

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application No. GA-
789000 of

Docket No. TG-000584

TRASH HUSTLERS, L.L.C.

POST HEARING BRIEF OF WASHINGTON
REFUSE AND RECYCLING ASSOCIATION

For a Certificate of Public
Convenience and Necessity to
Operate Motor Vehicles in
Furnishing Solid Waste
Collection Services.

COMES NOW Protestant Washington Refuse and Recycling Association (WRRRA) and respectfully submits the following:

PRELIMINARY STATEMENT: This application seeks limited authority in Yakima County, and is virtually an exact copy of the authority recently obtained by Trash Busters LLC in Certificate 256.¹ The application was filed April 12, 2000 and appeared in the April 24, 2000 Docket. Protests were filed by two certificate holders, Yakima Waste Systems, Inc. (YWS) and Country Garbage Service (Country). WRRRA also filed a protest and took part in the hearing, held before Administrative Law Judge Ann E. Rendahl on August 16 and 17, 2000, in Yakima. Commission staff were not represented at the hearing, although an appearance was made on staff's behalf by Assistant Attorney General Mary Tennyson. Applicant has filed its Post Hearing Brief, and this brief is in reply to same.

EXISTING SERVICE: In order for this application to be granted, Applicant must prove that the existing certificate holders cannot, or will not, provide service satisfactory to the Commission. **RCW**

¹ Trashbusters' application for authority in King and Snohomish Counties was protested but an agreement was reached and protests were withdrawn. Because of various factors, not the least being the urban/rural dichotomy, that proceeding has little, if any, value in reaching a decision here.

81.77.010. The Commission has dealt with this issue frequently and has set forth the "factors" to be applied:

. . . The nature, the seriousness of complaints about service; the carrier's response to customer complaints and the carrier's demonstrated ability to resolve them to the Commission's satisfaction; . . . the carrier's history of compliance with regulation, with special attention to the carrier's cooperation on matters central to the Commission's regulation in the public interest

In re Superior Refuse Removal, GA-849 (Nov. 1991).

The Commission, in the past, has cited as examples of unsatisfactory service erratic and unreliable service, frequently missed or tardy pick-ups, rude response to customer complaints, badly deteriorated equipment and slow (or no) response to complaints. *supra*.

In Order MVG 1537, in the same Superior Refuse proceeding, the Commission further commented on these factors. It reiterated its reliance on legislative intent to avoid overlapping authorities which, of course, would be the result here if this application were granted. It quoted, with approval, Order MVG 504,

In re DiTommaso Bros. Garbage Service, Apps. GA-374/376 (Aug. 1971):

It is clear and well settled that the legislature intended that garbage and refuse collection in this state be a regulated monopoly, with the condition that if a certified carrier would not provide satisfactory service, his authority could be revoked and another carrier authorized to provide service.

In ***Superior***, the Commission noted that:

Applicant urges the Commission to apply a strict liability or "perfect service" rule, granting overlapping authority whenever any inadequacy in the existing service is shown. The Commission has never adopted a strict liability rule, and such a rule would be incompatible with RCW 81.77.040 requirement that overlapping authority may be granted only if the existing carrier will not provide satisfactory service ***MVG 1537***.

The Commission has delineated some of the deficiencies which could constitute unsatisfactory service. For example:

- Persuasive customer complaints regarding late or missed pickups: ***In re Lawson Disposal, Inc.***, MVG 1264, App. GA-824 (Jan. 1987).
- Evidence that equipment is not regularly or adequately maintained: ***In re Brem-Air Dispsal, Inc.***, MVG 837, App. GA-575 (Aug. 1976)
- Deliberate overcharging, or a deliberate failure to correct billing errors: ***Brem-Air, supra***.
- A general failure to respond appropriately to customer complaints: ***Lawson, supra***.
- Numerous and frequent violations of law and regulations: ***In re RST Disposal Co., Inc.***,

d/b/a Tri-Star Disposal, MVG 1402, GA-845 (July 1985).

- Failure to present sufficient and accurate information about its ownership and finances in ratemaking proceedings or other proceedings before the Commission. **RST, supra.**

Here, there was no testimony that could even remotely be considered as reaching these standards. Applicant presented several public witnesses, not one of whom testified as to any service failures or problems with either Yakima Waste Systems or Country Garbage.²

BUD OWENS is in the trucking business and has several commercial and residential rentals. Tr. 153-54. Mr. Owens testified that he had never asked YWS to provide the kind of service proposed by Applicant, but that he will call them in the future if he has such a need. Tr. 176. He has no properties in Country's area. Tr. 179.

MICHAEL NASH is president of "ITEC" which manufactures "transportation goods." Tr. 189. Mr. Nash also owns rental properties. Tr. 192. He testified that ". . . I think Yakima Waste Systems does a fine job." Tr. 195. Like Mr. Owens, he has no properties in Country's area. Tr. 199.

JOHN PUCCINELLI owns a restaurant in Yakima and owns rentals in Yakima and property in Zillah. Tr. 203, 210. He is "satisfied" with the City of Yakima's municipal service for residential waste and that of YWS for commercial accounts in the City. Tr. 212. He admitted to having no knowledge about Applicant's "business practices, or his ability to provide [the] service." Tr. 213.

LYNN BUCHANAN owns warehouses and residential rentals in the City of Yakima and owns public truck scales, also in the City. Tr. 220-21. He lives within the City and is satisfied with Yakima's municipal service. Tr. 224. YWS provides commercial service to his warehouses and he is satisfied with that service as well. Tr. 224. He has no property or business holdings outside the City of Yakima. Tr. 225.

FITNESS: Applicant is an "LLC, of which Mr. DiTommaso is the sole member." Tr. 21. Trash Hustlers itself owns no equipment, has no capital and, in fact, has no assets whatsoever. Tr. 109. Mr. DiTommaso was in the solid waste business over 20 years ago but has no recent experience. Tr. 27. He has conducted no surveys to locate potential customers (Tr. 37) and has no idea of what, for example, his fuel or insurance costs would be. Tr. 82.

Mr. DiTommaso refused to produce a personal financial statement. Tr. 106. Arguably, since he is

² In fact, Applicant testified that he had no witnesses supporting his proposed service in Country Garbage's area. Tr. 98.

the "sole member" of Trash Hustlers LLC, and is relying on personal funding of the company if the application is granted, he is required by **RCW 81.77.040** to produce a statement of his assets. This application could, and perhaps should, be rejected on that basis alone.

One of the most troubling aspects of this application is that it and the proposed tariff are direct copies of that of "Trashbusters," holder of WUTC Certificate G-256, which provides for limited specialized service in King and Snohomish Counties. Mr. DiTommaso testified that his rates were taken from the permit or application of Trashbusters but that he didn't "have the foggiest" of how the rates were arrived at. Tr. 81.³

Mr. DiTommaso certainly cannot be faulted for not adopting "compensatory" rates. He testified that he thought it would be appropriate to charge between \$200 and \$350 for a load where his costs would be around \$40. Tr. 145-46.

Mr. DiTommaso also advocates a somewhat unique method of pricing for a job. He will give the customer a "non-binding estimate" which he can change "during" the job. Tr. 113-114. If the customer does not like the new rate, Mr. DiTommaso anticipates that the customer will pay for what has been loaded and "will bail out right now." Tr. 114.

Interestingly, Applicant includes "vehicle hulks" in his tariff, but has no intention of hauling them. Rather, he will call a "friend that has a tow truck" to do it. This would appear to be a violation of **RCW 81.77.040** unless Commission approval is given beforehand for each such haul.

Mr. DiTommaso also showed a troublesome lack of knowledge and/or concern for his potential employees. When asked how much weight an individual should be allowed to lift into a truck, his reply was "all that he can." He has yet to determine an hourly wage for drivers and will offer no benefits. Tr. 81.

Mr. DiTommaso is correct: he "doesn't have the foggiest" about how this business would operate, how much it would cost, what the proposed rates are based upon, or, for that matter, much of anything else he should know or have planned for before making this application and putting Protestants and the Commission to the expense of dealing with it.

SERVICE TO CITIES: As the Commission is well aware, cities which either provide municipal solid waste service, or contract, are exempt from WUTC supervision. **RCW 81.77.020; In re Basin Disposal, Inc.**, App. GA-898, Order M.V.G. 1464; **In re Superior Refuse Removal Corp.**, App. GA-899, Order M.V.G. 1414. The City of Yakima provides municipal residential service. Tr. 278. The City of

³ In fact, Mr. DiTommaso thought the disposal and recycling fees and the proposed tariff were rates from King County. TR 123-24.

Grandview has municipal service and the City of Sunnyside contracts with YWS. Tr. 400. The cities of Union Gap and Selah contract with Waste Connections, Inc., which purchased Superior Refuse. Ex. 17 and 18, Tr. 402.

Thus, even if Applicant's witnesses actually had testified to a need for service (which none of them did), much, if not virtually all, of that testimony concerned areas outside Commission jurisdiction.

OVERLAPPING AUTHORITY: There is a strong presumption against overlapping solid waste authority. The Commission frequently has spoken against overlapping authority as being contrary to the public interest. In *In re Revision of Common Carrier Permits of Garbage and Refuse Haulers in King County*, Order MV 53066, Hearing 4020 (Nov. 1949), the Commission stated its position, which has not changed since.

That unnecessary duplication of facilities and competition for customers in the same districts and areas by two or more permittees results in increased cost of rendering the service to the public, results in making the cost of garbage and refuse removal service in some cases prohibitive so that householders prefer to dispose of their garbage and refuse in other ways than by having it transported by common carriers to a garbage dump; that this results in dumping of garbage by householders in such manner as to be unsanitary and causes a public health menace; that in the interest of the public, and in the interest of conserving the highways, relieving congestion and promoting sound economic conditions among carriers in the public interest, it is necessary that this Commission enter into a hearing to investigate these matters, and where duplication of common carrier service exists, or where common carrier permittees are not exercising fully the rights in their permits, and are not serving the entire territory or routes which they are authorized to serve by said permits, that the Commission revise said permits to avoid duplication and restrict permits of carriers to conform to their actual operations, or such additional territory which they have a reasonable prospect of serving in the reasonable future.

This policy has continually been reiterated and emphasized by the Commission. In *Superior Refuse, supra*, the Commission said:

An applicant that seeks authority to operate in territory already served by a certificate holder under Chapter 81.77 bears a heavy burden — to demonstrate that the existing solid waste collection company serving the territory will not provide service to the satisfaction of the Commission and then to show that the public convenience and necessity require a new service *Order MVG 1639*, at 23.

This application may be for a limited type of authority, but it is for a service that is already being provided by the two certificate holders. It is not a situation such as existed regarding biohazard waste, where the desire of generators for varied treatment/disposal methods led to issuance of overlapping permits. *See*

In re Stericycle of Washington, Inc., App. GA-75154/77539, Order M.V.G. 1761.

This is garbage collection, pure and simple. It is a service that is being provided by in Yakima County by certificate holders, cities and city contractors. As Mr. Bronkhorst, owner of Country Garbage, put it when asked if his company provides the kind of service requested here, he said:

"I think that's part of the garbage business."

Tr. 395.

That pretty well sums it up.

CONCLUSION: Applicant has presented absolutely no testimony indicating a need for this service that is not being met by existing carriers. In fact, his generator witnesses expressed satisfaction with their current service. There simply was no testimony of any failure of existing service; i.e., that either YWS or Country is not performing to the satisfaction of the Commission.

There are also serious issues concerning Applicant's fitness. His application is simply a copy of that of a King/Snohomish County carrier. He has no equipment, no business plan, no employees, no potential customers, and appeared to lack even a basic understanding of his own application and tariff. He proposes rates which would result in as much as a \$350 fee for a job with costs of \$40. He refuses to submit financial information as required by statute. He has a tariff item for dead animals but restricts the application against biomedical waste. He wants to give customers a non-binding estimate which can change during the job. He has not made even the most basic presentation to perform the proposed service in a competent and legal manner.

This application should be denied.

Respectfully submitted,

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Washington Refuse and

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the foregoing **Post Hearing Brief of Washington Refuse and Recycling Association** was served by first class mail, postage prepaid, on:

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I swear under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

DATED this _____ day of _____, 2000 at Silverdale, Kitsap County, Washington.

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