In re the Matter of Determining the Proper

GLACIER RECYCLE, LLC; HUNGRY

BUZZARD RECOVERY, LLC; AND T&T

Carrier Classification of

RECOVERY, INC.

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UTILITIES AND TRANSPORTATION COMMISSION
Determining the Proper | Docket No.: TG-072226

MEMORANDUM IN RESPONSE TO PETITIONS TO INTERVENE

# I. INTRODUCTION AND REQUEST FOR RELIEF

BEFORE THE WASHINGTON STATE

Glacier Recycle, LLC, Hungry Buzzard Recovery, LLC, and T&T Recovery, Inc., by and through their counsel of record, submit this memorandum in opposition to the Petitions to Intervene filed in the above-captioned matter by the Washington Refuse and Recycling Association ("WRRA"), Murrey's Disposal Company, Inc. ("Murrey's"), Island Disposal, Inc. ("Island Disposal"), Waste Connections of Washington, Inc. ("WCW"), Lynnwood Disposal d/b/a Allied Waste of Lynnwood ("Lynnwood Disposal"), and Eastside Disposal d/b/a Allied Waste of Bellevue ("Eastside Disposal") (collectively, "Petitioners").

The Petitions should be denied, because the Petitioners fail to articulate a substantial interest in these proceedings, and fail to demonstrate that intervention would be in the public interest.

## II. STATEMENT OF RELEVANT FACTS

On December 28, 2007, the Washington Utilities and Transportation Commission (WUTC) instituted a special proceeding with respect to Glacier Recycle, LLC, Hungry Buzzard

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Recovery, LLC, and T&T Recovery, Inc.'s transportation of construction, demolition and land clearing ("CDL") waste to a Weverhauser facility in Longview, Washington. See generally, *Order Instituting Special Proceeding*, ¶ 5.

On or about January 4, 2008, the WRRA filed its Petition to Intervene in the abovecaptioned proceedings ("WRRA Petition"). The stated basis for the WRRA's Petition is as follows:

> WRRA is a trade association representing over 30 solid waste haulers in Washington state. As such, it has taken part as a party or intervenor in virtually every WUTC hearing regarding solid waste since the inception of regulation of solid waste. Matters involving regulation of the solid waste industry are of interest to the members of the WRRA [...]. The issue herein, i.e., the alleged unlawful transportation and disposal of solid waste, is of vital importance to the WRRA's members.

WRRA Petition, ¶ 2. The WRRA further states that it does not intend to broaden the issues in this matter, and that its position with respect to said issues are "that expressed by the Commission in its Order Instituting Special Proceeding herein." WRRA Petition, ¶¶ 4-5.

On or about January 18, 2008, Murrey's, Island Disposal, WCW, Lynnwood Disposal and Eastside Disposal collectively filed a Petition to Intervene in the above-captioned proceedings ("Murrey Petition"). The stated basis for the Murrey Petition is that the petitioners "have a direct interest in the subject matter raised by the Notice and Order filed by the Commission, particularly with respect to the issue of whether the ongoing operations of the Respondents violate RCW 81.77.040 and WAC 480-70-081." Murrey Petition, 2. The Murrey Petition further asserts that the petitioners "have a direct stake in the outcome of any Commission ruling in this matter." Murrey Petition, 2. Finally, the Murrey Petition alleges that the Commission's "belief and allegations regarding Respondents' ongoing activities...are accurate in fact and under law." Murrey Petition, 2.

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<sup>&</sup>lt;sup>1</sup> The Murrey Petition does not expressly state whether the petitioners intend to broaden the issues in these proceedings, as is required by WAC 480-07-355(1)(c)(iv).

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#### III. **AUTHORITY AND ARGUMENT**

WAC 480-07-355 provides that any person who desires to appear and participate as a party in a WUTC special proceeding may file a petition to intervene. The petition must include a description of the petitioner's interest in the proceeding, and his/her position(s) with respect to the matters in controversy. WAC 480-07-355(1)(c)(ii)-(iii). Generally, a presiding officer may grant a petition to intervene upon determining that intervention is in the interests of justice, and will not impair the orderly and prompt conduct of the proceedings. RCW 34.05.443(1). In proceedings before the WUTC, the presiding officer may grant a petition to intervene when the petitioner discloses a "substantial interest in the subject matter of the hearing," or if the petitioner's participation is in the "public interest." WAC 480-07-355(3).<sup>2</sup>

Here, the WRRA and Murrey Petitions should be denied because the Petitioners fail to articulate any substantial interest in these proceedings, much less demonstrate how intervention would be in the public interest.

As a threshold matter, the Petitioners fail to identify any substantial interest in these The WRRA's sole contention in this regard is that "the alleged unlawful proceedings. transportation and disposal of solid waste, is of vital importance to the WRRA's members." The WRRA fails to articulate, however, why its interest in this matter is in any way different from that of every other citizen of Washington state. Indeed, it is self-evident that the public has a "vital" interest in regulating the "transportation and disposal of solid waste."

Similarly, the Murrey Petition is based upon conclusory allegations that the petitioners "have a direct interest in the subject matter" of these proceedings, and have a "direct stake in the outcome of any Commission ruling in this matter." Conclusory allegations aside, the Murrey Petition simply fails to articulate how the petitioners have any interest in the narrow scope of

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<sup>&</sup>lt;sup>2</sup> The presiding officer may also limit the petitioner's participation in the proceedings. RCW 34.05.443; WAC 480-07-355(3). Such limitations can include: (1) limiting participation to only those issues in which the petitioner has a particular interest demonstrated by the petition; (2) limiting the petitioner's use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings. RCW 34.05.443(2)(a)-(b).

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these proceedings-Glacier Recycle, LLC, Hungry Buzzard Recovery, LLC, and T&T Recovery, Inc.'s transportation of CDL waste to a Weyerhauser facility in Longview, Washington. See generally, Order Instituting Special Proceeding, ¶ 5.

Because the WRRA and Murrey Petitions fail to articulate any substantial interest in these proceedings, they should be denied.<sup>3</sup>

Assuming arguendo that the Petitioners had articulated a substantial interest in these proceedings, the Petitions should nevertheless be denied because they cannot demonstrate that intervention is in the public interest.

The Petitioners do not allege that their interests (or those of the public) will not be adequately articulated and/or represented by the WUTC. To the contrary, the WRRA affirmatively alleges that its position with respect to the matters at issue is the same as that of the WUTC, the very agency charged with protecting the public's interest with respect to the "transportation and disposal of solid waste." WRRA Petition, ¶ 5. Similarly, the Murrey Petition alleges that the Commission's "belief and allegations regarding Respondents' ongoing activities...are accurate in fact and under law." Murrey Petition, 2. Thus, by their own admission, the Petitioners merely intend to adopt the position of the WUTC as their own, and have no intent to broaden the scope of the matters at issue. There is thus no basis to conclude that intervention by the Petitioners in these proceedings would serve the public interest.

In short, the WRRA and Murrey Petitions do not articulate any substantial interest in these proceedings such as would justify intervention, much less how Petitioners' participation in these proceedings would serve the public interest. The WRRA and Murrey Petitions should be denied.

Similarly, the WRRA's suggestion that intervention is justified because it has participated "in virtually every WUTC hearing regarding solid waste since the inception of regulation of solid waste" is without merit. The WRRA must articulate some justification for intervention that is specific to these proceedings, not merely a pattern of participation in other administrative proceedings. WAC 480-07-355(3).

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### VI. CONCLUSION

For the foregoing reasons, the WRRA and Murrey Petitions to Intervene should be denied. In the alternative, the Petitioners' participation in these proceedings should be limited in accordance with RCW 34.05.443(2)(a)-(b).

DATED this 22nd day of January, 2008.

EISENHOWER & CARLSON, PLLC

By:

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Hungry Buzzard Recovery, LLC, and
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## **CERTIFICATE OF SERVICE (WAC 480-07-150)**

I hereby certify that on the day of January 2008, I filed the Response to Washington and Recycling Association's Petition to Intervene with the Washington Utilities and Transportation Commission and served a copy upon the following via legal messenger service:

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DATED this \_\_\_\_\_day of January 2008, at Tacoma, Washington.

Jan M. Bauer