

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RECEIVED
GENERAL MANAGER
2008 MAR 25 AM 11:06
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In re the Matter of Determining the Proper
Carrier Classification of

Docket No.: TG-072226

GLACIER RECYCLE, LLC; HUNGRY
BUZZARD RECOVERY, LLC; AND T&T
RECOVERY, INC.

HUNGRY BUZZARD'S MOTION TO
DISMISS

I. INTRODUCTION & RELIEF REQUESTED

Hungry Buzzard Recovery, LLC ("**Hungry Buzzard**"), by and through its counsel of record, Eisenhower & Carlson PLLC, Donald L. Anderson and Ian M. Bauer, hereby moves for dismissal. Hungry Buzzard has ceased the activities which form the basis for the above-referenced administrative proceedings, and further stipulates that it will comply with the final decision entered herein or upon judicial review. Further proceedings with respect to Hungry Buzzard are thus moot.

II. STATEMENT OF RELEVANT FACTS

On December 28, 2007, the Washington Utilities and Transportation Commission ("**Commission**") instituted the above-referenced proceedings with respect to Glacier Recycle, LLC, Hungry Buzzard, and T&T Recovery, Inc.'s transportation of construction, demolition and land clearing ("**CDL**") waste to a Weyerhaeuser facility in Longview, Washington. Specifically, the *Order Instituting Special Proceeding* ("**Order**") described the Commission's factual allegations as follows:

MOTION TO DISMISS - 1

- 1 (1) The companies are engaged, at least in part, in the business of collecting and
2 transporting recyclable materials, to recyclers, on behalf of commercial
3 generators of construction, demolition and land clearing (CDL) waste, and the
4 companies generally hold themselves out as such.
- 5 (2) The CDL waste that the companies collect from their customers contains more
6 than an incidental or accidental amount of solid waste that has no value as a
7 recyclable commodity.
- 8 (3) The companies transport this non-recyclable solid waste, on more than an
9 occasional basis, to a Weyerhaeuser facility near Longview, Washington.
10 Weyerhaeuser accepts the material, charging the companies a tipping fee.
11 Weyerhaeuser mixes the CDL waste with waste generated from its own
12 industrial operations and disposes of the mixture in its private landfill near
13 Castle Rock, Washington. Weyerhaeuser accepts the CDL waste because it
14 improves the internal drainage and slope stability of the landfill.

15 *Order*, ¶ 5(1)-(3). Paragraph 6 of the *Order* identifies the relief sought by the Commission to be
16 injunctive relief in the form of an order directing the Carriers to “cease and desist from collecting
17 more than an incidental or accidental amount of non-recyclable solid waste materials and
18 transporting such solid waste to the Weyerhauser facility.” Neither the *Order* nor the request
19 from Commission Staff to initiate these proceedings indicates that any further relief is sought or
20 otherwise warranted.¹

21 As of January 2008, Hungry Buzzard no longer engages in the activities described in
22 paragraph 5 of the *Order*. *Christianson Decl.*, ¶ 2. Moreover, Hungry Buzzard has expressly
23 agreed to abide by the final decision reached herein or upon judicial review. *Christianson Decl.*,
24 ¶3. Accordingly, further proceedings with respect to Hungry Buzzard are patently unnecessary,
25 and will merely force Hungry Buzzard to incur substantial attorney’s fees and costs.
26 *Christianson Decl.*, ¶ 4.

27 III. AUTHORITY AND ARGUMENT

28 It is well established that a case is moot if the court cannot provide the basic relief sought
29 or can no longer provide effective or meaningful relief. *E.g., Dioxin/Organochlorine Center v.*
30 *Pollution Control Hearings Bd.*, 131 Wn.2d 345, 351-52, 932 P.2d 158 (1997)). Where the relief

31 ¹ See *Staff Request for Classification Proceeding* dated December 12, 2007 at 7 (“Staff believes
32 that these allegations, if proved, would warrant an order requiring the companies to cease and
33 desist from collecting more than an incidental or accidental amount of non-recyclable solid waste
34 materials and transporting such solid waste to the Weyerhauser facility”).

1 sought, including declaratory relief, is impossible to grant due to an intervening event or
2 occurrence, courts refrain from deciding such matters because of mootness. *E.g., Yacobellis v.*
3 *City of Bellingham*, 55 Wn. App. 706, 709, 780 P.2d 272 (1989). In other words, an issue is
4 moot if there is no longer a controversy between the parties. *E.g., Emmerson v. Weilep*, 126 Wn.
5 App. 930, 938, 110 P.3d 214 (2005) (citation omitted).

6 With respect to Hungry Buzzard, these proceedings are concerned solely with the
7 transportation of CDL waste to Weyerhaeuser's facility in Longview. *Order*, ¶ 5. Similarly, the
8 sole relief sought by the Commission in instituting these proceedings was the entry of an Order
9 directing that Hungry Buzzard "cease and desist" from such activities. *Order*, ¶ 6.

