

September 10, 2009

**NOTICE OF REQUIREMENT TO FILE FINAL STATUS REPORT PRIOR TO
ISSUANCE OF NEW PROCEDURAL SCHEDULE
(By Thursday, December 24, 2009, at 3:00 p.m.)**

RE: *In the Matter of Determining the Proper Carrier Classification of Glacier Recycle, LLC; Hungry Buzzard Recovery, LLC; and T&T Recovery, Inc.,*
Docket TG-072226

TO ALL PARTIES:

Thank you for your most recent joint status report in this matter indicating that the passage of time has not altered the *status quo*. Unfortunately, as reflected in the procedural history below, all such reports have remained too similar for much too long. The undersigned Administrative Law Judge will allow several more months for the parties to resolve this matter amongst themselves. If no meaningful progress is being made to resolve this matter before year's end, the presiding officer will schedule an additional conference to discuss setting the case for hearing or dismissing this matter without prejudice.

Procedural History

On December 28, 2007, the Washington Utilities and Transportation Commission (Commission) initiated this proceeding with an Order Instituting Special Proceeding seeking to classify the respondent companies as solid waste haulers.¹ On June 13, 2008, the Commission entered its Order on Motions for Summary Determination, ruling that the respondent companies' transportation of construction, demolition, and land clearing (CDL) waste for deposit into a landfill constituted the hauling of solid waste for disposal, not recycling.² The remaining issues in this docket were (a) whether respondent companies were primarily engaged in business other than transporting solid waste, (b) the frequency of their

¹ Order 01.

² Order 06.

transportation of solid waste, and(c) how they held themselves out to the public.³ The Commission initially set these matters for hearing on December 4-5, 2008;⁴ at the parties' request, the hearing dates were postponed until December 16-17, 2008, to allow additional time for settlement negotiations.⁵

On October 23, 2008, nearly one year ago, the Commission suspended the procedural schedule in this docket on advice that settlement negotiations were nearing completion and the implication that these discussions would resolve the above-noted outstanding issues in this proceeding.⁶ A status conference held on November 18, 2008, resulted in the Commission setting deadlines for the parties to exchange further settlement offers and the scheduling of a second status conference for December 5, 2008.⁷

The parties never did reach an accord and instead requested that these proceedings be held in abeyance in the hope that the Commission's then six-month old rulemaking proceeding in Docket TG-080591 might influence the ultimate outcome of this case. On December 8, 2008, the Commission permitted this docket to enter a dormant period, noting even then that "with this matter now pending for a full year, the administrative process must continue on an appropriate pace" and required the parties to file a status report in the spring, no later than April 10, 2009.⁸ On April 15, 2009, following hopeful status reports regarding a draft rule that would address the remaining issues in this case, the Commission allowed the docket to remain quiescent for an additional period of months.⁹

On September 4, 2009, Commission Staff filed the latest joint status report, noting no change in its position since April and the concurrence of the Intervenor parties with taking a patient approach. According to the status report, the Commission's rulemaking proceeding in Docket TG-080591, now advancing toward 16 months in age, apparently remains ongoing.

³ *Id.*

⁴ *See* Notice Revising Procedural Schedule (August 5, 2008).

⁵ *See* Notice Revising Procedural Schedule (October 1, 2008).

⁶ *See* Notice Suspending Procedural Schedule and Establishing Date for Status Conference (October 23, 2008).

⁷ *See* Notice of Status Conference (November 18, 2008).

⁸ *See* Notice of Requirement to File Status Report(s) (December 8, 2008).

⁹ *See* Notice of Requirement to File Additional Status Report(s) (April 15, 2009).

Requirement for Resolution – Deadline for Final Status Report

This docket could have been resolved many months ago. Given the procedural history since the last substantive decision in this docket (issued in mid-June 2008), the original wisdom of deferring a decision on the outstanding issues in favor of having those questions resolved in an industry-wide rulemaking may no longer apply. A classification hearing should be capable of resolution within a period of 6 to 8 months or, at most, a year. This docket will mark its first biennium in the not too distant future. Therefore, prior to that two year anniversary, the undersigned ALJ requires that the parties file a status report in or before late December 2009 and submit therein a proposed procedural schedule for a hearing to resolve this matter within the first few months of 2010 or indicate a date certain for resolution of the outstanding issue by means other than concluding this litigation. If the parties choose the latter option and their selected date passes without incident, the presiding officer will consider dismissing the case.

THE COMMISSION GIVES NOTICE THAT the parties must file a final joint status report (or, in the alternative, individual reports from each¹⁰ party) regarding the resolution of the remaining issues presented in this docket via the Commission's solid waste rulemaking proceeding in Docket TG-080591 or other means (e.g., a settlement agreement). If no resolution can be identified through these means, the status reports must contain a recommended procedural schedule for bringing this matter to hearing. The status report(s) must be filed no later than Thursday, December 24, 2009, at 3:00 p.m. In the interim, any party may request that a status conference be scheduled at an earlier date.

THE COMMISSION REITERATES THAT the Findings of Fact and Conclusions of Law set out in Order 06 remain in effect and govern the parties to this case.

Thank you for your efforts to revive this matter and allow it to reach a conclusion.

Sincerely,

ADAM E. TOREM
Administrative Law Judge

¹⁰ If the parties do not file a single joint status report together, all parties, including the respondent companies, must file individual status reports.