

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In re the Matter of Determining the Proper	)	DOCKET TG-072226
Carrier Classification of	)	
	)	ORDER 02
GLACIER RECYCLE, LLC;	)	
HUNGRY BUZZARD RECOVERY, LLC;	)	
AND T&T RECOVERY, INC.	)	PREHEARING CONFERENCE
	)	ORDER; NOTICE OF HEARING
	)	<b>(Set for September 9-11, 2008,</b>
	)	<b>commencing daily at 9:00 a.m.)</b>
.....	)	

1 **NATURE OF PROCEEDING.** Docket TG-072226 involves a special proceeding instituted under Revised Code of Washington (RCW) 81.04.510 by the Washington Utilities and Transportation Commission (Commission) on its own motion to determine whether three companies holding motor freight common carrier permits under RCW 81.80 are operating as solid waste collection companies, hauling solid waste for compensation without the necessary certificate required by RCW 81.77.040 and Washington Administrative Code (WAC) 480-70-016.

2 **CONFERENCE.** The Commission issued an Order Instituting Special Proceeding and Notice of Prehearing Conference on Thursday, December 28, 2007, and subsequently convened a prehearing conference in this docket at Olympia, Washington, on Thursday, January 24, 2008, before Administrative Law Judge (ALJ) Adam E. Torem.

3 **APPEARANCES.** Donald L. Anderson, Eisenhower & Carlson, PLLC, Tacoma, Washington, represents Glacier Recycle, LLC (Glacier), Hungry Buzzard Recovery, LLC (Hungry Buzzard), and T&T Recovery, Inc (T&T) (collectively “the respondent companies”). James K. Sells, Ryan Sells Uptegraft, Inc. P.S., Silverdale, Washington, represents the Washington Refuse and Recycling Association (WRRRA). Polly L. McNeill, Summit Law Group PLLC, Seattle, Washington, represents Waste Management of Washington, Inc. (WMW). David W. Wiley, Williams Kastner & Gibbs PLLC, Seattle, Washington, represents Murrey’s Disposal Company, Inc. (Murrey’s), Island Disposal, Inc. (Island), 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).<sup>1</sup> Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff ("Commission Staff" or "Staff").<sup>2</sup> Contact information provided at the conference for the parties' representatives is attached as Appendix A to this order.

4 **BURDEN OF PROOF.** Pursuant to RCW 81.04.510, when the Commission believes that any person or corporation is engaged in operations without the necessary approval or authority required, the Commission may institute a special proceeding requiring that person or corporation to appear before the Commission and provide sworn evidence regarding the operations or actions in question. By statute, the burden of proof rests upon the companies called before the Commission to prove that their operations or actions are not subject to the provisions of RCW Title 81.

5 If the respondent companies fail to meet their burden of proof, the Commission will issue a classification order declaring their operations and actions subject to the provisions of RCW Title 81 and order that they cease and desist operations until they obtain the appropriate authorities and certificates from the Commission.

6 **ISSUE PRESENTED FOR HEARING.** RCW 81.77.040 makes it unlawful for a "solid waste collection company to operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation." In this proceeding, the respondent companies must prove that their activities do *not* qualify as hauling of solid waste for compensation. As noted in the Order Instituting Special Proceeding, the focus of this hearing will be on the respondent companies' handling of construction, demolition and land clearing (CDL) waste.

7 On March 3, 2006, the Commission issued a letter concluding that the respondent companies did not require a permit for their CDL hauling activities. However, approximately one year later, the Commission reversed its position and, on April 19, 2007, issued a second letter reaching the opposite conclusion. On September 7, 2007,

---

<sup>1</sup> Dana Ferestien, Williams Kastner & Gibbs PLLC, Seattle, Washington, appeared at the prehearing conference on behalf of Mr. Wiley.

<sup>2</sup> In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. RCW 34.05.455.

the Commission issued another letter reiterating and further explaining its position that the respondent companies were hauling solid waste without the required certificate of public convenience and necessity. On December 28, 2007, the Commission instituted this classification proceeding.

8 RCW 81.77 provides definitions of the terms “solid waste collection company,” “solid waste collection,” and “solid waste.” RCW 70.95 provides definitions of the terms “recyclable materials,” “solid waste,” and “solid waste handling.”

9 WAC 480-70-016 explains when motor freight common carriers must also obtain certificates of public convenience and necessity for solid waste collection.

