designation for the contract the applicant has with the Town of Worthington is Permit No. H-10840. The Commission restyled the instant proceeding to include the proper permit designation.

## Petition for Reconsideration

On November 25, 2013, Allied filed a Petition for Reconsideration. Allied stated that the Commission erred regarding the credit to be applied to waste streams generated by Certificate Nos. F-4865 and F-4879. Allied argued that Suburban Sanitation, Inc., from whom it acquired F-4865 and F-4879, had taken its waste to Meadowfill and that when Allied took over the transfer station, it maintained the rates of Meadowfill, so there was no reduction and, hence, there was no refund due. Allied also contended that it was unaware that the tariff for F-4865 and F-4879 included a 30E surcharge. Allied further contended that the Commission erred in denying Rule 30E treatment for Certificate Nos. F-5619, F-5620, F-7337, F-7439, and F-7498, and Permit Nos. H-010155, H-10824 and H-10840. Allied stated that its customers under those certificates and permits received more efficient service at MTS than at Meadowfill and that Allied reduced its costs by switching to MTS.

On December 3, 2013, Staff filed a response to the Petition for Reconsideration. Staff noted that the first page of the tariff Allied attached to its own Petition for Reconsideration indicated that the tariff was issued by authority of a Commission Order in two Rule 30E filings that resulted in the surcharge on the tariff, Case Nos. 07-0928-MC-30E and 07-0929-MC-30E and Allied could not deny knowledge of the 30E surcharge on the tariffs. Regarding the credit, Staff argued that when Allied obtained F-4865 and F-4879, Allied stepped into the shoes of Suburban Sanitation and charged its customers the 30E surcharge. Allied, however, received a cheaper rate by MTS because MTS took the waste to a cheaper solid waste facility, Allied's own Short Creek Landfill. Therefore, Staff agreed with the Commission that the decreased fee at MTS triggered the refund provision of M.C. Tariff Rule 33.7.f. Staff concluded that the Commission should deny the Petition for Reconsideration regarding F-4865 and F-4879.

Regarding Allied's request for reconsideration of Rule 30E treatment for Certificate Nos. F-5619, F-5620, F-7337, F-7439, and F-7498, and Permit Nos. H-10155, H-10824 and H-10840, Staff noted that Allied justified its decision to dispose of waste streams from these certificates and permits at MTS by the cost savings it achieved through shorter turnaround time at MTS. Staff argued, however, that it was only Allied that benefitted from taking the waste to MTS because Allied's customers would be paying a 30E surcharge in addition to the higher cost of transporting waste to Meadowfill. Furthermore, Allied was not forced to transport waste to MTS, it chose to do so. Staff recommended that the Commission deny the Petition for Reconsideration regarding F-5619, F-5620, F-7337, F-7439, F-7498, H-10155, H-10824 and H-10840.

In its response to the Staff response to its Petition for Reconsideration, Allied noted that the Commission had already allowed Rule 30E treatment for a carrier that switched landfills in M.C. Case No. 26356-30E, General Refuse Service, Inc.,

February 21, 1995. Allied argued that in that case, the Commission permitted a 30E increase by General Refuse Service, Inc. (General Refuse), a carrier that was taking its waste to Disposal Services Landfill but switched to the more expensive Sycamore Landfill that was only a half mile away from the other.

Allied requested that the Commission grant the petition and approve the 30E applications.

On April 1, 2014, the Commission held a hearing on the Petition for Reconsideration.

On May 5, 2014, the parties each filed post-hearing briefs. Each party subsequently filed a reply brief.

Andrew Smith, the only intervenor in these cases, made two filings regarding the Petition for Reconsideration. The first, filed on May 9, 2014, consisted of ad hominem attacks and requested that the Commission punish Allied. The second, filed on May 16, 2014, alleged misconduct against Allied through unsupported statements.

