

July 23, 2014

VIA EMAIL ONLY: pingram@utc.wa.gov

Penny L. Ingram
Regulatory Analyst
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive S.W.
Olympia, WA 98504

Re: Docket No. TG-141030, Petition for Amendment of Certificate No. G-169

I represent Couse's Sanitation & Recycle, Inc. ("Couse's Sanitation") in this matter. As you know, a certificate of public convenience and necessity to operate as a solid waste collection company in a territory is a property right under RCW 81.77.0201 and 81.77.040. *See also Dahl-Smyth, Inc. v. City of Walla Walla*, 110 Wn. App. 26, 31, 38 P.3d 366 (2002), *rev'd on other grounds, Dahl-Smyth, Inc. v. City of Walla Walla*, 148 Wn.2d 835 (2003). In 2002, the Washington Utilities and Transportation Commission ("WUTC") inadvertently excluded the City of Republic from Couse's Sanitation's Certificate No. G-169, thereby relinquishing its certificate property right over the service area. To remedy this mistake, Couse's Sanitation respectfully requests that the WUTC retroactively amend Certificate No. G-169 to reflect ownership since 2002.

Couse's Sanitation has provided solid waste collection services in the City of Republic (the "City") since 1983, originally operating solely under the authority of the WUTC. In 1993, the City exercised its right under RCW 81.77.020 and entered into an agreement with Couse's Sanitation. The agreement between the City and Couse's Sanitation controlled much of Couse's Sanitation's operations in the City of Republic until February, 2014.

During this period in which the agreement was in force, Couse's Sanitation also maintained operation of drop box service in the City of Republic under the authority of the WUTC. Couse's Sanitation applied the appropriate WUTC rates and operating procedures during this time. Its operation of the drop box also continued until February, 2014.

In 2002, Couse's Sanitation submitted application GA-79025 for an Extension of Service under Certificate No. G-169. In the WUTC's Order granting the extension of service, the Commission included the language "Excluding the city of Republic" in the amended service area for Certificate No. G-169. At no point did Couse's Sanitation, or any other party, request an exclusion of this service area, and at no point prior to issuance of the Order did the WUTC provide notice of its exclusion of the service area. See attached Order Granting Application GA-79025. Application GA-79025 was in fact an application to *extend* the service area under Certificate No. G-169. The only record of the exclusion is in Appendix A of the attached Order. See *Id.*

This issue came to light when Eugene K. Eckhardt, Assistant Director of Water and Transportation for the WUTC, informed the City of Republic, among others, of the status of the certificate holder for the City of Republic in February, 2014. See attached email from Mr. Eckhardt dated February 21, 2014. He specifically stated that:

. . . no company currently holds a certificate to serve the City of Republic. The last holder of a certificate to serve the City of Republic was Couse Sanitation and Recycling, Inc. (G-169). On March 22, 2002, the commission, by order issued in Docket TG-011549, granted Couse Sanitation and Recycling, Inc.'s request to remove the City of Republic from its certificate. Staff has not determined if Couse Sanitation and Recycling, Inc., was compensated for its certificate property right.

See *Id.*

Mr. Eckhardt then advised that "the UTC would consider an application for certificate authority for the area within the City, and issue a certificate for that area . . ." *Id.* This guidance was relayed to several interested parties, and was a surprise to Couse's Sanitation, as it never requested to remove the City of Republic from its certificate.

As a result of this notice from Mr. Eckhardt, Couse's Sanitation requested, in writing, "[a]ny and all documents regarding Docket No. TG-011549 (March 22, 2002) – Request for removing City of Republic from our certificate." See attached request dated March 17, 2014. The WUTC complied with the request and provided all documents from Docket No. TG-011549. After reviewing this information, Couse's Sanitation confirmed that the purported request for



exclusion of the City of Republic from Couse's Sanitation is absent from the record. At no point did Couse's Sanitation request this exclusion, or voluntarily surrender its certificate property right in any other form. Thus, the Commission's Order appears to be an inadvertent mistake.

In order to remedy this error, Couse's Sanitation requests that the WUTC retroactively amend Certificate G-169 to reflect ownership of its certificate property right as of 2002. There is no statute, regulation, or other precedent that prevents the WUTC from issuing a retroactive amendment, and it stands as an appropriate remedy for the situation. Couse's Sanitation is willing to testify and confirm this information in good faith. Should the Commission request any additional information, Couse's Sanitation is also willing to supplement the record with all relevant information within its control. Based on the foregoing, Couse's Sanitation respectfully requests a retroactive amendment to Certificate No. G-169 in order to correct the inadvertent exclusion of the City of Republic in 2002.

Sincerely,

A handwritten signature in blue ink, appearing to read "Reid Johnson".

Reid Johnson
Lee & Hayes, PLLC

Enclosures

cc: Couse's Sanitation & Recycle, Inc.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application GA-79025 of)	
)	
)	DOCKET TG-011549
Couse's Sanitation and Recycle, Inc.)	
)	
)	GRANTING APPLICATION
for Extension of Service under)	
Certificate of Public Convenience)	
and Necessity No. G-169)	
.....))	

By application filed with the Washington Utilities and Transportation Commission on the 2nd day of November, 2001, Couse's Sanitation and Recycle, Inc., requested extension of service under certificate of public convenience and necessity No. G-169.

Upon consideration of all the evidence of record, the Commission finds that the applicant is fit, willing and able to properly conduct the proposed operations and that the service sought to be rendered is necessary and will be a convenience to the public.

ORDER

WHEREFORE, IT IS ORDERED That the application herein be, and the same is hereby granted and contingent upon the applicant having complied with the provisions of chapter 81.77 RCW and the rules relating to solid waste companies. Certificate of Public Convenience and Necessity No. G-169 shall be amended, as per the attached Appendix A.

DATED at Olympia, Washington, and effective this 22nd day of March, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary

APPENDIX A

SOLID WASTE COLLECTION SERVICE in Ferry County and in that portion of Okanogan County described as follows: Commencing at the southwest corner of Section 31, T. 37 N., R. 31 E.; thence north to the northwest corner of Section 6, T. 40 N., R. 31 E.; thence east to the northeast corner of Section 1, T. 40 N., R. 31 E.; thence south to the southeast corner of Section 36, T. 37 N., R. 31 E.; thence west to the southwest corner of Section 31, T. 37 N., R. 31 E., the place of beginning. Excluding the city of Republic.

TG-011549

03-22-02

Shirley Couse

From: "Eckhardt, Gene (UTC)" <geckhard@utc.wa.gov>
Date: Friday, February 21, 2014 3:34 PM
To: "John Carpita, MRSC, Public Works Consultant," <jcarpita@mrsc.org>
Cc: "Jim Burnside, Mayor," <cor@rcabletv.com>; "Cliff Couse, Couse Sanitation and Recycling, Inc.," <sac@rcabletv.com>; "Scott Detro, City Attorney," <sdetro@ncidata.com>; "Vasconi, Mark (UTC)" <mvasconi@utc.wa.gov>; "Ingram, Penny (UTC)" <pingram@utc.wa.gov>; "Eckhardt, Gene (UTC)" <geckhard@utc.wa.gov>; "Rendahl, Ann (UTC)" <arendahl@utc.wa.gov>
Subject: Solid Waste Collection Service - City Contracts and UTC Jurisdiction

Greetings,

This email responds to questions from John Carpita, MRSC, Public Works Consultant, regarding solid waste collection service in a city under contract with a private hauler and UTC regulation. I copied several others who may be interested in this issue and I encourage you to share this information with other interested persons.

John Carpita, MRSC, Public Works Consultant, wrote (see email below):

We received the following question from a small city in Ferry County:

Our city garbage contract with our local Contractor ends on Feb. 28. If we do not come to an agreement on a new contract by that date it is my understanding that UTC will come in and automatically assign the contract to this current contractor

Staff response: No. The UTC has no authority to assign private contracts. If you mean to ask whether the UTC "automatically" would issue a certificate for the area within the City of Republic, upon termination of the current contract between the City and its Contractor, the answer is also No, as we explain in our response to Question 4 below.

WE DO NOT WANT THAT! Can we ask the UTC for 60 days to put a contract out to bid to get a new contractor?

Staff response: No. The UTC has no authority to regulate the bidding process for contracts between a city and a provider of solid waste collection services, or otherwise to waive applicable statutory provisions.

My (Mr. Carpita?) first impression is that the UTC would not intercede one way or the other, as the city has authority over its own services. Is that correct?

Staff response: The UTC's authority to act in the context at issue is discussed here and in staff's response to Question 4 below.

As relevant here, there are three contexts in which solid waste collection service are provided:

1. The city provides service itself. (RCW 81.77.020) or,
2. The city contracts with a private hauler to provide service. (RCW 81.77.020) or,
3. A private hauler provides service under a UTC certificate. (RCW 81.77.040)

The UTC regulates only in the context identified in item 3 of the above list.

<http://apps.leg.wa.gov/RCW/default.aspx?cite=81.77.020>

<http://apps.leg.wa.gov/RCW/default.aspx?cite=81.77.040>

Staff provides the following additional information and background.

Is there a private hauler that holds a UTC certificate to provide solid waste collection service within the incorporated limits of the City of Republic?

Staff response: No.

How can a private hauler obtain a UTC certificate to provide solid waste collection service within the incorporated limits of the City of Republic?

Staff response: As we explain below, the answer is governed by RCW 81.77.0201, which provides for UTC action in certain circumstances after a city "reverses its decision" to contract for solid waste collection services.

RCW 81.77.0201 allows a city at any time to reverse its decision to exercise its authority under RCW 81.77.020. In such an event, as RCW 81.77.0201 states:

... the commission: shall issue a certificate to the last holder of a valid commission certificate of public convenience and necessity ... for the area reverting to commission jurisdiction. If there was no certificate existing for the area, or the previous holder was compensated for its certificate property right, the commission shall consider applications for authority under RCW 81.77.040.

<http://apps.leg.wa.gov/RCW/default.aspx?cite=81.77.0201>

We note that the City of Republic has not advised the UTC that it has reversed its decision to exercise its authority under RCW

81.77.020. In any event, no company currently holds a certificate to serve the City of Republic. The last holder of a certificate to serve the City of Republic was Couse Sanitation and Recycling, Inc. (G-169). On March 22, 2002, the commission, by order issued in Docket TG-011549, granted Couse Sanitation and Recycling, Inc.'s request to remove the City of Republic from its certificate. Staff has not determined if Couse Sanitation and Recycling, Inc., was compensated for its certificate property right.

In the event a city reverses its decision to exercise its authority under RCW 81.77.020, and if there is no entity under RCW 81.77.0201 to whom the UTC must issue a certificate as described in that section, then "the commission shall consider applications for authority under RCW 81.77.040." RCW 81.77.0201 (last phrase).

Under RCW 81.77.040, when there is no existing certificate holder, the UTC has authority to issue a certificate "with or without hearing," and subject to "such terms and conditions" as "the public convenience and necessity may require."

Accordingly, if the circumstances make operative the last phrase of RCW 81.77.0201, the UTC would consider an application for certificate authority for the area within the City of Republic, and issue a certificate for that area, under appropriate terms and conditions.

If you have additional questions, please contact Penny Ingram at 360-664-1, or by email at pingram@utc.wa.gov.

This e-mail states the informal opinions of commission staff, offered as technical assistance, and are not intended as legal advice. We reserve the right to amend these opinions should circumstances change or additional information be brought to our attention. Staff's opinions are not binding on the commission.

Eugene K. Eckhardt
Assistant Director of Water and Transportation
Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250
Tel: (360) 664-1249
FAX: (360) 586-1150
E-mail: geckhard@utc.wa.gov

From: John Carpita [mailto:jcarpita@mrsc.org]
Sent: Wednesday, February 12, 2014 8:01 AM
To: Pratt, David (UTC)
Subject: Solid Waste Carrier Question
Importance: High

We received the following question from a small city in Ferry County:

Our city garbage contract with our local Contractor ends on Feb. 28. If we do not come to an agreement on a new contract by that date it is my understanding that UTC will come in and automatically assign the contract to this current contractor. WE DO NOT WANT THAT! Can we ask the UTC for 60 days to put a contract out to bid to get a new contractor?

My first impression is that the UTC would not intercede one way or the other, as the city has authority over its own services. Is that correct?

Please call or email me if you have any questions or need further information.

John W. Carpita, P.E.
Public Works Consultant
Municipal Research and Services Center
2601 Fourth Avenue, Suite 800
Seattle, WA 98121-1280
206-625-1300
Fax: 206-625-1220
jcarpita@mrsc.org
About MRSC: <http://www.mrsc.org/about.aspx>
www.mrsc.org

Terri Burbank

From: "Wyse, Lisa (UTC)" <lwyse@utc.wa.gov>
Date: Monday, March 17, 2014 5:35 PM
To: <terrib.couses@rcabletv.com>
Subject: RE: Request for Public Records ID# 105 - Clarification/Extension

The extension date on this is actually March 27, 2014. Sorry for any confusion with this email.

Lisa

From: Wyse, Lisa (UTC)
Sent: Monday, March 17, 2014 5:33 PM
To: 'terrib.couses@rcabletv.com'
Subject: Request for Public Records ID# 105 - Clarification/Extension

Terri Burbank:

The commission received a public records request from you today, March 17, 2014, in which you requested, "**Any and all documents regarding Docket No. TG-011549 (March 22, 2002)- Request for removing City of Republic from our certificate.**"

Unfortunately, because it is a 2001 docket, some of the information was not available electronically. I will need to order the file back from the State Records Center, which will take a bit more time. Meanwhile, I have attached the "Docket Sheet," which is a listing of the documents in the file. If you could select the document you are specifically interested in, it would help in getting them to you sooner.

This e-mail is to notify you that we will respond to your request by March 20, 2014.

If you have any further questions on this subject you can reply to this e-mail or call me directly at the number listed below.

Sincerely,

Lisa Wyse, Manager
Records Management
Utilities & Transportation Commission
360-664-1259