

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In re Application NO. GA-079289 of)	DOCKET NO. TG-041186
)	
RUSSELL VANDERVEEN d/b/a)	ORDER NO. 02
VANDERVEEN FAMILY)	
TRANSPORT)	ORDER DISMISSING PROTEST
)	AND REVISING PROCEDURAL
For a Certificate of Public)	SCHEDULE
Convenience and Necessity to)	
Operate Motor Vehicles in Furnishing)	
Solid Waste Collection Service)	
)	
.....)	

1 **NATURE OF PROCEEDING.** Docket No. TG-041186 is an application by Vanderveen Family Transport for authority to furnish solid waste collection service from the Cedarville landfill to the City of Ferndale Waste Water Treatment plant in Whatcom County pursuant to 81.77 RCW and 480-70 WAC.

2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington on November 8, 2004 before Administrative Law Judge Theodora M. Mace.

3 **APPEARANCES.** Applicant Russell Vanderveen represents Vanderveen Family Transport. James Lyons, Manager, appeared on behalf of Protestant Sumas Transport, Inc. Lisa Watson, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).

4 **PROTEST.** Sumas Transport, Inc. (Sumas Transport) filed a protest within 30 days of the publication of the application, pursuant to WAC 480-07-106. During the prehearing conference, Commission Staff alleged that Sumas Transport did

not have authority to provide the transportation service applied for in this docket. Sumas Transport stated that it did have the requisite authority. Neither party was able to provide documentary evidence at the conference in support of their claims. A schedule was established setting November 12, 2004 as the date by which the parties were to supply documentation regarding Sumas Transport's authority.

- 5 On November 10, 2004, Commission Staff filed documents in support of dismissal of the protest. Those documents included copies of Sumas Transport's authority on record with the Commission and a declaration from Staff Regulatory Analyst, Bonnie L. Allen. In its filing, Staff pointed out that the applicant is seeking authority to transport leachate from the Cedarville Landfill to the City of Ferndale Waste Water Treatment Plant in Whatcom County, Washington under contract with Whatcom County.
- 6 Staff's review showed that protestant Sumas Transport does not have Commission authority to provide transport of leachate from the Cedarville Landfill. Staff reviewed both the Commission's transportation information systems (motor carrier authority database) and the Commission's Record Center, to determine whether Protestant Sumas Transport possessed authority to haul leachate in the state of Washington. In Ms. Allen's, declaration, she states: "Sumas Transport holds authority under Certificate No. G-243 to transport leachate from Inman Landfill to waste water treatment facilities in Burlington, Mount Vernon, and Anacortes." Ms. Allen further stated that this authority was granted to Sumas in Docket No. GA-77479 on January 20, 1995. Ms. Allen also indicated that Sumas Transport "holds Common Carrier Permit No. CC-3837. Under that permit, Sumas Transport may transport general commodities, excluding household goods." This permit was issued on June 2, 1997.
- 7 Protestant Sumas Transport provided no support for its claim of authority to haul leachate in Whatcom County for the Cedarville Landfill.

8 **DISCUSSION AND DECISION.** The Legislature established statutory provisions to govern the hauling of solid waste, separate from those that govern common carriers in general.¹ RCW 81.77.040² provides that a solid waste company must have a certificate from the Commission permitting it to haul solid waste. In this case, Sumas Transport does not hold a certificate that specifically permits it to haul leachate (solid waste) from the Cedarville Landfill to the City of Ferndale. Its common carrier authority is legally insufficient for this purpose. Thus its authority does not overlap or conflict with the authority sought by Vanderveen Family Transport.

9 Under Commission rule WAC 480-07-370(1)(f)³, a protest may be filed by a person who asserts that its interests would be adversely affected if an application is granted. Because Sumas Transport does not hold authority that overlaps or conflicts with the applicant's, Sumas Transport would not be adversely affected by a grant of authority and its protest should be dismissed.

10 According to the schedule of proceedings established at the prehearing conference in this case, a hearing on the application was to be held on December 16, 2004. In light of the dismissal of the protest, the applicant may submit written evidence in support of the application on or before December 16, 2004. The hearing scheduled for that date is canceled.

¹ Compare Chapter 81.77 RCW, Solid Waste Collection Companies, and Chapter 81.80 RCW, Motor Freight Carriers.

² A copy of the text of RCW 81.77.040 is attached in Appendix A.

³ A copy of the text of WAC 480-07-370(1)(f) is attached in Appendix A.

ORDER

11 IT IS ORDERED That the protest of Sumas Transport is dismissed and that Vanderveen Family Transport must submit written evidence in support of its application on or before December 16, 2004.

12 **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 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 16th day of November, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge

APPENDIX A

RCW 81.77.040

Certificate of convenience and necessity required -- Procedure when applicant requests certificate for existing service area.

No solid waste collection company shall hereafter operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. A condition of operating a solid waste company in the unincorporated areas of a county shall be complying with the solid waste management plan prepared under chapter [70.95](#) RCW applicable in the company's franchise area.

Issuance of the certificate of necessity shall be determined upon, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, sworn to before a notary public; a statement of the assets on hand of the person, firm, association or corporation which will be expended on the purported plant for solid waste collection and disposal, sworn to before a notary public; a statement of prior experience, if any, in such field by the petitioner, sworn to before a notary public; and sentiment in the community contemplated to be served as to the necessity for such a service.

Except as provided in *RCW [81.77.150](#), when an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

Any right, privilege, certificate held, owned, or obtained by a solid waste collection company may be sold, assigned, leased, transferred, or inherited as other property, but only upon authorization by the commission.

Any solid waste collection company which upon July 1, 1961 is operating under authority of a common carrier or contract carrier permit issued under the provisions of chapter [81.80](#) RCW shall be granted a certificate of necessity without hearing upon compliance with the provisions of this chapter. Such solid waste collection company which has paid the plate fee and gross weight fees required by chapter [81.80](#) RCW for the year 1961 shall not be required to pay additional like fees under the provisions of this chapter for the remainder of such year.

For purposes of issuing certificates under this chapter, the commission may adopt categories of solid wastes as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chapter.

WAC 480-07-370 Pleadings -- General.

(1)(f) *Protest.* A person who asserts that its interests would be adversely affected if an application is granted may file a "protest." A protest to an application must conform to the requirements of any special rules that apply to the type of application being protested. A protestant must serve a copy of the protest upon the applicant.