

1 Hearing Date: None set  
2 Hearing Time: None set  
3 Judge/Calendar: \_\_\_\_\_  
4 \_\_\_\_\_

5  
6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
7 IN AND FOR THE COUNTY OF THURSTON

8 WASTE MANAGEMENT OF  
9 WASHINGTON, INC., WASTE  
10 MANAGEMENT DISPOSAL SERVICES OF  
11 OREGON, INC., MJ TRUCKING &  
12 CONTRACTING, and DANIEL ANDERSON  
13 TRUCKING AND EXCAVATION, LLC,

14 Petitioners,

15 v.

16 WASHINGTON UTILITIES AND  
17 TRANSPORTATION COMMISSION, an  
18 agency of the State of Washington,

19 Respondent.

CASE NO. \_\_\_\_\_

**PETITION FOR REVIEW OF  
AGENCY ACTION**

20 Waste Management of Washington, Inc. (“WMW”), Waste Management Disposal  
21 Services of Oregon, Inc. (“WMDSO”), MJ Trucking & Contracting (“MJ Trucking”), and Daniel  
22 Anderson Trucking and Excavation, LLC (“DAT”) hereby petition this Court for review of the  
23 attached decision of the Washington Utilities and Transportation Commission (“UTC”) pursuant  
24 to the Administrative Procedure Act (“APA”), Chapter 34.05 RCW. Petitioners ask this Court to  
25 find the UTC’s decision exceeded its authority and jurisdiction and was preempted by federal  
26 law. Petitioners respectfully ask this Court to set aside the UTC’s ruling and issue summary  
determination in favor of Petitioners.

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**I. NAMES AND MAILING ADDRESSES OF PETITIONERS**

Waste Management of Washington, Inc.  
800 Capitol St., Ste. 3000  
Houston, TX 77002-2925

Waste Management Disposal Services of Oregon, Inc.  
800 Capitol St., Ste. 3000  
Houston, TX 77002-2925

MJ Trucking & Contracting  
282283 US-101  
Port Townsend, WA 98368

Daniel Anderson Trucking and Excavation, LLC  
1835 NW Ponderosa Pl.  
Poulsbo, WA 98370

**II. NAMES AND ADDRESSES OF PETITIONERS' ATTORNEYS**

Jessica L. Goldman  
Jesse L. Taylor  
Summit Law Group, PLLC  
315 Fifth Avenue South, Suite 1000  
Seattle, Washington 98104-2682

**III. NAME AND ADDRESS OF AGENCY WHOSE ACTION IS AT ISSUE**

Washington Utilities and Transportation Commission  
621 Woodland Square Loop S.E.  
Lacey, WA 98503

**IV. AGENCY ACTION AT ISSUE**

4.1 Petitioners seek judicial review of the UTC's final order in the adjudicative proceeding *Murrey's Disposal Co., Inc. v. Waste Mgmt. of Wash., Inc., et al.*, titled Order 06, Granting Complainant's Motion for Summary Determination, Denying Respondents' Motion for Summary Determination, issued May 3, 2021. (In the proceedings before the UTC, the Petitioners herein were denominated "Respondents.") Attached as **Exhibit A** is a true and correct copy of the UTC's Order 06. The UTC ordered Petitioners to immediately cease and desist solid waste collection services provided to Port Townsend Paper Company ("PTP") and

1 McKinley Paper Company (“McKinley Paper”) which services are subject to exclusive federal  
2 jurisdiction.

3 **V. IDENTITY OF PARTIES TO ADJUDICATIVE PROCEEDING**

4 5.1 The parties to the adjudicative proceeding that led to the agency action at issue  
5 were Petitioners and Murrey’s Disposal Company, Inc. (“Murrey’s”).

6 **VI. FACTS ENTITLING PETITIONERS TO JUDICIAL REVIEW**

7 6.1. McKinley Paper and PTP, located in the Olympic Peninsula, generate solid waste  
8 in the form of old corrugated cardboard rejects (“OCC Rejects”). At the request of McKinley  
9 Paper and PTP, Petitioners, in conjunction with the Union Pacific Railroad (“UPRR”), provide  
10 continuous intermodal transportation of OCC Rejects from the customers to the Columbia Ridge  
11 Landfill in the State of Oregon.

12 6.2 Under contract with Kitsap County, WMW operates the Olympic View Transfer  
13 Station (“OVTS”) outside of Bremerton. The Puget Sound and Pacific Railroad (“PSAP”) owns  
14 and operates a rail line located near OVTS. PSAP provides rail car switching services at OVTS  
15 and moves rail cars to and from the Kitsap rail siding to the nearby PSAP rail line for onward  
16 transportation. WMW transloads intermodal containers of solid waste from motor vehicles to  
17 rail cars owned by UPRR that are staged on rail siding owned by Kitsap County and located at  
18 OVTS.

19 6.3 Likewise, North Mason Fiber Co. (“NMF”) owns and operates a recycling,  
20 organics and transload facility in Mason County, near Belfair, Washington. NMF transloads  
21 intermodal containers of solid waste from motor vehicles to rail cars owned by UPRR that are  
22 staged on rail siding owned by NMF and located at the NMF facility. PSAP provides rail car  
23 switching services at the NMF facility, whereby PSAP moves rail cars to and from the NMF  
24 facility rail siding to the nearby PSAP rail lines.

1           6.4     After loaded rail cars are switched to the PSAP rail line from either OVTS or  
2 NMF, the UPRR transports the intermodal containers to the Columbia Ridge Landfill in Oregon.  
3 WMDSO owns and operates the Columbia Ridge Landfill. The Columbia Ridge Landfill  
4 receives solid waste that is delivered by rail to the UPRR from OVTS and NMF.