10 There is no genuine dispute, however, that Hungry Buzzard ceased the transportation of
11 construction, demolition and land clearing ("CDL") waste to Weyerhaeuser's Longview facility
12 in January 2008. *Christianson Decl.*, ¶ 2. Moreover, Hungry Buzzard has expressly agreed to
13 comply with the final decision entered herein or upon judicial review, including any injunctive
14 relief. *Christianson Decl.*, ¶ 3. Simply put, any dispute between Hungry Buzzard and the
15 Commission has been resolved. No additional relief can be obtained against Hungry Buzzard in
16 these proceedings beyond that which has already been obtained.

17 To the extent that the Commission or Intervenors might argue that Hungry Buzzard's
18 continued involvement is necessary to resolve questions of continuing and substantial public
19 interest, such an argument disregards the fact that Glacier Recycle, LLC, and T&T Recovery,
20 Inc., have not moved for dismissal and would remain parties to these proceedings.

21 Hungry Buzzard's cessation of the activities that form the basis for these proceedings
22 coupled with its stipulation to comply with the final decision entered herein or upon judicial
23 review renders further proceedings against it moot. Accordingly, Hungry Buzzard should be
24 dismissed from these proceedings, subject to the stipulation that it comply with the final order
25 issued by the Commission or upon judicial review of the same.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IV. CONCLUSION

For the reasons set forth above, Hungry Buzzard respectfully requests that it be dismissed from the above-referenced proceedings, subject to the stipulation that Hungry Buzzard will comply with the final decision entered by the Commission herein or upon judicial review. A proposed order granting the relief request is attached hereto as **Exhibit A**.

DATED this 21st day of March, 2008.

EISENHOWER & CARLSON, PLLC


By: _____

Donald L. Anderson, WSBA # 8373
Ian M. Bauer, WSBA # 35563
Attorneys for Glacier Recycle, Inc.,
Hungry Buzzard Recovery, LLC, and
T&T Recovery, Inc.

1 **CERTIFICATE OF SERVICE (WAC 480-07-150)**

2 I hereby certify that on the 24th day of March 2008, I filed Hungry Buzzard's Motion to
3 Dismiss and the Declaration of Marc Christiansen in Support of Motion to Dismiss with the
4 Washington Utilities and Transportation Commission and served a copy upon the following via
5 electronic mail, with hard copies to follow via ABC Legal Services:

6 James K. Sells
7 Ryan Sells Uptegraft, Inc. P.S.
8 9657 Levin Rd. NW, Suite 240
9 Silverdale, WA 98383

10 Polly L. McNeill
11 Summit Law Group, PLLC
12 315 5th Ave South, Suite 1000
13 Seattle, WA 98104-2682

14 David W. Wiley
15 Williams, Kastner & Gibbs, PLLC
16 601 Union Street, Suite 4100
17 Seattle, WA 98101-2380

18 Jonathan Thompson, Assistant Attorney General
19 1400 S. Evergreen Park Drive SW
20 PO Box 40128
21 Olympia, WA 98504-0128

22 Washington Utilities and Transportation Commission
23 1300 S. Evergreen Park Drive SW
24 PO Box 47250
25 Olympia, WA 98504-7250

26 DATED this 24th day of March 2008, at Tacoma, Washington.

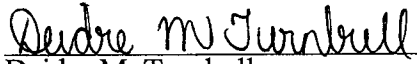
27
28 
29 Deidre M. Turnbull
30 Legal Assistant

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In re the Matter of Determining the Proper
Carrier Classification of

Docket No.: TG-072226

GLACIER RECYCLE, LLC; HUNGRY
BUZZARD RECOVERY, LLC; AND T&T
RECOVERY, INC.

[PROPOSED] ORDER GRANTING
MOTION TO DISMISS

THIS MATTER came on before the Court upon Hungry Buzzard Recovery, LLC's
Motion to Dismiss. Having reviewed the submissions of the parties and being otherwise advised
in the premises, it is now hereby

ORDERED, ADJUDGED AND DECREED that Hungry Buzzard Recovery, LLC's
Motion is **GRANTED**; and it is further

ORDERED, ADJUDGED AND DECREED that Hungry Buzzard Recovery, LLC is
dismissed from the above-captioned proceedings; and it is further

ORDERED, ADJUDGED AND DECREED that, pursuant to the stipulation of Hungry
Buzzard Recovery, LLC and notwithstanding the dismissal granted herein, Hungry Buzzard
Recovery, LLC shall comply with the final decision entered by the Commission in the above-
captioned proceedings, or the final decision reached upon judicial review of the same.

///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this ___ day of _____, 2008.

By: _____
ADAM E. TOREM
Administrative Law Judge

Presented by:

EISENHOWER & CARLSON, PLLC

By: _____
Donald L. Anderson, WSBA # 8373
Ian M. Bauer, WSBA # 35563
Attorneys for Hungry Buzzard Recovery, LLC