10 In this proceeding, the respondent companies must demonstrate that their handling of CDL waste comes within the meaning of the exception from “solid waste collection” set out in RCW 81.77.010(8).

11 **PETITIONS FOR INTERVENTION.** RCW 34.05.443 permits a presiding officer to grant a petition to intervene at any time, upon a determination that the petitioner qualifies to intervene under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings. WAC 480-07-355(3) allows the presiding officer to grant petitions to intervene when they disclose a substantial interest in the subject matter of the hearing or if the petitioner’s participation is in the public interest.

12 Petitions to intervene were filed with the Commission prior to the prehearing conference by the WRRRA, a trade association representing solid waste haulers in Washington, WMW, a company holding a solid waste collection certificate issued by the Commission, and by a group of five other companies holding solid waste collection certificates issued by the Commission: Murrey’s, Island, WCW, Lynnwood Disposal, and Eastside Disposal (collectively “the other companies”). No additional petitions for intervention were orally presented at the prehearing conference.

13 WRRRA’s petition to intervene, paragraph 2, states that the WRRRA:

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 WRRRA, who would not be parties in this action.

The issue herein, i.e. the alleged unlawful transportation and disposal of solid waste, is of vital importance to WRRRA's members.

WRRRA does not intend to broaden the issues presented in this matter. To the contrary, paragraph 5 of its petition states that "WRRRA's position with respect to the matter in controversy will be that expressed by the Commission in its Order Instituting Special Proceeding."

- 14 WMW's petition to intervene, paragraph 3, states that WMW is being financially harmed by the respondent companies' alleged provision of "unauthorized solid waste collection service to customers who rightfully should be served by WMW." As with the WRRRA, WMW's petition notes that it does not intend to broaden the issues presented and also supports the Commission's expressed position in this matter.
- 15 Similarly, the petition to intervene filed by the other companies claims a direct financial interest in the outcome of this case based on each of the other companies' holding of certificates of public convenience and necessity for their respective territories. The other companies also note their agreement that Commission Staff's beliefs and allegations as set out in the Order Instituting Special Proceeding are accurate in fact and under law.
- 16 The respondent companies initially opposed all of these petitions, contending that none of them articulated a substantial interest in the proceedings and that their intervention would not be in the public interest. However, upon clarifying that the other companies are members of WRRRA, but that WMW is *not* a member of WRRRA, the respondent companies conceded that WMW had a substantial financial interest in the proceedings and removed their opposition to WMW intervening in this docket. In addition, the respondent companies agreed that the other companies also had a substantial financial interest in the proceedings, but suggested that because they were all WRRRA members, the Commission should grant either their petition *or* the WRRRA's petition, but not both. The respondent companies expressed a preference for granting the other companies' petition.
- 17 ***Decision on Intervention.*** Although the interests of the various petitioners are generally difficult to distinguish from that of Commission Staff in this classification proceeding, each of these petitioners will approach the issues presented from different perspectives. Therefore, after careful consideration, their petitions are granted.

- 18 First and foremost, each petitioner has expressed a sufficiently specific substantial interest in the subject matter of the hearing to justify intervention. Each of the intervenors has a financial interest in the outcome of this hearing, not only in the matter of direct competition from the respondent companies, but also in the Commission's general interpretation of its solid waste collection regulations. WRRRA's general membership shares these same interests with the individually named companies petitioning to intervene.
- 19 Second, Commission Staff can not adequately represent the business interests of the petitioners in this case. Commission Staff intends to approach this matter from the perspective of government properly regulating an industry. The majority of the proposed intervenors are individual commercial entities with direct operational experience in the issues presented at hearing. The other is a trade association with broader industry-wide views on the matters in controversy. Thus, the petitioners will provide the Commission with a different point of view from Commission Staff.
- 20 Finally, the intervening companies each noted that the result of this proceeding could directly affect their operations. If the respondent companies' CDL waste handling practices are determined not to require a certificate, the intervening companies might be able to alter their own business practices in the area of CDL waste. WMW pointed out that any expansion of their own operations may allow a lowering of rates for their customers. In this way, their participation may further the public interest.
- 21 Notably, because of the closely related but individualized interests of these petitioners, granting any one of the petitions for intervention would appear to require granting them all, to include potential petitions for intervention from any certificated solid waste hauler in Washington. Clearly, having every one of the state's solid waste collection companies participating in the proceeding would create a cumulative impact on the docket that would impair the orderly and prompt conduct of the proceedings. Therefore, if the benefit of wider participation from industry members in this case is to be realized without being outweighed by procedural difficulties or delays, appropriate limitations on intervention must be implemented.
- 22 For the reasons noted above, the petitions to intervene filed by WRRRA, WMW, and the other companies are all GRANTED, subject to the following restrictions.
- 23 Under RCW 34.05.443(2), the presiding officer may impose conditions on the intervenors participating in the proceeding. In order to reduce repetitive evidence and