5           6.5     Murrey's is a solid waste collection company holding Certificate G-009, issued by  
6 the UTC, which authorizes Murrey's to provide solid waste collection services in portions of  
7 Clallam and Jefferson Counties that include the areas in which McKinley Paper and PTP are  
8 located. Prior to June 2020, Murrey's provided solid waste collection service to PTP. Prior to  
9 2011, Murrey's provided solid waste collection service to the prior owner and operator of  
10 McKinley Paper.

11          6.6     In 2020, McKinley Paper and PTP each contracted with WMDSO to provide solid  
12 waste container-on-flat-car ("COFC") transportation and disposal services for OCC Rejects.  
13 Pursuant to this arrangement, WMDSO contracts with MJ Trucking and DAT to transport  
14 intermodal cargo containers of OCC Rejects from McKinley Paper and PTP to OVTS or NMF.  
15 McKinley Paper and PTP load the intermodal cargo containers with the OCC Rejects and such  
16 containers are closed at the time they are picked up by MJ Trucking and DAT for intermodal  
17 transport. Recently, WMDSO has revised its arrangements with McKinley Paper whereby its  
18 OCC Rejects also are transported in intermodal containers to UPRR's transload facility located  
19 in Seattle, known as the Argo Yard.

20          6.7     Once these intermodal cargo containers of OCC Rejects arrive at OVTS, NMF or  
21 the Argo Yard by truck, the containers are loaded onto rail cars owned and operated by UPRR.  
22 These intermodal containers remain closed for the entire duration of their transport, including  
23 during the transloading process. Below is a photograph of a closed intermodal container of OCC  
24 Rejects being transloaded in COFC service from a truck directly to the rail line at OVTS.



12           6.8     The photographs below show a closed intermodal container of OCC Rejects from  
13 PTP being offloaded from the truck to the UPRR train at NMF’s rail spur, bound for WMDSO’s  
14 Columbia Ridge Landfill in Oregon.



1           6.9     And, below is a photograph of a closed PTP-loaded intermodal container of OCC  
2 Rejects being offloaded at the end of the COFC service from NMF's rail spur at WMDSO's  
3 Columbia Ridge Landfill in Oregon.  
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20           6.10    WMDSO and UPRR have a prior-existing agreement by which UPRR transports  
21 intermodal containers of solid waste to Columbia Ridge Landfill. All intermodal containers  
22 holding OCC Rejects generated by PTP or McKinley Paper and delivered to OVTS or NMF are  
23 transported by the UPRR under this agreement. WMDSO and UPRR also have a prior-existing  
24 agreement by which UPRR loads the intermodal containers of solid waste from the Argo Yard to  
25 the Columbia Ridge Landfill. All intermodal containers holding OCC Rejects generated by  
26 McKinley Paper and delivered to the Argo Yard are transported by UPRR under this agreement.

1           6.11    WMW uses continuous intermodal transportation to transport OCC Rejects from  
2 PTP and McKinley Paper that **always** includes **both** a rail and a trucking segment. The closed  
3 intermodal containers are not unloaded during the continuous intermodal service to the Columbia  
4 Ridge Landfill.

5           6.12    The federal Surface Transportation Bureau (“STB”) has exclusive jurisdiction  
6 over the rail transportation of solid waste, preempting all state regulatory efforts. That rail  
7 transportation includes COFC service from beginning to end, including both the motor carrier  
8 (truck) leg and the rail leg, irrespective of how the two carriers and the customer structure their  
9 business relationship. *See* 49 U.S.C. § 10501(b); 49 U.S.C. § 10502(a); 49 U.S.C. § 10102(9);  
10 49 U.S.C. § 10908(e)(1)(H)(1); 49.C.F.R. § 1090.1(b); 49 C.F.R. § 1155.2(a)(10); 49 C.F.R. §  
11 1090.2; *Improvement of TOFC/COFC Regulations (Pickup and Delivery)*, EP No. 230 (Sub-No.  
12 7), 6 I.C.C.2d 208 (1989), *aff’d sub nom. Central States Motor Freight Bureau, Inc. v. Interstate*  
13 *Comm. Comm’n*, 924 F.2d 1099 (D.C. Cir. 1991); *Or. Coast Scenic RR, LLC v. Or. Dep’t of*  
14 *State Lands*, 841 F.3d 1069 (9th Cir. 2016); *Ass’n of Am. R.R.s v. S. Coast Air Quality Mgmt.*  
15 *Dist.*, 622 F.3d 1094, 1097 (9th Cir. 2010).

16           6.13    Notwithstanding the STB’s exclusive jurisdiction over rail transportation,  
17 including continuous intermodal COFC service, the UTC has by its Order 06 sought to regulate  
18 and prohibit Petitioners’ COFC service.

19           6.14    The UTC’s ruling substantially prejudices Petitioners by ordering them to cease  
20 and desist lawful COFC services provided to PTP and McKinley Paper, for which Petitioners  
21 currently manage hundreds of tons of waste byproducts a day, seven days a week. A judgment by  
22 this court setting aside the UTC’s unlawful order will substantially eliminate or redress the  
23 prejudice caused to Petitioners by Order 06.

24           6.15    This Court has jurisdiction under RCW 34.05.570, which authorizes judicial  
25 review of an agency order in an administrative proceeding. Filing this Petition for review is the  
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1 appropriate means for obtaining judicial review of the UTC's ruling pursuant to RCW 34.05.570  
2 and WAC 480-07-825(7).

3 6.16. This matter is ripe for judicial review because the UTC has issued a final decision  
4 and Petitioners exhausted all administrative remedies, pursuant to RCW 34.05.534.

5 6.17. This Petition is timely filed, pursuant to RCW 34.05.542(2), within 30 days of  
6 service of the UTC's final ruling.

7 6.18. This matter is properly heard in this Court pursuant to RCW 34.05.514(1)(a).

