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STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

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Seattle, Washington 98101  
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November 23, 2004

HEIDI L. WILDER  
Direct (206) 689-8703  
hlwilder@stoel.com

**VIA HAND DELIVERY**

Ms. Carole Washburn, Executive Secretary  
Washington Utilities & Transportation Committee  
1300 Evergreen Park Drive, SW  
Olympia, WA 98504

**Re: *WUTC v. T&T Recovery, Inc.***  
***Docket No. TG-041481***

Dear Ms. Washburn:

Enclosed for filing is an original and nine copies of T&T Recovery, Inc.'s Notice of Appearance and T&T Recovery, Inc.'s Response to the Petition to Intervene of Washington Refuse and Recycling Association.

Please contact us if you have any questions and thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Heidi L. Wilder".

Heidi L. Wilder  
Assistant to John H. Ridge

Enclosures

cc: Parties of Record

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STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Petitioner,

v.

T&T RECOVERY, INC.,

Respondent.

DOCKET NO. TG-041481

**NOTICE OF APPEARANCE**

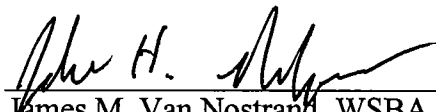
PLEASE TAKE NOTICE that Respondent T&T Recovery, Inc. hereby appears in the above-entitled cause through the undersigned attorneys, and requests that all further service, pleadings, papers, and proceedings in this case, exclusive of original process, be served upon the undersigned attorneys at the following addresses:

James M. Van Nostrand, WSBA #15897  
900 SW 5th Avenue, Suite 2600  
Portland, OR 97204  
Telephone (503) 224-3380  
Fax (503) 220-2480  
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Fax (206) 386-7500  
Email: [jhridge@stoel.com](mailto:jhridge@stoel.com)

DATED: November 23, 2004.

STOEL RIVES LLP



James M. Van Nostrand, WSBA #15897  
John H. Ridge, WSBA #31885  
Attorneys for T&T Recovery, Inc.

NOTICE OF APPEARANCE - 1

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that I am an employee of Stoel Rives LLP. I am a citizen of the United States and a resident of the state of Washington. I am over the age of eighteen years, and not a party to this action.

On November 23, 2004, I served a true and correct copy of *T&T Recovery, Inc.'s Notice of Appearance and this Certificate of Service* upon the following parties using the method below:

Washington Utilities & Transportation  
Commission  
1300 S. Evergreen Park Dr. SW  
P.O. Box 47250  
Olympia, WA 98504-7250

*WUTC*  
 Via United States Mail  
 Via Messenger  
 Via Facsimile  
 Via E-mail

Lisa Watson  
Assistant Attorney General  
1300 S. Evergreen Park Dr. SW  
P.O. Box 40128  
Olympia, WA 98504-0128

*Representatives for WUTC*  
 Via United States Mail  
 Via Messenger  
 Via Facsimile  
 Via E-mail

James K. Sell  
Ryan Sells Uptegraft Inc., P.S.  
9657 Levin Road NW, Suite 240  
Silverdale, WA 98383

*Attorneys for Petitioner Washington Refuse & Recycling Association*  
 Via United States Mail  
 Via Messenger  
 Via Facsimile  
 Via E-mail

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

Executed this 23<sup>rd</sup> day of November, 2004 at Seattle, King County, Washington.

Heidi L. Wilder  
Heidi L. Wilder

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UTIL. AND TRANSP.  
COMMISSION

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Petitioner,

v.

T&T RECOVERY, INC.,

Respondent.

DOCKET NO. TG-041481

**T&T RECOVERY, INC.'S RESPONSE  
TO THE PETITION TO INTERVENE  
OF WASHINGTON REFUSE AND  
RECYCLING ASSOCIATION**

**I. INTRODUCTION AND FACTUAL ASSERTIONS**

1. On September 20, 2004, the Washington Utilities and Transportation Commission (the "Commission") issued to T&T Recovery, Inc. ("T&T Recovery") an Order to Show Cause and Notice of Hearing. *See generally* Order No. 01, Docket. No. TG-041481 ("Order No. 1"). The expressly stated purpose of the hearing is "to determine whether T&T Recovery . . . is transporting solid waste for collection or disposal for compensation over the public highways in Washington State without a certificate of public convenience and necessity as required by RCW 81.77.040." *Id.* at ¶ 1. The hearing is currently scheduled for December 1 and 2, 2004. *See generally* Notice Granting Continuance of Hearing, October 29, 2004.