in accordance with RCW 34.05.443(2)(c), WRRRA, WMW, and the other companies shall combine their presentations. These parties shall, to the extent feasible, present joint witnesses and designate one lead counsel to conduct cross-examination of other parties' witnesses at hearing. Each intervenor will be permitted to participate in a shared opening statement at hearing; however, each intervenor will be entitled to submit individual post-hearing briefing, as needed. Such combination of presentations will ensure the orderly and prompt conduct of the proceedings in the most efficient manner possible but also allow individual intervenors to approach the issues presented with their own particularized focus.

24 Further, WRRRA, WMW, and the other companies shall, to the extent practicable under the terms of any protective order issued in this matter, coordinate with Commission Staff during discovery and in preparation for hearing. This coordination will prevent duplication of effort and increased expense for all parties, but particularly for the respondent companies subject to the Order Instituting Special Proceeding.

25 **PROTECTIVE ORDER.** A protective order will be entered in this docket under RCW 34.05.446, RCW 80.04.095, WAC 480-07-420 and WAC 480-07-423 to protect the confidentiality of any information identified as proprietary information. At this time, however, the exact terms of the protective order have not been established.

26 The parties have agreed to attempt to draft a mutually agreeable protective order and submit it to the Commission no later than Tuesday, February 12, 2008. If the parties can not reach agreement on suitable terms for a protective order, they shall submit competing versions of their proposed orders on that same date. The Commission will review the parties' submission(s) and issue an appropriate protective order.

27 **DISCOVERY.** The parties jointly requested to invoke the Commission's rule on discovery, WAC 480-07-400(2)(b) and the request was granted. Discovery will proceed in accordance with Commission's rules, WAC 480-07-400 – 425.

28 **PROCEDURAL SCHEDULE.** The parties agreed upon a procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B, and incorporated into the body of this Order by this reference.

29 **NOTICE OF HEARING.** The Commission schedules a hearing in this matter, to commence on **Tuesday, September 9, 2008, at 9:00 a.m., in Room 206 of the Commission's headquarters, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

30 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an original plus seven (7) copies of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

31 All filings must be mailed or delivered to the Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

32 An electronic copy of all filings must be provided through the Commission's Web Portal ([www.wutc.wa.gov/e-filing](http://www.wutc.wa.gov/e-filing)) or by e-mail delivery to [records@utc.wa.gov](mailto:records@utc.wa.gov). Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.

33 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Pursuant to WAC 480-07-145(6), the presiding officer grants a one-day extension of the paper-filing requirement, allowing electronic submission of documents with the Commission on the filing deadline. Parties must submit documents through the Commission's Web Portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)) or by e-mail to [records@utc.wa.gov](mailto:records@utc.wa.gov), and file an original, plus seven (7) paper copies, of the documents with the Commission by noon on the following business day. Parties must provide courtesy copies of their electronic submissions to the presiding administrative law judge and the parties to the proceeding.

- 34 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. Commission Staff and the respondent companies have previously explored settlement of this matter without success. Nevertheless, it may be possible to reach a stipulation or a partial settlement in this matter. The Commission does have limited ability to provide dispute resolution services; if the parties wish to explore those services, please call ALJ Ann Rendahl, Director, Administrative Law Division, at (360) 664-1144.
- 35 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective January 28, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
Administrative Law Judge