8 **VII. REASONS WHY RELIEF SHOULD BE GRANTED**

9 7.1 The UTC's ruling is outside of its statutory authority or jurisdiction conferred by  
10 any provision of law. RCW 34.05.570(3)(e).

11 7.2 The UTC's ruling is based on an erroneous interpretation and application of the law  
12 and preempted by federal law, including the Interstate Commerce Commission Termination Act, 49  
13 U.S.C. § 10501. RCW 34.05.570(3)(d).

14 **VIII. RELIEF REQUESTED**

15 WHEREFORE, pursuant to RCW 34.05.574, Petitioners request the following relief:

- 16 1. An order setting aside the UTC's Order 06;
- 17 2. An order declaring that the UTC's Order 06 exceeds the UTC's authority or  
18 jurisdiction, is an erroneous interpretation or application of the law, and is preempted by federal  
19 law;
- 20 3. An order granting summary determination to Petitioners;
- 21 4. An award of attorney's fees and costs to Petitioners in the maximum amounts  
22 allowed by law; and
- 23 5. An award of such other and further relief as the Court deems just and equitable.
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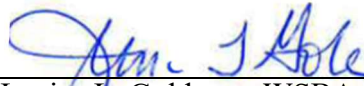


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DATED this 10<sup>th</sup> day of May, 2021.

Respectfully submitted,

SUMMIT LAW GROUP, PLLC

By:   
\_\_\_\_\_  
Jessica L. Goldman, WSBA #21856  
Jesse L. Taylor, WSBA #51603

Attorneys for Petitioners

1 **CERTIFICATE OF SERVICE**

2 I do hereby certify that on this day I caused to be served a true and correct copy of the  
3 foregoing *Petition for Review of Agency Action* by method indicated below and addressed to the  
4 following:

5 Mark Johnson  
6 Executive Director and Secretary  Via Legal Messenger  
7 Washington Utilities and Transportation Commission  Via Email  
8 621 Woodland Square Loop S.E.  
9 Lacey, WA 98503  
(360) 664-1234  
[records@utc.wa.gov](mailto:records@utc.wa.gov)

10 Office of the Attorney General  Via U.S. Mail  
11 1125 Washington St. SE  Via Email  
12 PO Box 40100  
13 Olympia, WA 98504  
(360) 753-6200  
[serviceATG@atg.wa.gov](mailto:serviceATG@atg.wa.gov)

14 *Attorneys for Murrey's Disposal Co. Inc.*  Via U.S. Mail  
15 Blair I. Fassburg, WSBA #41207  Via Email  
16 David W. Wiley, WSBA #08614  
17 WILLIAMS, KASTNER & GIBBS PLLC  
18 601 Union Street, Suite 4100  
19 Seattle, WA 98101-2380  
(206) 233-2895  
[dwiley@williamskastner.com](mailto:dwiley@williamskastner.com)  
[bfassburg@williamskastner.com](mailto:bfassburg@williamskastner.com)

20 Murrey's Disposal Company, Inc.  Via U.S. Mail  
21 c/o Corporation Service Company  
22 300 Deschutes Way SW, Ste 208  
Tumwater, WA 98501  
(800) 927-9800

23 DATED this 10<sup>th</sup> day of May, 2021.

24   
25 \_\_\_\_\_  
26 Karen Lang, Legal Assistant

# **EXHIBIT A**

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

MURREY'S DISPOSAL CO., INC.,  
Complainant,

v.

WASTE MGMT. OF WASH., INC.,  
WASTE MGMT. DISPOSAL  
SERVICES OF OR., AND MJ  
TRUCKING & CONTRACTING,  
Respondents.

DOCKETS TG-200650 and  
TG-200651 (*Consolidated*)

ORDER 06

GRANTING COMPLAINANT'S  
MOTION FOR SUMMARY  
DETERMINATION, DENYING  
RESPONDENTS' MOTION FOR  
SUMMARY DETERMINATION

MURREY'S DISPOSAL CO., INC.,  
Complainant,

v.

WASTE MGMT. OF WASH., INC.,  
WASTE MGMT. DISPOSAL  
SERVICES OF OR., AND DANIEL  
ANDERSON TRUCKING AND  
EXCAVATION, LLC,  
Respondents.

**BACKGROUND**

1 On July 15, 2020, Murrey's Disposal Company, Inc. (Murrey's Disposal), filed with the Washington Utilities and Transportation Commission (Commission) a complaint against Waste Management of Washington, Inc. (WMW), Waste Management Disposal Services of Oregon, Inc. (WMDSO), and MJ Trucking & Contracting, Inc. (MJ Trucking). Murrey's Disposal filed a second complaint against WMW, WMDSO, and Daniel

Anderson Trucking and Excavation, Inc. (DAT) (respondents in both complaints; collectively, Respondents). The complaints allege that Respondents are providing solid waste collection services in Murrey's Disposal's service territory in Jefferson County and Clallam County without a certificate of public convenience and necessity and request that the Commission order Respondents to cease and desist.

2 On August 4, 2020, the Respondents filed answers to the complaints and motions to dismiss. Respondents contend that the Commission lacks jurisdiction over the complaints because federal law preempts Commission regulation of the intermodal rail and motor carrier transportation of solid waste that Respondents provide.

3 On August 20, 2020, Murrey's Disposal filed responses opposing the motions to dismiss.

4 On August 27, 2020, the Commission entered Order 01, consolidating these dockets.

5 On October 19, 2020, following a hearing and supplemental briefing from the parties, the presiding Administrative Law Judge Andrew J. O'Connell entered Order 02, denying Respondents' motions to dismiss.

6 On October 29, 2020, Respondents filed a petition for interlocutory review of Order 02.

7 On December 7, 2020, after receiving a response from Murrey's Disposal opposing Respondents' petition for interlocutory review, the Commission entered Order 03, granting interlocutory review of Order 02 and affirming Order 02's denial of the motions to dismiss.