2. The Washington Refuse and Recycling Association ("WRRRA") is a trade association representing solid waste carriers in the state of Washington. *See* Petition to Intervene of WRRRA ("Petition") at ¶ 1. WRRRA seeks to intervene in this matter. WRRRA argues that it should be permitted to intervene because all "[m]atters involving solid waste . . . are of interest

to the solid waste industry as a whole,” *id.*, and this action allegedly “involves illegal hauling, which is a matter which is of concern to the solid waste industry in Washington as a whole, and the resolution of which will affect each and every solid waste hauler in the state.” *Id.* at ¶ 3 (internal quotation marks omitted).

3. WRRRA’s Petition fails to meet the standards for intervention and should be denied.

## II. DISCUSSION

4. RCW 34.05.443 provides that a party may intervene only if “the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.” As a result, a petition must plainly state the “petitioner’s interest in the proceeding” (WAC 480-07-355(1)(c)(ii)) and the “petitioner’s position(s) with respect to the matters in controversy” (WAC 480-07-355(1)(c)(iii)). WRRRA’s Petition should be denied because:

- WRRRA has not demonstrated a substantial interest in the subject matter of this proceeding,
- this proceeding involves factual issues and WRRRA’s participation would duplicate the efforts of the Commission Staff, and
- to the extent WRRRA seeks to raise issues of law or policy, its intervention would unnecessarily broaden the scope of this proceeding—notwithstanding WRRRA’s statements to the contrary in its Petition—and thereby cause undue delay and expense to the detriment of T&T Recovery.

5. WRRRA’s Petition states that “[t]rade associations are granted potential party status in WUTC proceedings,” and cites RCW 70.95.030, WAC 480-07-340(1), WAC 480-70-041, and WAC 480-07-355, respectively, as supporting authority. These provisions generally provide that a trade association may be defined as a “person” for various purposes, including intervention. While a trade association may qualify as a “person” for purposes of intervention, that status does not address the requirement of whether such “person” should be afforded “party” status in a particular proceeding. On this point, WRRRA’s Petition

fails to identify any substantial interest in the outcome of this proceeding, as required by WAC 480-07-355(3). Other trade associations that are granted party status in Commission proceedings achieve that status by virtue of their members being directly affected by the outcome of a particular proceeding. Members of Telecommunications Ratepayers Association for Cost-based and Equitable Rates (“TRACER”), for example, are large-business telecommunications customers that pay the telephone rates established in Qwest or Verizon rate proceedings. Members of Northwest Industrial Gas Users (“NWIGU”) are industrial customers that pay the natural gas charges established in Puget Sound Energy (“PSE”), Cascade Natural Gas, or Avista Utilities rate proceedings. Members of Industrial Customers of Northwest Utilities (“ICNU”) are industrial customers of electric utilities that pay the electric rates established in PSE, Avista, or PacifiCorp rate proceedings. These trade associations are granted intervention in these various rate proceedings *as representatives of members that are directly affected by the outcome of such proceedings*. WRRRA has alleged no such interest in its Petition. It has not identified any member that will be affected by the outcome of this proceeding. WRRRA may be a “person” under RCW 70.95.030 or WAC 480-70-041, but it is not a “party” without the requisite showing.

6. This proceeding is focused solely on factual issues. The Commission instituted this hearing “to determine whether T&T Recovery . . . is transporting solid waste for collection or disposal for compensation over the public highways in Washington State without a certificate of public convenience and necessity as required by RCW 81.77.040.” *See* Order No. 1 at ¶ 1. Moreover, the factual issues in dispute are specific to T&T Recovery alone. The Commission has received information allegedly indicating that “T&T is transporting solid waste for collection or disposal for compensation in Whatcom County and Island County . . . [without] a certificate of public convenience and necessity.” *Id.* at ¶ 3. Pursuant to Order No. 1, T&T Recovery must appear before the Commission and factually prove that its “operations are not subject to the provisions of RCW 81.77.040.” *Id.* at ¶ 8.