## DISCUSSION

### Refund under Certificate Nos. F-4865 and F-4879

In its post-hearing brief, Allied continues to refer to Suburban Sanitation in its arguments as the corporate entity "Suburban Sanitation, Inc.," blurring the distinction between Suburban, the motor carrier and predecessor to Allied on Certificate Nos. F-4865 and F-4879, and the Suburban Transfer Station. Allied Initial Brief at 6. Keith Koebley, Allied's witness, however, corrected his Pre-filed Direct Testimony both in his Rebuttal Testimony and at the hearing, testifying that prior to Allied's acquisition of F-4865 and F-4879, Suburban, the motor carrier, disposed of waste at the Suburban Transfer Station. Tr. at 22-24. Allied relies on the fact that Meadowfill's tip fee did not change. It is not, however, the position of the Commission that it did. The fee at the Suburban Transfer Station is the increased fee that resulted in the existing 30E surcharge on the tariff associated with F-4865 and F-4879. Invoices filed by Allied in the instant cases indicate that MTS was charging Allied \$49.50 per ton, not the \$58.35 per ton on which Allied's rates (Suburban's old rates) were based. When MTS decreased the fee on Allied, this was the reduction that Allied, under M.C. Tariff Rule 33.7.f, was required to report to the Commission.

Although it is not completely clear from the language of the brief, Allied also seems to be arguing that because M.C. Tariff Rule 33.7.f requires a motor carrier to report a reduction in landfill rates that resulted in a 30E surcharge for that carrier and to

file certain related information, M.C. Tariff Rule 33.7.f conflicts with the limitation on information filed with a 30E application under §24A-2-4a. That proposition, however, is plainly false. The information required by W.Va. Code §24A-2-4a pertains to applications for increases, whereas M.C. Tariff Rule 33.7.f requires that a motor carrier report to the Commission a subsequent decrease in the tipping fee at a solid waste facility. These are completely different circumstances and do not raise a conflict between the statute and the rule.

Allied also argues that it was not permitted to change its customers' rates by the Recommended Decision in Case Nos. 10-1757-MC-TC and 10-1758-MC-TC, in which it acquired F-4865 and F-4879 from Suburban. The rates that could not be changed, however, were the rates at MTS, not the rates Allied charged its customers for garbage pick-up in Morgantown. Commission Case No. 11-0239-SWF-CN was consolidated with the two motor carrier certificate transfers. In that case, Allied acquired Certificate No. SWF-5021 from Suburban Sanitation, Inc. As Allied notes in its Initial Brief, the ALJ ordered that "Allied Waste Services of North America, LLC, charge the existing Suburban Sanitation rates for service at the transfer station for a period of eighteen months after it comes into service." Allied Initial Brief at 7. (Emphasis added)

Commission Staff agreed with the Commission that M.C. Tariff Rule 33.7.f requires Allied to report to the Commission a decrease in the tipping fee at a solid waste facility whose increased tipping fee previously justified a 30E surcharge for the motor carrier. Because Allied did not report the reduced fee at MTS, Allied overcharged its customers and owes a refund. Therefore, the credit ordered by the Commission is appropriate.

30E Pass-through Treatment for Certificate Nos. F-5619, F-5620, F-7337, F-7439, and F-7498, and Permit Nos. H-010155, H-10824 and H-10840

The Commission denied Allied expedited treatment under Rule 30E because of the circumstances surrounding the requested surcharge under these certificates and permits. Allied was not forced to switch to MTS from Meadowfill. Furthermore, the costs on which Allied's rates were based, including the rates charged by MTS, were not part of the tariff rates Allied wished to continue to charge its customers. The Commission has not, as Allied argues, required Allied to take waste to Meadowfill. The Commission stated that the circumstances of the requested surcharge for customers under F-5619, F-5620, F-7337, F-7439, F-7498, H-10155, H-10824 and H-10840, were better suited to a Rule 42 case than an expedited proceeding under W.Va. Code §24A-2-4a.