8 On December 18, 2020, the Commission convened a virtual prehearing conference before Judge O'Connell. At the conference, the Parties agreed to collaborate and file jointly with the Commission a stipulation of material facts by January 15, 2021, and agreed that the Commission should hold a subsequent status conference to determine a further procedural schedule.

9 On January 13, 2021, the Commission entered Order 04, Prehearing Conference Order, memorializing the agreed procedural schedule and setting a status conference for January 26, 2021.

10 On January 15, 2021, the Commission issued a notice continuing the deadline for the Parties' joint stipulation of material facts (or a letter explaining the Parties' inability to agree) until January 21, 2021, pursuant to the Parties' request.

- 11 On January 21, 2021, Murrey's Disposal filed with the Commission a letter indicating that the Parties were unable to reach an agreed stipulation of facts.
- 12 On January 26, 2021, the Commission convened a virtual status conference before Judge O'Connell to discuss further process due to the Parties' failure to stipulate to a list of agreed facts. The Parties presented an agreed procedural schedule, but did not indicate an agreed hearing date. The Parties also indicated the need for a protective order in these consolidated dockets.
- 13 On January 27, 2021, the Commission entered Order 05, Protective Order, in these consolidated dockets.
- 14 On January 29, 2021, the Commission issued a notice modifying the procedural schedule and notice of evidentiary hearing (set for August 5-6, 2021) in these consolidated dockets. The modified procedural schedule provided for, among other things, simultaneous motions for summary determination to be filed on March 16, 2021, and required responses to the motions by April 7, 2021.
- 15 On March 16, 2021, the Parties filed with the Commission motions for summary determination, supported by declarations and exhibits.
- 16 On April 7, 2021, the Parties filed responses to the motions for summary determination. Respondents also filed additional declarations.

### DISCUSSION AND DECISION

- 17 The Commission may grant a motion for summary determination when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.<sup>1</sup> Here, based upon the declarations and exhibits submitted by the Parties and viewed in the light most favorable to Respondents, there is no genuine issue of material fact. Respondents are providing solid waste collection service in Jefferson County and Clallam County (within Murrey's Disposal's certificated service territory) without the statutorily required certificate of authority from the Commission. We therefore determine that Murrey's Disposal is entitled to judgment as a matter of law as explained below.

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<sup>1</sup> WAC 480-07-380(2)(a).

- 18 Murrey's Disposal has authority from the Commission to collect solid waste in unincorporated Jefferson County and Clallam County.<sup>2</sup> WMW also has authority from the Commission to collect solid waste, but not in Jefferson County or Clallam County.<sup>3</sup> DAT and MJ Trucking each have common carrier permits from the Commission, but lack authority to operate as solid waste collection companies.<sup>4</sup> WMDSO holds no authority from the Commission, but "provides solid waste disposal services and contracts with third parties to collect and transport solid waste to provide these services."<sup>5</sup>
- 19 Port Townsend Paper is located in unincorporated Jefferson County and McKinley Paper is located in Port Angeles, Clallam County.<sup>6</sup> Both are former customers of Murrey's Disposal for the collection and disposal of solid waste in the form of Old Corrugated Cardboard Rejects (OCC Rejects).<sup>7</sup> It is undisputed that OCC Rejects are solid waste and have no positive market value.<sup>8</sup>
- 20 Port Townsend Paper currently contracts with WMDSO for the collection and disposal of solid waste (OCC Rejects).<sup>9</sup> WMDSO subcontracts with DAT to collect solid waste in trailer on flatcar or container on flatcar (TOFC/COFC) containers from Port Townsend Paper and deliver the solid waste via motor vehicle over public highways to the Olympic View Transfer Station operated by WMW under contract with Kitsap County and also to a facility owned and operated by North Mason Fiber Company (NMF) in Mason County near Belfair, Washington.<sup>10</sup>

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<sup>2</sup> Murrey's Disposal: Certificate G-009.

<sup>3</sup> WMW: Certificate G-237. Declaration of Michael Weinstein at 1, ¶ 3.

<sup>4</sup> DAT: Common Carrier Permit CC029397, USDOT Number 2489589. MJ Trucking: Common Carrier Permit CC030132, USDOT Number 935162.

<sup>5</sup> Declaration of Justin Wheeler at 1, ¶ 3.

<sup>6</sup> Declaration of Eric Evans at 2-3, ¶¶ 8-9.

<sup>7</sup> Respondents' Motion at 1-2, ¶ 5. Murrey's Disposal provided solid waste collection services to the prior owner and operator of McKinley Paper. *Id.*

<sup>8</sup> See Respondents' Motion at 1, ¶¶ 3-4; Murrey's Disposal's Exhibit 3.1 at 11, Response to Data Request No. 67.

<sup>9</sup> Declaration of Eric Evans at 2, ¶ 7; Murrey's Disposal's Exhibit 3.1 at 25, Response to Data Request No. 97; Murrey's Disposal's Exhibit 3.19 at 5, Response to Data Request No. 11.