7. Resolution of the factual issues in dispute will not be facilitated in any manner by WRRRA's intervention. WRRRA has been given ample opportunity to provide information to Commission Staff related to the factual issues in dispute, and, in fact, has provided such information. For example, in addition to numerous other documents and reports, WRRRA hired a private investigator to prepare a "Confidential Investigative Report," which it delivered to Commission Staff. *See* Exh. 1, Oct. 18, 2004 Letter from L. Watson to J. Van Nostrand. Staff is apparently using this report as part of its case in the pending hearing. *Id.* Commission Staff has the principal obligation and responsibility to evaluate the facts and enforce the laws and regulations of the state of Washington, not WRRRA. Having delivered its factual allegations to Staff, WRRRA has no other role to play in this matter. Any intervention by the WRRRA in this proceeding at this point would only duplicate the efforts of Commission Staff, and thereby impair and delay these proceedings. *See* RCW 34.05.443 (intervention is permissible only if it will not impair the orderly and prompt conduct of the proceedings).

8. Similarly, Judge Mace's findings and determinations in this proceeding will affect only the operations of T&T Recovery. The operations of no other company or organization, including WRRRA, are at issue or will be affected by Judge Mace's rulings. Thus, WRRRA does not have a substantial interest in the outcome of this proceeding.

9. To the extent that the WRRRA wants to dispute issues of law or policy, its petition should still be denied. Such issues plainly go well beyond the scope of this proceeding, which involves a narrow factual dispute. To raise such issues in this matter would deviate from the main issue and cause undue delay and expense to the detriment of T&T Recovery. WRRRA's participation thus is not in the public interest under WAC 480-07-355(3). Furthermore, the WRRRA again failed to identify any such legal or policy issues in its Petition, or even discuss its position with respect to such issues, as required by WAC 480-07-355(1)(c)(iv).

### III. CONCLUSION

10. This matter involves a narrow factual issue: whether T&T Recovery is unlawfully hauling solid waste without a certificate of public convenience and necessity as required by RCW 81.77.040. At the hearing, T&T Recovery has the burden of proving that its operations are not subject to the provisions of RCW 81.77.040. *See* Order No. 1 at ¶ 8. WRRRA has already provided Commission Staff with its factual information bearing on this issue. Staff now has the responsibility to evaluate the facts and enforce the law. The rulings from Judge Mace flowing from this proceeding will affect no party other than T&T Recovery. Any intervention by WRRRA is therefore unnecessary. It will only delay these proceedings and confuse the real issue at hand. As a result, WRRRA's intervention is not in the public interest, and should be denied.

DATED: November 23, 2004.

STOEL RIVES LLP



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James M. Van Nostrand, WSBA #15897  
John H. Ridge, WSBA #31885

Attorneys for T&T Recovery, Inc.



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that I am an employee of Stoel Rives LLP. I am a citizen of the United States and a resident of the state of Washington. I am over the age of 18 years, and not a party to this action.

On November 23, 2004, I served a true and correct copy of *T&T Recovery, Inc.'s Response to the Petition to Intervene of Washington Refuse and Recycling Association; and this Certificate of Service* upon the following parties using the method below:

Washington Utilities & Transportation  
Commission  
1300 S Evergreen Park Drive SW  
PO Box 47250  
Olympia, WA 98504-7250

*Commission*

- Via United States Mail
- Via Messenger
- Via Facsimile
- Via Email

Lisa Watson  
Assistant Attorney General  
1300 S Evergreen Park Drive SW  
PO Box 40128  
Olympia, WA 98504-0128

*Counsel for Commission Staff*

- Via United States Mail
- Via Messenger
- Via Facsimile
- Via Email


James K. Sell  
Ryan Sells Uptegraft Inc., P.S.  
9657 Levin Road NW, Suite 240  
Silverdale, WA 98383

*Counsel for Petitioner Washington Refuse & Recycling Association*

- Via United States Mail
- Via Messenger
- Via Facsimile
- Via Email

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct

Executed this 23<sup>rd</sup> day of November, 2004 at Seattle, King County, Washington.

  
Heidi L. Wilder





Christine O. Gregoire

# ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

October 18, 2004

James M. Van Nostrand  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204-1268

Re: *Washington Utilities and Transportation Commission vs. T&T Recovery, Inc.*  
Docket No. TG-041481

Jamie:

Enclosed is the investigation report by Larry Walsh prepared for the Washington Refuse & Recycling Association. The report was given to Staff, and it is one of the things Staff is using to prepare for the hearing in the above matter.

Very truly yours,

LISA WATSON  
Assistant Attorney General

LW:tt  
Enclosure

STOEL RIVES LLP

OCT 21 2004

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