**APPENDIX A**

**PARTIES' REPRESENTATIVES  
DOCKET TG-072226**

<b>PARTY</b>	<b>REPRESENTATIVE</b>	<b>PHONE</b>	<b>FACSIMILE</b>	<b>E-MAIL</b>
<b>GLACIER RECYCLE, LLC</b>	<b>DONALD L. ANDERSON</b> Eisenhower & Carlson, PLLC 1200 Wells Fargo Plaza 1201 Pacific Avenue Tacoma, WA 98402	253-572-4500	253-272-5732	<a href="mailto:danderson@eisenhowerlaw.com">danderson@eisenhowerlaw.com</a>
<b>HUNGRY BUZZARD RECOVERY, LLC</b>	<b>DONALD L. ANDERSON</b> <i>see above</i>	<i>see above</i>	<i>see above</i>	<i>see above</i>
<b>T&amp;T RECOVERY, INC.</b>	<b>DONALD L. ANDERSON</b> <i>see above</i>	<i>see above</i>	<i>see above</i>	<i>see above</i>
<b>WASHINGTON REFUSE AND RECYCLING ASSOCIATION</b>	<b>JAMES K. SELLS</b> Ryan Sells Uptegraft, Inc. P.S. 9657 Levin Road NW, Ste 240 Silverdale, WA 98383	360-307-8860	360-307-8865	<a href="mailto:jimsells@rsulaw.com">jimsells@rsulaw.com</a>
<b>WASTE MANAGEMENT OF WASHINGTON, INC.</b>	<b>POLLY L. MCNEILL</b> Summit Law Group PLLC 315 Fifth Avenue South, Ste 1000 Seattle, WA 98104	206-676-7040	206-676-7041	<a href="mailto:pollvm@summitlaw.com">pollvm@summitlaw.com</a>
<b>MURREY'S DISPOSAL COMPANY, INC.</b>	<b>DAVID W. WILEY</b> Williams, Kastner & Gibbs PLLC Two Union Square 601 Union Street, Suite 4100 Seattle, WA 98101-2380	206-628-6600	206-628-6611	<a href="mailto:dwiley@williamskastner.com">dwiley@williamskastner.com</a>
<b>ISLAND DISPOSAL, INC.</b>	<b>DAVID W. WILEY</b> <i>see above</i>	<i>see above</i>	<i>see above</i>	<i>see above</i>

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
WASTE CONNECTIONS OF WASHINGTON, INC.	DAVID W. WILEY <i>see above</i>	<i>see above</i>	<i>see above</i>	<i>see above</i>
LYNNWOOD DISPOSAL d/b/a ALLIED WASTE OF LYNNWOOD	DAVID W. WILEY <i>see above</i>	<i>see above</i>	<i>see above</i>	<i>see above</i>
EASTSIDE DISPOSAL d/b/a ALLIED WASTE OF BELLEVUE	DAVID W. WILEY <i>see above</i>	<i>see above</i>	<i>see above</i>	<i>see above</i>
COMMISSION STAFF	JONATHAN THOMPSON Asst. Attorney General 1400 S Evergreen Park Dr SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1125	360-586-5522	<a href="mailto:JThomps@utc.wa.gov">JThomps@utc.wa.gov</a>
Admin. Law Judge	ADAM E. TOREM 1300 S Evergreen Park Dr SW P.O. Box 47250 Olympia, WA 98504-7250	360-664-1138	360-664-2654 [ALD fax only – <i>do not use to file</i> ]	<a href="mailto:atorem@utc.wa.gov">atorem@utc.wa.gov</a>

**APPENDIX B  
PROCEDURAL SCHEDULE  
DOCKET TG-072226**

EVENT	DATE	INTERVAL
<b>Prehearing Conference</b>	<b>Thurs, January 24, 2008</b>	—
<b>Parties to Submit Proposal(s) for Protective Order</b>	<b>Tues, February 12, 2008</b>	<b>19 Days</b>
<b>Deadline to File Dispositive Motions</b>	<b>Friday, April 18, 2008</b>	<b>66 Days</b>
<b>Responses to Dispositive Motions</b>	<b>Thursday, May 8, 2008</b>	<b>20 Days</b>
<b>Argument on Motions (if needed)</b>	<b>Week of May 12-16, 2008</b>	<b>4 Days</b>
<b>Order Deciding Dispositive Motions</b>	<b>Friday, June 6, 2008</b>	<b>~21 Days</b>
<b>Pre-Filed Direct Testimony: Respondent Companies</b>	<b>Friday, June 27, 2008</b>	<b>21 Days</b>
<b>Pre-Filed Direct Testimony: Commission Staff &amp; Intervenors</b>	<b>Tuesday, July 22, 2008</b>	<b>25 Days</b>
<b>Pre-Filed Rebuttal Testimony: Respondent Companies</b>	<b>Friday, August 8, 2008</b>	<b>17 Days</b>
<b>Evidentiary Hearing (3 days)</b>	<b>Tuesday, Sept 9, 2008 through Thursday, Sept 11, 2008</b>	<b>32 Days</b>
<b>Post-Hearing Briefs</b>	<b>Friday, October 3, 2008</b>	<b>22 Days</b>