<sup>10</sup> Declaration of Eric Evans at 1-3, ¶¶ 3-4, 9; Murrey's Disposal's Exhibit 3.1 at 23, Response to Data Request No. 92. MJ Trucking has collected solid waste in TOFC/COFC containers from

- 21 After arriving at the Olympic View Transfer Station or NMF's facility, the containers of solid waste from Port Townsend Paper are subsequently loaded onto rail cars and transported via railroad by Union Pacific Railroad (Union Pacific RR) under a preexisting contract with WMDSO to the Columbia Ridge Landfill in Arlington, Oregon, which is owned by WMDSO, where the solid waste is disposed.<sup>11</sup>
- 22 McKinley Paper currently contracts with WMDSO for the collection and disposal of solid waste (OCC Rejects).<sup>12</sup> WMDSO subcontracts with MJ Trucking to collect solid waste in TOFC/COFC containers from McKinley Paper and deliver the solid waste via motor vehicle over public highways to the Olympic View Transfer Station, NMF's facility, and Union Pacific RR's facility in Seattle, Washington (the Argo Yard).<sup>13</sup>
- 23 After arriving at the Olympic View Transfer Station, NMF's facility, or the Argo Yard, the containers of solid waste from McKinley Paper are subsequently loaded onto rail cars and transported via railroad by Union Pacific RR under a preexisting contract with WMDSO to the Columbia Ridge Landfill in Arlington, Oregon, where the solid waste is disposed.<sup>14</sup>

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Port Townsend Paper on behalf of DAT. Murrey's Disposal's Exhibit 3.20 at 5, Response to Data Request No. 12.

<sup>11</sup> Declaration of Eric Evans at 2-3, ¶¶ 4-6, 10; Declaration of Justin Wheeler at 2, ¶ 5; Murrey's Disposal's Exhibit 3.1 at 24, Response to Data Request No. 93. Puget Sound and Pacific Railroad (Puget Sound and Pacific RR) has authority from the STB and provides rail switching services at the Olympic View Transfer Station and NMF's facility. Declaration of Eric Evans at 1-2, ¶¶ 3, 5.

<sup>12</sup> Declaration of Eric Evans at 2, ¶ 8; Murrey's Disposal's Exhibit 3.1 at 22, Response to Data Request No. 86.

<sup>13</sup> Declaration of Eric Evans at 1-3, ¶¶ 3-4, 9; Murrey's Disposal's Exhibit 3.1 at 20, Response to Data Request No. 79. DAT has collected solid waste in TOFC/COFC containers from McKinley Paper on behalf of MJ Trucking. Murrey's Disposal's Exhibit 3.19 at 7, Response to Data Request No. 14.

<sup>14</sup> Declaration of Eric Evans at 2-3, ¶¶ 4-6, 9-10; Declaration of Justin Wheeler at 2, ¶¶ 5-6; Murrey's Disposal's Exhibit 3.1 at 21, Response to Data Request No. 80. Puget Sound and Pacific RR has authority from the STB and provides rail switching services at the Olympic View Transfer Station and NMF's facility. Declaration of Eric Evans at 1-2, ¶¶ 3, 5.



- 24 Respondents do not hold authority from the Surface Transportation Board (STB) to operate as rail carriers.<sup>15</sup> Respondents do not offer to provide solid waste collection services to Port Townsend Paper or McKinley Paper jointly with Union Pacific RR.<sup>16</sup>
- 25 These facts establish that Respondents are providing solid waste collection services under Washington law without the required certificate of authority from the Commission. Respondents collect solid waste in the form of OCC Rejects from Port Townsend Paper and McKinley Paper for compensation and transport it via motor vehicle over Washington's public highways for collection and disposal.
- 26 Chapters 70A.205 and 81.77 Revised Code of Washington (RCW) establish the legislative authority for regulating the handling of solid waste, which includes the Commission, the state Department of Ecology, and county and city governments. The Legislature defines "solid waste handling" very broadly as "the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof."<sup>17</sup>
- 27 Specifically with respect to the Commission's responsibilities, the Legislature requires:
- The commission shall supervise and regulate every solid waste collection company in this state,
  - (1) By fixing and altering its rates, charges, classifications, rules and regulations;
  - (2) By regulating the accounts, service, and safety of operations;
  - (3) By requiring the filing of annual and other reports and data;
  - (4) By supervising and regulating such persons or companies in all other matters affecting the relationship between them and the public which they serve;
  - (5) By requiring compliance with local solid waste management plans and related implementation ordinances;

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<sup>15</sup> Respondents' Response to Motion at 9, n. 9, stating "Respondents **do not** claim they are rail carriers or should be treated as rail carriers." (bold and underline included in original).

<sup>16</sup> Murrey's Disposal's Exhibit 3.1 at 12-15, Responses to Data Request Nos. 70, 71, 72, 73.

<sup>17</sup> RCW 70A.205.015(23).

(6) By requiring certificate holders under chapter 81.77 RCW to use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70A.205.005 and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans.<sup>18</sup>

28 A “solid waste collection company” is “every person or his or her lessees, receivers, or trustees, owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation . . . over any public highway in this state as a ‘common carrier’ or as a ‘contract carrier.’”<sup>19</sup> No one may operate as a solid waste collection company without a certificate from the Commission granting authority to begin service in a specified territory.<sup>20</sup>

29 The Commission has promulgated rules in Chapter 480-70 WAC to implement this authority, the purpose of which is:

[T]o administer and enforce Chapter 81.77 RCW by establishing standards for: Public safety; Fair practices; Just and reasonable charges; Nondiscriminatory application of rates; Adequate and dependable service; Consumer protection; and Compliance with statutes, rules, and commission orders.<sup>21</sup>

30 The Commission’s rules define a “solid waste collection company” as “every common carrier, including a contract carrier, who provides solid waste collection service,” and “solid waste collection” as “collecting solid waste from residential or commercial

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<sup>18</sup> RCW 81.77.030.

<sup>19</sup> RCW 81.77.010(9). A “common carrier” for these purposes is “any person who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules.” RCW 81.77.030(1).

<sup>20</sup> RCW 81.77.040; WAC 480-07-101. A company may be granted authority by the Commission to operate even in a territory already served by a certificate holder, but only if the existing solid waste collection company serving the territory does not object to the issuance or will not provide service to the satisfaction of the Commission. RCW 81.77.040.