Allied would like the Commission to grant the 30E surcharge based solely on the higher tipping fee of MTS. If W.Va. Code §24A-2-4a was intended to limit 30E surcharges to those instances in which the increase could be traced to the single, easily identifiable change in cost caused by an increase in a tipping fee – with all other costs

remaining the same – then the Commission was correct in denying Allied 30E treatment. Tipping fees, however, are not the only costs that make up a waste hauler's rates. The Commission must consider other sections of the Code to prevent a utility from deriving a benefit at the expense of its rate payers. W.Va. Code §24-1-1(a)(4) confers upon the Commission the "authority and duty to enforce and regulate the practices, services and rates of public utilities in order to... [e]nsure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference, applied in a manner consistent with the purposes and policies set forth in article two-a [§§24-2A-1 et seq.] of this chapter and based primarily on the costs of providing these services." (Emphasis added.)

Allied also contended that it should not be denied 30E treatment because it switched to a solid waste facility with a higher tipping fee, citing the case of General Refuse. General Refuse, however, switched landfills because the lower priced landfill attempted to force General Refuse into signing a contract – if General Refuse did not sign, then the landfill would no longer accept waste from General Refuse. No such threat existed in the instant case and no similar treatment is justified.

Staff agrees with the Commission regarding these certificates and permits – that the switch by Allied from Meadowfill to MTS removed the instant case from consideration in an expedited 30E proceeding and that a Rule 42 case is the appropriate proceeding for consideration for a rate increase in the instant circumstances.

### CONCLUSION

The Commission has reviewed the Petition for Reconsideration, the transcript of the hearing and the briefs of Allied and Staff, and concludes that there is no reason to change its previous denial of expedited 30E treatment for Allied. Allied's witness at the hearing, Keith Koebly, conceded that although Allied is enjoying a cost savings by taking the waste from F-5619, F-5620, F-7337, F-7439, F-7498, H-10155, H-10824, and H-10840 to MTS instead of Meadowfill, it has no plan to pass on that savings to those customers but wants to charge those customers a surcharge. Tr. at 33-38.

As previously noted, Allied's arguments regarding the 30E treatment given to General Refuse were inapplicable because the cheaper landfill to which General Refuse had been hauling refused to accept any further waste from General Refuse without a contract. Therefore, the instant case is distinct.

Regarding the credit for customers served under F-4865 and F-4879, Staff cites three cases in which the Commission required a waste hauler to make refunds to customers when the waste hauler switched from one landfill to a cheaper landfill after obtaining a 30E surcharge at the first. The switch to a lower priced landfill, of course, resulted in inflated customer rates because the tip fees were lower than those on which

the Commission based its decision to grant the 30E surcharges. (See, Recommended Decision entered on January 8, 2003, final on January 28, 2003, in Case Nos. 02-0331-MC-30E, 02-0332-MC-30E, 02-0333-MC30E; 02-0983-MC-42A; 02-1056-MC-42A, and 02-1057-MC-T (consolidated), Southern Sanitation, Inc.; Recommended Decision entered on May 27, 2003, in M.C. Case No. 26411-30E (Reopened), Lusk Disposal, Inc.; and Case No. 03-1163-MC-GI, Fly-By-Nite Disposal, Inc.) Allied achieved a similar decrease in fees in the instant case from the transfer station.

Because the arguments presented by Allied do not warrant any change in our Order of November 14, 2013, the Commission will deny the Petition for Reconsideration. Because they do not specifically address the factual or legal issues raised in the Petition for Reconsideration, the Commission has not considered and will make no findings regarding the April 16, 2014 and May 16, 2014 filings by Andrew Smith, the intervenor in this matter.

#### **FINDINGS OF FACT**

1. On November 25, 2013, Allied filed a Petition for Reconsideration of the Commission Order of November 14, 2013.
2. On April 1, 2014, the Commission held a hearing on the Allied Petition for Reconsideration.

#### **CONCLUSION OF LAW**

Because the arguments presented by Allied do not warrant any change in our Order of November 14, 2013, the Commission will deny the Petition for Reconsideration.

#### **ORDER**

IT IS THEREFORE ORDERED that the November 25, 2013 Petition for Reconsideration is denied. The Commission Order of November 14, 2013, remains in full force and effect.

IT IS FURTHER ORDERED that upon entry of this Order this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Teste,

A handwritten signature in cursive script that reads "Ingrid Ferrell".

Ingrid Ferrell  
Executive Secretary

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