

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In re Application No. GA-079042 of)	
)	DOCKET NO. TG-011675
Ludtke-Pacific Trucking, Inc. for a)	
Certificate of Public Convenience and)	FIRST SUPPLEMENTAL ORDER;
Necessity to Operate Motor Vehicles in)	COMMISSION ORDER AND
Furnishing Solid Waste Collection)	DECISION GRANTING
Service)	APPLICATION
)	
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1 **SYNOPSIS.** Docket No. TG-011675 addresses the application by Ludtke-Pacific Trucking, Inc. (“Ludtke”), for a certificate of public convenience and necessity to transport biomedical waste in loaded trailers from points in the state of Washington to destinations outside state of Washington under terms and conditions of a contract with Stericycle of Washington, Inc. (“Stericycle”).

2 **Prehearing Conference.** The Commission convened a prehearing conference in this docket at Olympia, Washington on March 25, 2002, before Administrative Law Judge Lawrence J. Berg.

3 **Appearances.** Lex Ludtke, Vice President of Ludtke, appeared on behalf of the applicant via teleconference from the company’s offices in Bellingham, WA. Lisa Watson, Assistant Attorney General, Olympia, appeared on behalf of Commission Staff.

4 **Protests and Petitions for Intervention.** The Commission did not receive any filings within the thirty-day protest period pursuant to notice of Ludtke’s pending application for new authority in the Commission’s application docket issued on December 24, 2001,¹ nor was any petition to intervene presented at the prehearing conference in this proceeding.

5 **Staff Request to Applicant for Clarification.** Commission Staff requested clarification regarding the use of the term “long haul operations” in a support letter written by Stericycle dated December 10, 2001 (“Stericycle Support Letter”). Stericycle in correspondence dated March 25, 2002, clarified that “long haul operations” refers to intrastate and interstate trucking. Commission Staff filed a letter

¹ See WAC 480-70-106.

on April 1, 2002, stating that Stericycle's statement of shipper support is consistent with Ludtke's request for authority to provide both intrastate and interstate transportation services, and that Stericycle's clarification addressed its sole concern.

- 6 **Ludtke Waiver of Hearing and Initial Order.** RCW 81.77.040 states that when an applicant requests a certificate to operate in a territory already served by a certificate holder, the Commission may, after hearing, issue a certificate only if the existing solid waste collection company serving the territory will not provide service to the satisfaction of the Commission. Stericycle is the existing solid waste collection company serving the territory in which Ludtke seeks authority in this proceeding. At the prehearing conference, Ludtke waived its right to a oral hearing in this matter, and consented to the Commission directly entering a final order based on the paper record that has been submitted.

I. MEMORANDUM

Background

- 7 Stericycle holds statewide authority issued to transport medical waste and serves approximately 7,800 customers. Stericycle needs an additional carrier to support certain limited aspects of its intrastate and interstate operations throughout its service area. Ludtke is a trucking company with transportation equipment and personnel suitable to perform transportation services sought by Stericycle. Ludtke has not previously held or operated under a solid waste certificate.
- 8 Stericycle and Ludtke entered into a Transportation Services Agreement on December 10, 2001 ("Agreement"). According to the Agreement, Stericycle will tender loaded highway trailers containing biomedical waste to Ludtke at locations in Washington for transportation to designated destinations both inside and outside of Washington State. Stericycle is responsible for loading the trailers in compliance with all applicable laws, and Ludtke will pick up the loaded trailers and deliver them to Stericycle or other specified consignees. Additionally, Ludtke will pick up trailers containing empty re-usable containers, and return trailers and empty containers to locations designated by Stericycle.
- 9 Ludtke filed its Application for Solid Waste Certificate to perform services under the terms of the Agreement on December 12, 2001 ("Application"). Supporting documents attached to the Application include a copy of the Agreement and the Stericycle Support Letter.² A schedule of routes and rates was attached to the Agreement as Schedule A.

² WAC 480-70-091 states the supporting documents that must be submitted as part of a certificate application.

II. DISCUSSION AND DECISION

Standard for Determination

10 The fundamental standards upon which this application is considered are those stated in RCW 81.77.040, as follows:

Issuance of the certificate of necessity shall be determined upon, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, sworn to before a notary public; a statement of the assets on hand of the person, firm, association or corporation which will be expended on the purported plant for solid waste collection and disposal, sworn to before a notary public; a statement of prior experience, if any, in such field by the petitioner, sworn to before a notary public; and sentiment in the community contemplated to be served as to the necessity for such a service.