<sup>21</sup> WAC 480-70-001.

customers and transporting the solid waste, using a motor vehicle, for collection and/or disposal over the highways of the state of Washington for compensation.”<sup>22</sup>

31 The Commission has also included in its rules the determination that neither the Interstate Commerce Act nor the Federal Aviation Administration Authorization Act (FAAAA) exempt solid waste collection companies operating in Washington from Commission regulation.<sup>23</sup>

32 Respondents have consistently characterized the service they are providing as TOFC/COFC intermodal transportation that is preempted from Commission regulation by the Interstate Commerce Commission Termination Act (ICCTA), which authorizes the STB to regulate transportation by rail carriers.<sup>24</sup> Respondents’ argument centers on the TOFC/COFC containers in which the solid waste is collected and transported in this instance. Respondents argue that their “continuous transportation of intermodal containerized solid waste from motor carrier to railroad, unloaded only at the final destination, is . . . like all such continuous intermodal movement of cargo including a rail leg . . . part of rail transportation exclusively regulated by the STB.”<sup>25</sup>

33 We disagree. Respondents’ service consists of more than the TOFC/COFC intermodal transportation because it involves the inherently local concerns of entering upon a customer’s property to collect and remove solid waste and then transporting that waste over Washington’s public highways by motor vehicle. Regardless of the container in which the solid waste is initially placed, or the fact that it may at some point be moved via rail, its collection remains intrinsically local in nature and falls outside of the STB’s jurisdiction.<sup>26</sup> None of the federal statutes, rules, or agency decisions on which the

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<sup>22</sup> WAC 480-70-041.

<sup>23</sup> WAC 480-70-006(5).

<sup>24</sup> 49 U.S.C. § 10501. To show that the Commission is preempted, Respondents must demonstrate that their operations constitute transportation by a rail carrier under the ICCTA. Respondents fail to meet this burden as none are rail carriers and their operations are not at the direction of a rail carrier, offered jointly with a rail carrier, and are not related to transportation by a rail carrier. Additionally, the case law has long established that the STB does not regulate the transportation by motor vehicle of solid waste, as explained *infra* at Paragraphs 33-35 and associated notes.

<sup>25</sup> Respondents’ Motion at 19, ¶ 57.

<sup>26</sup> One could hardly imagine an area of regulation that has been considered to be more intrinsically local in nature than collection of garbage and refuse, upon which may rest the health, safety, and aesthetic well-being

Respondents rely state or otherwise support the conclusion that federal jurisdiction over TOFC/COFC intermodal transportation extends to the entirety of the solid waste collection service of which intermodal transport may be only a part. In other words, the jurisdiction of Congress and the STB over TOFC/COFC intermodal transportation does not extend so far as to preempt state regulation of solid waste collection.

34 The federal law on which the Respondents rely at most reflects the STB's assertion of jurisdiction over the combination of rail and motor carrier transportation when *rail carriers* provide, arrange, or jointly partner with a motor carrier to provide that transport.<sup>27</sup> Here, none of the Respondents are rail carriers and none of the services provided are offered at the direction of a rail carrier or jointly with a rail carrier.<sup>28</sup> Even then, neither Congress nor the STB has extended federal authority over solid waste handling by rail carriers to the extent Respondents assert.<sup>29</sup> To the contrary, Congress exempted solid waste rail transfer facilities from STB jurisdiction, thus preserving states' ability to regulate such facilities in the same manner as non-rail solid waste management facilities.<sup>30</sup> This illustrates Congress's respect for state authority over solid waste handling, including the rail transfer facilities that are used as part of rail transportation, as well as the collection, disposal, and other handling of solid waste before and after it is transported.

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of the community. The historic responsibility of local governments to ensure safe and comprehensive garbage collection posts a strong caution against the possibility that Congress lightly would preempt local regulation in this field.

*AGG Enter. v. Wash. Cty.*, 281 F.3d 1324, 1328 (9th Cir. 2002) (citing *Cal. Reduction Co. v. Sanitary Reduction Works of S.F.*, 199 U.S. 306, 318 (1905); *Kleenwell Biohazard Waste and Gen. Ecology Consultants, Inc. v. Nelson*, 48 F.3d 391, 398 (9th Cir. 1995)). Internal citations omitted.

<sup>27</sup> Respondents' Motion at 5-9, ¶¶ 27-35 citing *e.g. Improvement of TOFC/COFC Regulation*, 364 I.C.C. 731 (1981), *aff'd sub nom. Am. Trucking Ass'n v. ICC*, 656 F.2d 1115 (5th Cir. 1981); *ICC v. Texas*, 479 U.S. 450 (1987); *Cent. States Motor Freight Bureau Inc. v. ICC*, 924 F.2d 1099 (1991); *Improvement of TOFC/COFC Regulations (Railroad-Affiliated Motor Carriers and Other Motor Carriers)*, 3 I.C.C.2d 869 (1987); *Am. Trucking Ass'n v. Atchison, T. & S. F. R. Co.*, 387 U.S. 397 (1967); *Improvement of TOFC/COFC Regulations (Pickup and Delivery)*, 6 I.C.C.2d 208 (1989). *See also infra* n. 31 and accompanying text.

<sup>28</sup> *Supra* n. 15 and accompanying text; n. 16 and accompanying text.

<sup>29</sup> *See infra* n. 27; n. 31 and accompanying text.

<sup>30</sup> 49 U.S.C. § 10501(c)(2)(B).

35 Respondents do not point to any language in the ICCTA or any other law, legislative history, or regulation demonstrating or even suggesting, that Congress or the STB intended to preempt traditional state regulation of solid waste collection. To the contrary, Congress, federal courts, and the STB have historically preserved traditional state regulation of solid waste collection.<sup>31</sup> The most reasonable interpretation of federal law is, therefore, that Congress never granted the STB jurisdiction over solid waste transfer facilities, the solid waste collection service as a whole, and neither has the STB ever asserted such jurisdiction.

