IN THE MATTER OF:
LEONARD and ROBERT PACIO
t/a PACIO DISPOSAL,

Decided January 22, 1981

Initial Decision

SYNOPSIS

Pacio Disposal filed a petition asked for a rate increase for both its residential and commercial customers.

The administrative law judge assigned to the case found that on the basis of income and reasonable operating expenses that a reasonable increase in customer rates would be 28.4 percent and ordered a corresponding tariff to be filed.

C. William Petrics, Esq., for petitioner (Cossman, Levenstein & Goodkin, attorneys)

Edward Kopelson, Assistant Deputy Public Advocate for Division of Rate Counsel of the Department of the Public Advocate (Stanley C. Van Ness, Public Advocate of New Jersey, attorney)

LaBASTILLE, ALJ:

Pacio Disposal, a partnership of Leonard and Robert Pacio, filed a petition with the Board of Public Utilities asking for a 37 percent increase in rates for its residential and 45 percent for its commercial solid waste collection services. The matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Petitioner published notice of the hearing in the Courier-News of Bridgewater, New Jersey, on October 16, 1980 and mailed notice to the municipal clerks of Plainfield, North Plainfield and South Plainfield in compliance with N.J.A.C. 14:1-6.16.

The agreed test year is 1979. Petitioner has no rate base and asks no return. The principal expense issues concern wages and owner compensation. Board staff agreed with Rate Counsel's recommendations generally.
Owners' Compensation and Wages

Petitioner services 702 Plainfield residential customers with twice weekly backyard collection as well as five small commercial accounts on its route. Leonard Pacio and his son, Robert, own the business, employing one helper. Prior to 1979, when Leonard Pacio hurt his back, he worked as long as 12 hours per day, with his father as an uncompensated driver and his son as a helper. His work began about 5:30 a.m. when he picked up a helper; after finishing the route at about 1:30 he ran errands and made repairs until 4 or 5:00 p.m., additionally completing bookwork and billings at night. When his son became a partner, Leonard was able to work about 20 hours less a week. The eldest Pacio died in June 1978. A driver and two helpers have always been needed.

There is a substantial discrepancy in the financial statement accompanying the petition as compared to the 1979 annual report to the Board. In the former, the owners' compensation is stated as $37,000 whereas the annual report shows $29,600. Total labor costs as stated in the Board's annual report or as otherwise noted are as follows:

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<tbody>
<tr>
<td>Owner or</td>
<td></td>
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<tr>
<td>Owners</td>
<td>$21,255</td>
<td>$20,000</td>
<td>$29,600</td>
<td>$37,100</td>
<td>$40,810</td>
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<tr>
<td>Helper</td>
<td>$12,375</td>
<td>$15,600</td>
<td>7,020</td>
<td>10,136</td>
<td>10,136</td>
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<tr>
<td>Total</td>
<td>$33,630</td>
<td>$36,400</td>
<td>$36,620</td>
<td>$47,236</td>
<td>$50,946</td>
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The number of customers has been constant since 1977 according to the testimony. The accountant's statement includes a present salary of $21,500 for Leonard Pacio and $15,600 for his son, or a total of $37,100 for 1980. If this is true, 1980 costs increased 29 percent over 1979. Petitioner requests increases of 10 percent to $23,650 and $17,160, respectively.

Rate Counsel applies a "reasonable" increase of 8.5 percent to actual reported 1979 take home pay of $29,600, arriving at at total pro forma owner compensation of $31,116. Leonard Pacio testified that he was paid $14,300 and his son was paid $14,600 in 1979, sums reflected in both his IRS and BPU filings. Petitioner's accountant witness testified that in its last rate order, Leonard Pacio as sole proprietor was allowed $20,800 plus $1,500 for an IRA account. In 1978, however, his son was employed as a helper; he became a driver in 1979 at a higher salary for longer work hours.

The accountant testified that there was not enough revenue in 1978
and 1979 to pay the owner. Board allowed compensation. She also stated that the "going rate" for Robert's work was at least $13,000 plus payroll taxes. Since the truck is fully depreciated, and the new engine will not be purchased until later in 1981, there is no rate base upon which to obtain an allowable return and none was requested. In partnership or sole proprietor business, petitioners tend to think of all revenue over other expenses as compensation; thus what petitioner is here requesting pro forma is in excess of reasonable increases in compensation to make up what would ordinarily be obtained through profit.

While it is unfortunate that no basis exists to pay profit and increase gross compensation, the proper rate-setting method cannot be ignored by replacing profit with substantial salary increases. On the other hand, Rate Counsel's recommendation is too harsh in the circumstances of this case. In recognition of the long hours and ratably low pay totaling $29,600 in 1979, it is reasonable to allow an 8.5 percent increase for 1980 and 1981.