11 The statute also provides that:

[W]hen an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission.

12 The Commission has determined that this “standard is whether the overall quality of service is satisfactory, and the Commission must apply its judgment and expertise in making that determination. The determination must be based objectively on all of the facts and circumstances in the formal record.” *In re Superior Refuse Removal Corp.*, Commission Decision and Order Denying Reconsideration, Order M.V.G. No. 1537, Hearing No. GA-849, at 4 (Feb. 1992). In addition, the Commission considers whether an applicant is fit, willing, and able to provide the service for which it seeks authorization.

Review of the Evidence

13 The evidence that is considered in review of the company’s application consists of: the Application; the Agreement; Schedule A – routes and rates; Ludtke equipment list; Ludtke Balance Sheet, dated October 31, 2001; Stericycle Support Letter; Stericycle letter dated March 25, 2002, responding to Commission Staff’s request for clarification; and Staff’s letter dated April 1, 2001.

- 14 We find that the Stericycle Support Letter and the Agreement, when considered along with the absence of any protest to the Application, demonstrate that the existing solid waste collection companies will not provide service to our satisfaction. Stericycle also is in the business of transporting biomedical waste, but it is unable to effectively transport all of the waste it currently collects utilizing its own operations. Public convenience and necessity require that biomedical waste be timely and safely transported for disposal.
- 15 Ludtke's equipment list and balance statement demonstrates that considerable assets and operating expenses are incurred in providing transportation services. Stericycle's business judgment to contract with Ludtke to provide necessary transportation services, rather than directly incurring those expenses, is reasonable. Under the terms of the Agreement, Stericycle remains responsible to ensure that the biomedical waste tendered to Ludtke is packaged in appropriate containers, properly labeled, properly loaded in Stericycle's trailers and accompanied by appropriate shipping documentation in compliance with all applicable local, state, and federal laws and regulations. Ludtke agrees that the service fees specified in Schedule A are in amounts sufficient to allow operation of Ludtke's equipment at a profit for the specified routes.
- 16 Ludtke has not been cited within the last three years by the Commission for violations of its rules or laws. All Ludtke drivers must receive a certificate of training acknowledging completion of a training program for the handling and transporting biomedical waste before commencing any operation. In all other respects, Ludtke complies with the Commission's biomedical waste safety-fitness review. Ludtke's application demonstrates that it will conform its operations to the Commission's regulatory requirements and otherwise conduct its operations in accordance with law.
- 17 We find that Ludtke is fit, willing, and able to provide the service for which it seeks authorization. The Commission grants Ludtke's application for a certificate of public convenience and necessity to transport biomedical waste in accordance with the terms and conditions of the Agreement.

III. FINDINGS OF FACT

- 18 (1) Ludtke-Pacific Trucking, Inc. ("Ludtke"), filed an application on December 12, 2001, for a certificate of public convenience and necessity to transport biomedical waste in loaded trailers from points in the state of Washington to destinations outside state of Washington under terms and conditions of a contract with Stericycle of Washington, Inc. ("Stericycle").
- 19 (2) The existing certificated carriers in the state of Washington do not currently provide the service proposed by Ludtke to the Commission's satisfaction.

- 20 (3) Ludtke demonstrates that it is financially fit to provide the services for which
it seeks authorization.
- 21 (4) Ludtke demonstrates that it will conform its operations to the Commission's
regulatory requirements and otherwise conduct its operations in accordance
with law.

IV. CONCLUSIONS OF LAW

- 22 (1) The Washington Utilities and Transportation Commission has jurisdiction
under chapter 81.77 RCW both over the subject matter and the parties to the
pending application.
- 23 (2) Public convenience and necessity require the operations proposed by Ludtke
in its application.
- 24 (3) Ludtke is fit, willing, and able to provide the service for which it seeks
authorization.

V. ORDER

THE COMMISSION ORDERS That:

25 That Application No. GA-079042 of Ludtke-Pacific Trucking, Inc., for a Certificate
of Public Convenience and Necessity to transport biomedical waste in loaded trailers
under the terms and conditions of the Transportation Services Agreement dated
December 10, 2001, is granted.

26 All Ludtke drivers must receive a certificate of training acknowledging completion of
a training program for the handling and transporting biomedical waste before
commencing any operation.

DATED at Olympia, Washington, and effective this 11th day of April, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).