36 Additionally, Respondents argue that they relied upon advice provided by Commission Staff in 2011, which indicated that the operations raised as issues in this case were not regulated by the Commission.<sup>32</sup> We have consistently rejected such arguments. Commission Staff's opinions on the applicability of statutes and rules are their opinions alone, which Commission Staff stated explicitly in its 2011 advice.<sup>33</sup> "The Commission through its rules and final orders interprets the statutes the legislature has enacted for the Commission to implement and enforce."<sup>34</sup> Here, the Commission has jurisdiction over the solid waste collection services conducted by Respondents. Respondents' misunderstanding of the law and Commission jurisdiction does not absolve the Respondents of their culpability for operating contrary to Commission regulation.<sup>35</sup>

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<sup>31</sup> See *AGG Enter. v. Wash. Cty.*, 281 F.3d at 1328-29 (explaining the intrinsically local nature of solid waste collection, states' historic regulation, and that the legislative history of the FAAAA showed that Congress believed that solid waste was not property under ICC case law and that garbage collectors would be unaffected, and citing H.R. Conf. Rep. No. 103-677, at 85 (1994), reprinted in 1994 U.S.C.C.A.N. 1715, 1757); *Kleenwell Biohazard Waste and Gen. Ecology Consultants, Inc. v. Nelson*, 48 F.3d 391; *Joray Trucking Corp. Common Carrier Application*, 99 M.C.C. 109 (Jun. 29, 1965); *Long Island Nuclear Serv. Corp., Common Carrier Application*, 110 M.C.C. 395 (Sep. 9, 1969); *Transp. of "Waste" Prod. for Reuse and Recycling*, 114 M.C.C. 92, 103-08 (1971); *ICC v. Browning-Ferris Indus., Inc.*, 529 F. Supp. 287 (N.D. Ala. 1981); *Wilson v. IESI N.Y. Corp.*, 444 F. Supp. 2d 298 (M.D. Pa. 2006); *Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295 (3d Cir. 2004).

<sup>32</sup> Respondents' Motion at 3, ¶ 16; Declaration of Eric Evans at 2, ¶ 7.

<sup>33</sup> See *In re Proper Carrier Classification of, and Complaint for Penalties Against Ghostruck Inc.*, Docket TV-161308, Order 05, Denying Petition for Administrative Review, 5, 11, ¶¶ 14, 30 (Jun. 1, 2017); Declaration of Jessica L. Goldman, Exhibit No. 1 at 2.

<sup>34</sup> *Id.* at 11, ¶ 30; see also *id.* at 5, ¶¶ 14-15.

<sup>35</sup> In *Ghostruck*, the Commission reasoned that Staff's contribution to a company's misunderstanding of the law through interactions and discussions *may* be a mitigating factor in reducing (but not eliminating) the penalty amount assessed to the company. See *id.* at 5-6, ¶¶ 16-

37 Murrey's Disposal argues that Respondents are motor carriers, not rail carriers, and that

the STB's jurisdiction varies based upon the mode of transportation involved, and its authority over motor carriers is actually set forth in 49 U.S.C. Section 13501. Starting with the ICC's decision in *Joray Trucking Corp. v. Common Carrier Application* construing its jurisdiction over motor carriers, the ICC and its successor, the STB, consistently ruled that federal law does not confer jurisdiction over the collection and transportation of solid waste hauled for disposal."<sup>36</sup>

Murrey's Disposal argues that Respondents' operations do not qualify for preemption by virtue of the STB's exclusive jurisdiction over rail carriers granted in 49 U.S.C. Sections 10501 and 10502 because Respondents are not rail carriers or under the control of a rail carrier.<sup>37</sup> Instead, Respondents' "service involves transportation *to* a rail carrier," preemption of which has been rejected.<sup>38</sup> Thus, Murrey's Disposal argues, the Commission cannot be preempted from regulating Respondents' service by virtue of the STB's exclusive jurisdiction to regulate rail carriers.<sup>39</sup> For the reasons explained above, we agree.

38 Accepting Respondents' arguments would have repercussions far beyond the Commission and these consolidated dockets. WMW is a certificated solid waste collection company (albeit without authority to operate in Murrey's Disposal service territory), but the Respondents' preemption argument, if accepted, would preclude the Commission (or any municipality that has contracted for, or engages in, solid waste collection) from regulating *any* company that provides solid waste collection service using TOFC/COFC containers that are eventually moved via rail. The Commission would also be precluded from regulating any aspect of solid waste collection service utilizing TOFC/COFC containers, including the contents or type of the solid waste collected,

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18. Here, no penalty is in dispute, only whether Respondents must hold authority from the Commission to conduct solid waste collection from Port Townsend Paper and McKinley Paper.

<sup>36</sup> Murrey's Disposal's Motion at 14, ¶ 17, citing *Joray Trucking Corp. v. Common Carrier Application*, 99 M.C.C. 109.

<sup>37</sup> Murrey's Disposal's Motion at 15-17, ¶¶ 18-28.

<sup>38</sup> Murrey's Disposal's Motion at 16, ¶ 25 (emphasis in original), citing *Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295.

<sup>39</sup> Murrey's Disposal's Motion at 17, ¶ 28.

transported, and disposed, the enforcement of county and city comprehensive solid waste management plans, public safety, and consumer protection. Indeed, none of the provisions of Chapters 70A.205 and 81.77 RCW and Chapter 480-70 WAC would apply to solid waste collection service using TOFC/COFC containers or the companies that provide it. Absent a showing of express Congressional intent to so preempt state authority over solid waste handling, Respondents' argument that the ICCTA preempts all local regulation of solid waste collection services using TOFC/COFC containers must fail.

