

Agenda Date: September 11, 2014  
Item Number: B1

**Docket:** TG-141030  
Company: Couse's Sanitation and Recycle, Inc.

Staff: Penny Ingram, Regulatory Analyst

### **Recommendation**

Deny Couse's Sanitation and Recycle, Inc.'s petition to retroactively amend its solid waste certificate (G-169) to include the City of Republic.

### **Discussion**

On July 27, 2014, Couse's Sanitation and Recycle, Inc. (Couse's Sanitation or company), filed a revised petition requesting the commission retroactively amend its solid waste certificate (G-169) to include the City of Republic.

In 2000, the commission began mapping solid waste collection certificates. During that process, Mr. Couse advised staff that Couse's Sanitation was serving a portion of Ferry County that was excluded from its certificated authority. On November 2, 2001, Couse's Sanitation filed an application in Docket TG-011549 to add that portion of the county to its authority. The commission published notice of the application. The file in TG-011549 contains no staff notes or emails between staff and Couse's Sanitation.

On March 22, 2002, the commission's secretary issued an Order in TG-011549 granting Couse's Sanitation's application. The Order included an appendix describing the new service area. For reasons that are not clear, the appendix also stated, "Excluding the city of Republic." Couse's Sanitation did not challenge this language.

Couse's Sanitation claims it cannot remember asking staff to remove the city; however, staff's background memo dated March 11, 2002, states: "In its application the company asked that its certificate authority be revised to exclude the city. The existing certificate language should be replaced with the attached text and the certificate reissued. (The electronic copy of this revised text will be forwarded to Licensing staff by E-mail)."

In 2003, Couse's Sanitation filed a second extension application. It raised no issue at that time regarding the 2002 order.

Through conversations with Mr. and Mrs. Couse, staff understands that Couse's Sanitation wants to have the city added back into its certificated authority in case the city decides to revert its jurisdiction for solid waste collection back to the commission. 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, the commission will issue a certificate to the last holder of a valid commission certificate of

public convenience and necessity. If there is no certificate existing for the area, or the previous holder was compensated for its certificate property right, the commission will consider applications for authority under RCW 81.77.040.

At this time, there is no company that holds a certificate to provide solid waste collection within the city, and the commission has not determined if the previous certificate holder (Couse's Sanitation) was compensated for its certificate.

Couse's Sanitation held a contract with the city for over 20 years. On March 31, 2014, the contract between Couse's Sanitation and the city expired. The city asked Mr. Couse to extend the contract by two months to try and work out the differences between both parties. However, Mr. Couse decided not to extend the contract. The city then issued an RFP seeking a new solid waste collection company. The city issued a new contract to a different solid waste collection company effective April 1, 2014.

Couse's Sanitation's petition states that the company could not find the forms needed to request a certificate amendment. Staff contacted Couse's Sanitation and explained the only way to amend a certificate is through an application process (WAC 480-70-091 and WAC 480-70-106(1)(e)). Staff further explained that the commission cannot retroactively revise a certificate and that the company should withdraw its petition. The company declined to withdraw its petition.

Couse's Sanitation contends that no statute, regulation, or other precedent precludes retroactive amendment of its certificate. Under this logic, the commission may take any action not specifically forbidden by statute or case law. To the contrary, administrative agencies are limited to the powers granted by the legislature. *Snohomish Cnty. Pub. Transp. Benefit Area v. State Pub. Employment Relations Comm'n*, 173 Wn. App. 504, 518, 294 P.3d 803 (2013); see also *Davidson Serles & Associates v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 159 Wn. App. 148, 155, 244 P.3d 1003 (2010) (administrative agencies are creatures of the Legislature, without inherent or common law powers and, as such, may exercise only those powers conferred by statute, either expressly or by necessary implication). Couse's Sanitation cites no statutory authority expressly or impliedly allowing retroactive amendment of a solid waste certificate.

In effect, Couse's Sanitation is seeking untimely review of the commission's 2002 order. The commission's secretary appears to have issued the 2002 order under a delegation of authority. Generally speaking, a company has 14 days to request review of delegated matter. WAC 480-07-904(3)(a). Couse's Sanitation's petition comes more than a decade too late.

### **Conclusion**

Deny Couse's Sanitation and Recycle, Inc.'s petition to retroactively amend its solid waste certificate (G-169) to include the City of Republic.