

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

In re the Matter of Determining the Proper)	DOCKET TG-072226
Carrier Classification of)	
)	ORDER 07
GLACIER RECYCLE, LLC;)	
HUNGRY BUZZARD RECOVERY, LLC;)	SCHEDULING ORDER;
AND T&T RECOVERY, INC.)	NOTICE OF HEARINGS
)	(Hearing on Proposed Settlement
)	set for April 14, 2010 at 9:30 a.m.;
)	Hearing on the Merits set for
)	June 21-23, 2010)
.....)	

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 **PROCEDURAL HISTORY.**¹ The Commission issued an Order Instituting Special Proceeding and Notice of Prehearing Conference on Thursday, December 28, 2007, and subsequently convened the initial prehearing conference in this docket at Olympia, Washington, on Thursday, January 24, 2008, before Administrative Law Judge (ALJ) Adam E. Torem. In June 2008, Judge Torem ruled on the parties’ competing motions for partial summary determination, reducing the number of issues remaining for hearing. Most recently, on January 27, 2010, the Commission conducted a status conference before Judge 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

¹ A more detailed procedural history of this docket’s more than two years in existence can be found through a reading of the various Notices issued throughout 2008 and 2009.

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). Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).²

4 **ISSUES DECIDED ON SUMMARY DETERMINATION.** On June 13, 2008, in Order 06, the undersigned ALJ granted Commission Staff’s Motion for Partial Summary Determination and denied the Respondent Companies’ Motion for Summary Determination. In sum, Order 06 found that transportation of construction, demolition, and land clearing waste for deposit into a landfill constitutes disposal, not recycling, even if the deposited waste benefits the structural integrity of the landfill. Order 06 concluded that Respondent Companies were hauling solid waste, not recyclables. No party petitioned for review of Order 06.

5 **REMAINING ISSUES FOR HEARING.** WAC 480-70-016(4) sets out multiple factors for determining whether a company’s operations require a solid waste certificate under RCW 81.77:

- (a) The intent of the shipper;
- (b) The intended destination of the shipment;
- (c) The actual destination of the shipment
- (d) Special handling or conditions placed on the shipment by the shipper and/or receiver;
- (e) The value of the commodity being transported;
- (f) Whether the carrier is primarily engaged in the business of providing solid waste collection or is primarily engaged in the business of providing a service other than the collection of solid waste; and
- (g) Whether the carrier holds itself out to the public as a transporter of solid waste.

² In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

Order 06 addressed the majority of these criteria. The only issues remaining for hearing are the final two: whether Respondent Companies are primarily engaged in business other than transporting solid waste (including the frequency of their transportation of solid waste) and how they hold themselves out to the public.

6 Since entry of Order 06, the parties have attempted to resolve the remaining issues through a Commission-sponsored rulemaking and also through settlement negotiations. To date, Commission Staff and Respondent Companies have identified a mutually acceptable position in principle, but the Intervenors have not joined in their accord.

7 At the status conference, Commission Staff and Respondent Companies expressed their intent to submit a Multi-Party Settlement Agreement for the Commission's consideration, potentially over the objection of one or more Intervenor parties. The Intervenor parties wish to further develop the record in this matter, possibly through deposition(s) of principals of the Respondent Companies. With some additional time, the parties may be able to craft and submit a Full Settlement Agreement.

8 **WAIVER OF INITIAL ORDER.** At the January 27, 2010, status conference, all parties expressed their intent to waive an Initial Order and to have the Commission enter a Final Order in this docket. In accordance with WAC 480-07-820(1)(b)(iv), the Commissioners will enter a Final Order on any proposed settlement or following an evidentiary hearing on the remaining contested issues.

9 **PROCEDURAL SCHEDULE.** In an effort to resolve the remaining issues in this docket without further delay, the undersigned ALJ adopts the following procedural schedule, a summary of which is attached to this Order as Appendix B:

Friday, March 19, 2010 Settling Parties File Proposed Settlement
& Supporting Narrative

Monday, March 29, 2010 Parties Opposing Settlement File Comments

Wednesday, April 14, 2010 Hearing on Proposed Settlement

10 If the Commission does not adopt and approve a proposed settlement, the parties will prepare for a hearing on the merits on the following schedule:

Friday, June 4, 2010	Parties pre-file Witness Testimony and Supporting Exhibits
Monday, June 14, 2010	Parties pre-file Cross-Examination Exhibits
Monday, June 21, 2010 thru Wed., June 23, 2010	Evidentiary Hearing on Remaining Issues

11 In Order 02, the undersigned ALJ imposed the following condition on the Intervenors participating in the proceeding as permitted under RCW 34.05.443(2):

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.

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.³

Although Staff and the Respondent Companies may be presenting a proposed settlement that the Intervenors do not support in whole or in part, this condition remains in effect.

³ See Order 02, paragraphs 23 and 24.

- 12 **NOTICE OF SETTLEMENT HEARING.** The Commission schedules a hearing on any proposed settlement in this matter, to commence on **Wednesday, April 14, 2010, at 9:30 a.m., in Room 206 of the Commission's headquarters, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**
- 13 **NOTICE OF EVIDENTIARY HEARING.** The Commission schedules a hearing on the merits of the remaining issues in this matter, to commence on **Monday, June 21, 2010, at 9:30 a.m., in Room 206 of the Commission's headquarters, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The hearing will continue, as necessary, on Tuesday, June 22, 2010, and Wednesday, June 23, 2010.**
- 14 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** As an update to Order 02, parties must now file an **original plus ten (10) copies** of all pleadings, motions, briefs, and other prefiled materials.⁴ All other provisions relating to document preparation and filing, including WAC 480-07-140(4), WAC 480-07-395 and WAC 480-07-460, continue to apply. *See* Order 02, paragraphs 30 to 33.
- 15 **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 February 3, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

⁴ This increase to the number of copies is necessitated by the parties' request to have the Commissioners enter a Final Order on this matter.

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

EVENT	DATE	INTERVAL
Status Conference	Weds, January 27, 2010	—
Staff and Respondent Companies to Submit Settlement Proposal	Fri, March 19, 2010	51 Days
Intervenor Response(s) to Settlement Proposal (<i>if necessary</i>)	Mon, March 29, 2010	10 Days
Settlement Hearing	Weds, April 14, 2010	16 Days
<i>Target Date for Order on Proposed Settlement</i>	Friday, April 23, 2010	9 Days
*** ONLY IF PROPOSED SETTLEMENT REJECTED ***		
Pre-Filed Direct Testimony: All Companies	Friday, June 4, 2010	~41 Days
Pre-Filed Cross Exam Exhibits	Monday, June 14, 2010	10 Days
Evidentiary Hearing (up to 3 days)	Monday, June 21, 2010 through Weds, June 23, 2010	7 Days
Post-Hearing Briefs	TBD at close of hearing	~10-20 Days