The Board previously allowed expense of $1,500 for Leonard Pacio's IRA; he has been making the IRA contribution each year. The calculation of total reasonable owner compensation is therefore:

1980: \[ 29,600 + 2,516 + 1,500 = 33,616 \]

1981 (pro forma): \[ 32,116 + 2,730 + 1,500 = 36,346 \]

The manner in which the partners split this compensation is irrelevant to the ratepayers. The increase is somewhat high but it includes part-time clerical work by petitioner's wife. This petitioner cannot afford a rate case for several years; allowing the partners less would simply guarantee higher regulatory costs.

Helper's wages were booked at $7,020 in 1979. The testimony was that, as of 1980, the helper was actually paid $160 per week net ($8,320) plus all taxes, including income taxes, he would have owed on that amount ($10,136). Rate Counsel would allow $9,279, including an 8.5 percent increase and presently paid tax expense and then allow the usual payroll tax upon that amount. Petitioner asks $10,136 plus payroll taxes. The position papers do not reflect the appropriate FICA tax percentage for 1981; testimony shows it is 6.35 percent not 6.13 percent.

As explained below, sums paid which were not booked and reflected on a W-2 form should not be cognizable in a rate case. Petitioners do not owe payment of the helper's taxes. If they pay these taxes,
they do so as volunteers. In conformity with the rationale concerning owners' compensation, it is reasonable to allow the helper annual increases but they should be no more than the maximum COWPS increase of 9.5 percent. An increase of 9.5 percent a year for 1980 and 1981 over booked 1979 payment of $7,020 would result in a reasonable base pay of $8,417. Present net pay of $160 per week is $8,320. Actual payment is stated to be $10,136. Solely because of this discrepancy, which would require the owners to pay the helper out of their compensation to assure that he continues at the same rate of pay, the hearer finds it reasonable to allow an additional increase of 9.5 percent for 1982, a year early in an anticipated rating period of three years. Reasonable helper's wage expense is therefore $9,217, a figure very close to Rate Counsel's recommendation with which Board staff agrees.

In many prior small waste rate cases, this hearer has heard testimony of the same type: petitioners pay additional compensation either "off the books" or by paying telephone bills for or taxes owed by helpers. As an officer of the court and as a judicial officer in the executive branch of government, the hearer cannot close her eyes to the fact that irregular practices exist. These practices tend to circumvent tax reporting and family support laws, and are clearly contrary to the public interest. No governmental agency can properly countenance such practices. Whatever petitioners provided by way of compensation to employees should be stated on IRS W-2 forms and in annual report to the Board. No petitioner should receive rate recognition for employee compensation not supported by W-2 form proofs. When such accounting irregularities are found, the hearer concludes it appropriate to specifically mandate compliance with the Board's accounting rules adopted pursuant to N.J.S.A. 48:2-16 and the State and Federal tax laws by ordering that all employee compensation of whatever kind be booked and reported as such by the utility.

Other Expenses

No party contends that the following pro forma expenses proposed by petitioner are unreasonable: tires, tubes and repairs; dumping fees; fuel; road use charges; rate case expense; insurance including worker's compensation; office supplies; and leasehold rental.

Petitioner's old truck is in need of extensive repairs. These should be made immediately and have not been made because petitioner had
no money to pay $1,448 for bodywork and an estimated $4,500 for overhaul of the engine. Petitioner had no written estimate to support the estimate for engine work, which it hopes will be performed later in 1981. It proposes $3,003 in expense, including $1,448 for bodywork and $1,555 actual annual maintenance expense. Rate Counsel would amortize $1,448 over three years and allow $2,038 for total expense. Unfortunately, this would provide no money over the three-year rating period toward engine repairs which the hearer is convinced are necessary. It is reasonable to amortize $1,448 over two years, leaving $724 in the rates the third year toward engine repair. The allowance should be conditioned upon proof of completion of either the body or the engine repair within the next six months. Petitioner should have this option.

Other operating expense proposed by petitioner totals $367. As Rate Counsel rightly points out, $66 in fines should be disallowed as a matter of public policy, so that reasonable expense is $301.

The hearer also agrees that $25 must be deducted from accounting fees of $650 which include that sum for preparation of Leonard Pacio's personal IRS return.

Petitioner's pro forma taxes and fees must be adjusted to reflect 1981 tax rates and findings of reasonable helper's wages. Based on helper's wages of $9,217, the tax calculation is as follows:

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>FICA at 6.35 percent</td>
<td>$585</td>
</tr>
<tr>
<td>N.J. Unemployment</td>
<td>214</td>
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<tr>
<td>FUTA</td>
<td>42</td>
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<tr>
<td>BPU</td>
<td>92</td>
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<td>EPA</td>
<td>30</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$963</strong></td>
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</tbody>
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**Revenue and Tariff Design**

The test year revenue was $55,176. Petitioner bills monthly or bimonthly in arrears, and, according to the testimony, frequency of billing generates more work and expense. Leonard Pacio testified that he spends a half-day Sunday collecting payments, some of which are long in arrears. Rate Counsel proposes a change from monthly to quarterly billing in advance. Petitioner Pacio knows his customers, however. He believes many will not be able to pay in advance, and he will lose business to competition. Petitioner has no working capital available and operates in a highly competitive area. In these circumstances, the hearer would be most reluctant to demand that it change
its billing practices. I would urge petitioner for the future to prove uncollectibles, provide for them in the pro forma expenses, and cut off customers more than two months in arrears on monthly billings after proper notice. Instead of doing so, it would appear that Leonard Pacio spends many Sunday hours personally pursuing payment. Petitioner's customers have been allowed to vitiate working capital.

Pacio testified that his tariff was based on 20 gallon cans, whereas many customers use 32 gallon cans, yet he has not asked for a tariff classification recognizing this difference. Essentially, it is a discriminatory practice not to do so and consideration should be given in the next case to a tariff design which would recognize a distinction between 20 and 30 gallon cans.

The hearer rejects a change in billing practices at this time as unreasonable in light of the testimony.

I FIND, based on the testimony and exhibits and incorporating by reference the findings and rationale stated in the discussion above, that:

1. Reasonable operating expenses are:

Operating Expenses

Equipment Maintenance

Repairs—Revenue Equipment $ 2,279
Tires, Tubes and Repairs 460

Operating Expenses

Landfill Dumping Fees 6,806
Wages, Helpers 9,217
Partners Compensation (Includes $1,500 IRA) 36,346
Fuel—Revenue Equipment 7,368
Road Use Charges 459
Other Operating Expenses—Work Barrels, Rain Gear, etc. 301

Traffic and Advertising Expenses

Rate Case Expense 767
Insurance and Safety Expense

Public Liability and Workmen's Comp. 3,432

Administrative—General Expense

Accounting Fees 625
Office Supplies and Postage 610
Rentals—Leasehold 600

Taxes and Fees 963

Total Operating Expense $70,233

2. Revenue at present rates is $55,176. The deficiency in revenue under the $70,233 needed to cover expenses is $15,057.

3. Petitioner's proposal to increase commercial revenue of $1,560 to $2,262 is not contested; nor is its proposal to leave surcharges revenue at $3,072. The total pro forma revenue from these sources is $5,334.

4. Pro forma required revenue of $70,233 net of revenue to be received from surcharges and non-residential customers is $64,899, resulting in a deficiency in residential customer revenue of $14,355 over present revenue from that source of $50,544.

5. A reasonable increase in customer rates is therefore 28.4 percent, or a monthly charge of $7.75 rounded, up from the present monthly charge of $6.00.

I CONCLUDE that a revised tariff based upon the above findings will provide a just and reasonable rate which not be excessive, consistent with the standards of N.J.S.A. 48:221, 13A-4 and 13A-7.

It is, therefore, ORDERED that the rate increase proposed in the petition be denied and a tariff consistent with the above findings and conclusions be filed to be effective for services rendered on an after the effective date of the final order in this docket.

It is further ORDERED that petitioner file with the Board proof of payment of either bodywork or engine repairs by July 1, 1981.

And it is further ORDERED that petitioner conform to Board accounting practices by stating all compensation paid to any employee in the annual report and to the employee on a W-2 form in compliance with law.
After reviewing this Initial Decision, the Board of Public Utilities on February 11, 1981, issued the following Final Decision:

The Board, having reviewed the initial decision submitted by the administrative law judge on January 22, 1981 in the above-captioned matter hereby ADOPTS same as its decision in this matter as though fully set forth herein.

The Board further ORDERS that Petitioner:
1. Shall file a revised tariff consistent with this decision for Board consideration and approval prior to increasing rates.
2. Shall file proofs of payment of body work and/or engine repairs with the Board by July 1, 1981.
3. Shall file Annual Reports in accordance with regulations and properly reflect all compensation to all employees.

Failure to comply with paragraph two above may subject Petitioner to refund and/or roll-back of rates.