39 As stated in Order 03, we need not ascribe to Respondents any intent to undermine Washington's authority over solid waste handling. This case presents only the issue of Respondents providing uncertificated solid waste collection services to two large commercial customers located in another solid waste collection company's exclusive service territory. The Legislature has established a process by which the Commission can authorize more than one solid waste collection company to operate in the same service territory.<sup>40</sup> If Respondents seek to serve solid waste collection customers outside of WMW's service territory, they cannot rely on claims of federal preemption of solid waste collection service to circumvent that process.

40 Thus, we determine that there is no genuine issue of material fact and that Murrey's Disposal is entitled to judgment as a matter of law. Respondents are providing solid waste collection services without the required certificate of authority from the Commission and federal law does not preempt the Commission's jurisdiction over the services provided. Accordingly, we order Respondents to immediately cease and desist their provision of solid waste collection services to Port Townsend Paper and McKinley Paper. The remaining events in the procedural schedule in these consolidated dockets are cancelled.

### FINDINGS AND CONCLUSIONS

41 Having discussed above all evidence and matters material to this decision, the Commission now makes the following summary findings of fact and conclusions of law, incorporating by reference pertinent portions of the preceding detailed findings and conclusions:

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<sup>40</sup> RCW 81.77.040.

- 42 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property, and affiliated interests of public service companies, including solid waste collection companies.
- 43 (2) Murrey's Disposal is a solid waste collection company subject to Commission jurisdiction with a service territory including Clallam County and unincorporated Jefferson County.
- 44 (3) WMW is a solid waste collection company subject to Commission jurisdiction, but whose service territory does not include Clallam County or unincorporated Jefferson County.
- 45 (4) MJ Trucking and DAT are common carriers subject to Commission jurisdiction, but do not have authority from the Commission to operate as solid waste collection companies.
- 46 (5) WMDSO owns and operates the Columbia Ridge Landfill in Arlington, Oregon, and does not have authority from the Commission to operate as a solid waste collection company in Washington state.
- 47 (5) Port Townsend Paper is a paper mill located in Port Townsend, Jefferson County, and is former customer of Murrey's Disposal.
- 48 (6) McKinley Paper is a paper mill located in Port Angeles, Clallam County whose prior owner and operator was a customer of Murrey's Disposal.
- 49 (7) On July 15, 2020, Murrey's Disposal filed complaints in these dockets against the Respondents, alleging that Respondents were operating as solid waste collection companies in Murrey's Disposal's service territory without a certificate of public convenience and necessity by providing solid waste collection services to Port Townsend Paper and McKinley Paper.
- 50 (8) On March 16, 2021, the Parties filed with the Commission motions for summary determination, supported by declarations and exhibits.
- 51 (9) On April 7, 2021, the Parties filed responses to the motions for summary determination. Respondents also filed additional declarations.



- 52 (10) WMDSO contracts with Port Townsend Paper and McKinley Paper to collect solid waste in the form of OCC Rejects.
- 53 (11) WMDSO contracts with DAT to collect the solid waste from Port Townsend Paper in TOFC/COFC containers and deliver the solid waste over Washington's public highways via motor vehicle to Olympic View Transfer Station or a facility owned and operated by NMF in Mason County near Belfair, Washington.
- 54 (12) WMDSO contracts with MJ Trucking to collect the solid waste from McKinley Paper in TOFC/COFC containers and deliver the solid waste over Washington's public highways via motor vehicle to Olympic View Transfer Station, a facility owned and operated by NMF in Mason County near Belfair, Washington, or the Argo Yard, Union Pacific RR's facility, in Seattle, Washington.
- 55 (13) The Olympic View Transfer Station is operated by WMW under contract with Kitsap County.
- 56 (14) WMDSO has a preexisting contract with Union Pacific RR to transport via railroad solid waste in TOFC/COFC containers to the Columbia Ridge Landfill in Arlington, Oregon.
- 57 (15) After the solid waste in TOFC/COFC containers from Port Townsend Paper and McKinley Paper arrives at the Olympic View Transfer Station, NMF's facility, or the Argo Yard, it is subsequently loaded onto rail cars and transported by Union Pacific RR according to Union Pacific RR's preexisting contract with WMDSO.
- 58 (16) Respondents do not hold authority from the STB to operate as rail carriers.
- 59 (17) Respondents do not offer the provided solid waste collection services to Port Townsend Paper or McKinley Paper at the direction of or jointly with Union Pacific RR.
- 60 (18) Respondents are providing solid waste collection service to Port Townsend Paper and McKinley Paper in Murrey's Disposal's service territory without a statutorily required certificate of public convenience and necessity from the Commission.

- 61 (19) The Legislature has established a process in statute by which the Commission can authorize more than one solid waste collection company to operate in the same service territory.<sup>41</sup>
- 62 (20) The Commission is not preempted by federal law from regulating the operations of the Respondents at issue in these consolidated proceedings.
- 63 (21) There is no genuine issue of material fact and Murrey's Disposal is entitled to judgment as a matter of law.
- 64 (22) The Commission should deny Respondents' motion for summary determination and grant Murrey's Disposal's motion for summary determination and order Respondents to cease and desist.
- 65 (23) The Commission should cancel the remaining procedural schedule in these consolidated dockets.

### ORDER

#### THE COMMISSION ORDERS THAT

- 66 (1) Respondents' Motion for Summary Determination is DENIED and Murrey's Disposal's, Co., Inc., Motion for Summary Determination is GRANTED.
- 67 (2) Respondents are ordered to immediately cease and desist solid waste collection services provided to Port Townsend Paper Company and McKinley Paper Company.
- 68 (3) The remaining events in the procedural schedule are cancelled.

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<sup>41</sup> RCW 81.77.040.

69 (4) The Commission retains jurisdiction over the terms of this Order.

DATED at Lacey, Washington, and effective May 3, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner