

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application No. GA-789000 of)	DOCKET NO. TG-000584
)	
TRASH HUSTLERS, L.L.C.)	
)	POST-HEARING REPLY BRIEF OF
For a Certificate of Public Convenience)	TRASH HUSTLERS L.L.C.
and Necessity to Operate Motor Vehicles)	
in Furnishing Solid Waste Collection)	
Services.)	

A. Trash Hustlers, L.L.C. concurs with the Commission’s Staff that a portion of the service that Trash Hustlers desires to provide is properly described as “clean up service.” Commission Staff takes the position that:

Clean up service, with hauling and disposal of trash as an incident to the clean up, does not require a solid waste certificate. Providing a “carry out” service is not the same as providing a “clean up” service. In a “clean up service” the transportation of waste is usually an incidental activity. Site remediation, land clearing, lawn and garden maintenance, building maintenance, janitorial services, housekeeping, and other types of services are some common types of “clean up” services that may include the incidental removal of related waste materials for disposal or recycling.

Brief of Commission Staff, P.2.

A clean up service as described by the Staff is the sort of service for which Mr. Owens testified he had a need. See T.172 L-5 to P. 176; also see Testimony of Mr. Nash T.200 L-14 to T.201 L-3. Mr. Puccinelli similarly characterized his understanding of the service to be provided by applicant as being:

. . . that he was really going to be just an independent hauler and wanted to be able to have that ability, to give prices out to people to clean up and haul stuff to the dumps, and do some recycling pick up.

T.204, 1-24 to T.205, 1-3.

Mr. DiTommaso's testimony and that of the area businessmen supporting his application is consistent with Commission Staff's description of a clean up service where hauling and disposal of solid waste is incident to the clean up. If the Commission concurs with the analysis of Staff, then applicant need not obtain a permit in order to haul solid waste as a part of a clean-up service. Although applicant has applied for authority to haul solid waste without being restricted to clean-up situations, it concedes that it would expect a significant amount of its business to come from persons who desire a clean-up service.

B. If the Commission determines that applicant is required to obtain a permit for hauling of solid waste incident to clean up, then the record demonstrates that the existing permit holder has not provided that service satisfactorily.

In this connection, it is important to note that nothing in the record suggests any particular attention by Yakima Waste Systems to this particular type of service, at least until after applicant filed its application. Other than the Comet warehouse instance, both Mr. Robertson and Mr. Wheatley had very fragmentary and incomplete knowledge about specific instances where Yakima Waste Systems had actually provided a clean up type of service.

Mr. Boster provides the best evidence that this type of service was not routinely provided by Yakima Waste Systems. Protestant, Yakima Waste Systems, attempted to impeach Mr. Boster's testimony in this respect by questioning him about Yakima Waste System's "daily log of service requests for service not involving a container or drop box." T.256, L-6 to L-22. In fact, the record does not establish that Yakima Waste Systems maintained a daily log prior to Mr. Boster's departure from employment with the company. "Special haul requests," which apparently document such

requests, only originated in the last year. T.366, L-12 to L-20. The file which Mr. Robertson brought to the hearing containing “special haul requests” was not a complete file. T.369, L-17 to L-24. The record is devoid of evidence to how calls for the type of service that applicant desires to provide were recorded or handled prior to the development of the “special haul request”. Therefore, Yakima Waste Systems’ effort to discredit Mr. Boster’s testimony by a series of questions relating to the “company’s daily log of service requests for service not involving a container or drop box”, is irrelevant and misleading and these questions and answers relating to this subject (T. 256, L- 2 to L-12) should be disregarded.

Mr. Boster also testified that he did not have knowledge with respect to what sales people may have told perspective customers. However, this line of question is also misleading, because the only instance disclosed in the record in which Trash Hustlers made known the availability of the type of service through a sales call was when Mr. Owens was contacted a couple weeks before the hearing. T.184, L-6 to L-14. Mr. Boster’s familiarity with the Yakima Waste Systems is authenticated by his employment with Yakima Waste Systems for 16 to 17 years and his association with the business of transporting solid waste for a period of 18 to 23 years. Even Mr. Wheatley concurred that Mr. Boster information was in a position to receive from other drivers. T.295, L-17 to L-19. Therefore, great weight should be given to his testimony that as far as he knew Yakima Waste Systems never provided the type of service that Trash Hustlers desires to provide.

C. Applicant has sufficient financial resources to initiate the type of service proposed by the application.

The Washington Refuse and Recycling contends that RCW 81.77.040 requires Mr. DiTommaso to produce a statement of his assets as part of his permanent application. No such requirement exists in the statutes Mr. DiTommaso has sworn under oath as to the commitment of personal funds in the amount of \$40,000 to this enterprise, if the permit is granted by the

Commission. This satisfies the requirement of the statute. Also, the statutory requirement in this context has to be applied to the type of service which the applicant proposes to provide. The proposed service is an on call service, the financial success of which will be ultimately determined by the public. If the public response is insufficient, then the service will simply cease without any threat to the public interest. The service is fundamentally different from that of a scheduled or curb side solid waste transporter where the public demand for the service is already established, and the public interest requires that the Commission insure the continuation of the service. Mr. DiTomasso has demonstrated the ability of the applicant to provide the service at the initial level that applicant proposes.

D. Applicant is authorized by statute to haul animal carcasses.

Washington Refuse and Recycling Association contends that it is a defect in Trash Hustler's tariff, in that applicant proposes to haul dead animals but restricts its tariff against biomedical waste. In this respect, applicant concurs with the understanding of Commission Staff that dead animals are included in the definition of garbage in WAC 480-70-050(5), and are not biomedical waste unless infected or injected with human pathogenic organisms. See WAC 480-70-050(8).

E. Conclusion.

Based upon the record, the Post-Hearing Brief of Trash Hustler, L.L.C., and this Post-Hearing Reply Brief, the Commission should grant the application of applicant.

RESPECTFULLY SUBMITTED this _____, day of October, 2000.

PAINE, HAMBLIN, COFFIN,
BROOKE & MILLER LLP

By: _____
R. BLAIR STRONG
Attorney for Trash Hustlers, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to WAC 480-09-120(2)(a), I have caused this day to be served the original plus nineteen (19) copies, by FEDEX, of the foregoing **POST-HEARING REPLY BRIEF OF TRASH HUSTLERS, LLC** on Carole Washburn, Executive Secretary for the Washington Utilities & Transportation Commission for filing and have served a copy by First Class U.S. Mail postage duly prepaid thereon, upon each person designated on the following service list.

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