

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of
SUPERIOR WASTE & RECYCLE LLC,
For Authority to Operate as a Solid Waste
Collection Company in Washington

DOCKET TG-181023
COMMISSION STAFF'S REPLY TO
SUPERIOR'S RESPONSE TO
MOTION FOR CLARIFICATION

I. INTRODUCTION

1 On November 13, 2019, the Utilities and Transportation Commission (Commission) issued Order 04 in this case, finding that Waste Management of Washington, Inc., d/b/a Brem-Air Disposal (Waste Management) will provide service to the satisfaction of the Commission and denying Superior Waste & Recycle LLC's (Superior) application for a solid waste certificate of convenience and necessity (certificate). On December 3, Waste Management filed a motion for clarification or in the alternative a petition for administrative review (Motion for Clarification) regarding its obligations under Order 04. On December 12, Superior filed a response to Waste Management's Motion for Clarification. Commission Staff (Staff) submits the following reply to Superior's response.

II. ARGUMENT

A. Customer Comments

2 As part of its response, Superior refers to several comments submitted by customers within Superior's proposed service territory from October 2019, after the evidentiary hearing in this case.¹ Although the Commission noted these comments in its Order 04, it does not appear that the comments were made a part of the evidentiary record in the

¹ *Superior's Response to Waste Management's Motion for Clarification* at 3.

adjudication. Under RCW 34.05.461, the findings of fact in an order “shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.” While the Commission may acknowledge the October customer comments, Staff contends that the comments may not be used to support a change to a finding in Order 04 because the comments were not incorporated into the administrative record or officially noticed by the Commission in this case.

B. Clarification of Commission Analysis

3 As part of its response, Superior suggests that the Commission likely relied on Waste Management’s representations regarding the purchase of new service vehicles as part of the Commission’s decision to deny Superior’s application.² As noted in Staff’s post-hearing brief, the Commission may not consider subsequent service improvements as part of its analysis of whether an incumbent carrier will provide service to the satisfaction of the Commission.³ Therefore, the Commission should clarify that it did not rely on Waste Management’s representations regarding the purchase of new service vehicles as part of its determination that Waste Management will provide service to the satisfaction of the Commission, and by extension, the Commission’s decision to deny Superior’s application.

C. Superior’s Requested Alternative Relief

4 In its response, Superior requests that the Commission grant Superior a certificate as an alternative to clarifying whether Waste Management is obligated by Order 04 to purchase

² *Id.* at 1.

³ *In re Application of Superior Waste & Recycle, LLC*, Docket TG-181023, Staff’s Post-Hearing Brief, p. 5, ¶ 8 (“The Commission has explained that ‘[i]mprovements in service following the threat of competition, correcting the very deficiencies an applicant bases its case on, are not entitled to weight in evaluating whether the existing service is satisfactory.’”)(citing *In re Application of Superior Refuse Removal Corporation*, Order M.V.G. No. 1537, Hearing No. GA-849, at 7 (Feb. 11, 1992)).

smaller service vehicles.⁴ The Commission should deny this alternative relief at this time for two reasons.

5 First, in communication with the parties, Judge Pearson characterized Waste Management's motion as a motion for clarification and cited to WAC 480-07-835.⁵ WAC 480-07-835(2) states that a party may not file a motion for clarification that "seeks to change an outcome with respect to one or more issues," resolved by an order. Consistent with WAC 480-07-835(2), Superior may not lawfully request that the Commission change the outcome of Order 04 by granting Superior a certificate as part of a response to a motion for clarification.

6 Second, Superior does not argue that the Commission erred in determining that Waste Management will provide service to the satisfaction of the Commission. Order 04 notes that the Commission must resolve the threshold issue of whether Waste Management will provide service to the satisfaction of the Commission before considering whether to grant an overlapping certificate to Superior.⁶ As discussed above, the Commission should clarify that it did not rely on Waste Management's representations regarding the purchase of new service vehicles in determining that Waste Management will provide service to the satisfaction of the Commission. As such, insofar as Superior has not challenged the Commission's analysis regarding whether Waste Management will provide service to the satisfaction of the Commission, Superior should not be heard to argue that the Commission erred by finding that Waste Management will provide service to the satisfaction to the Commission. Consequently, the Commission should not grant Superior a certificate because

⁴ *Superior's Response to Waste Management's Motion for Clarification* at 3

⁵ E-mail between all parties and Judge Pearson (Dec. 5, 2019).

⁶ *In re Application of Superior Waste & Recycle, LLC*, Docket TG-181023, Order 04, p. 6, ¶ 29 (Nov. 13, 2019).

it has not shown as a threshold matter that Waste Management will not provide service to the satisfaction of the Commission.

III. CONCLUSION

7 The Commission should delineate Waste Management's obligations under Order 04, clarify that it did not rely on Waste Management's representations regarding the purchase of new service vehicles as part of its analysis of whether Waste Management will provide service to the satisfaction of the Commission, and deny Superior's requested alternative relief.

DATED December 20, 2019.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

/s/ Harry Fukano, WSBA No. 52458
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1225
harry.fukano@utc.wa.gov