

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper
Carrier Classification of, and Complaint for
Penalties Against:

INTERNATIONAL RESOURCE
MANAGEMENT, INC. D/B/A
WASTEXPRESS AND D/B/A
WASTEXPRESS HAZARDOUS WASTE
DISPOSAL

DOCKET TG-200131

STAFF'S MOTION TO WITHDRAW
COMPLAINT

I. INTRODUCTION

1 Staff of the Washington Utilities and Transportation Commission (Commission)
submits this Motion to Withdraw Complaint pursuant to WAC 480-07-375 and WAC 480-
07-380.

II. RELIEF REQUESTED

2 Commission staff (Staff) respectfully requests that the Commission withdraw Order
01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; Notice of
Virtual Prehearing Conference, issued on June 12, 2020, in Docket TG-200131 (Complaint).

III. STATEMENT OF FACTS

3 On June 12, 2020, the Commission entered the Complaint and set a prehearing
conference for August 20, 2020.¹ The Complaint alleged, in part, that the Company operated
for the hauling of solid waste for compensation in Washington without first obtaining a
certificate of convenience and necessity from the Commission on at least two occasions, in
violation of RCW 81.77.040.² The Complaint instituted a special proceeding to formally
classify the Company's operations and determine, in fact, whether the Company improperly

¹ See generally *In re Determining the Proper Carrier Classification of, and Complaint for Penalties Against International Resource Management, Inc. d/b/a WasteXpress & d/b/a WasteXpress Hazardous Waste Disposal*, Docket TG-200131, Order 01 (June 12, 2020).

² *Id.* at 8 ¶ 37.

conducted business without the required Commission authority.³ The Complaint contained two specific requests for relief: (1) that the Commission assess penalties of up to \$1,000 for each violation of RCW 81.77.040, pursuant to RCW 81.04.380; and (2) that the Commission order WasteXpress to cease and desist from transporting solid waste until it obtained a certificate of convenience and public necessity authorizing it to operate for the hauling of solid waste.⁴

4 On July 2, 2020, the Company filed its Answer to the Complaint. In its Answer, the Company argued, in part, that its operations in the state of Washington did not require a certificate of convenience and necessity from the Commission.⁵

5 On July 13, 2020, the Commission issued a second notice rescheduling the prehearing conference for September 10, 2020.⁶

6 On August 28, 2020, WasteXpress applied for a certificate of convenience and necessity with the Commission in Docket TG-200764 (Application).⁷

7 On September 4, 2020, Staff contacted the presiding officer via email, on behalf of all parties, to request that the Commission reschedule the telephonic prehearing conference to permit more time for the Application to be processed and to afford the Company an opportunity to come into compliance as a permitted carrier.⁸

8 On September 8, 2020, the Commission issued a second notice rescheduling the prehearing conference for November 10, 2020.⁹

³ *Id.* at 8 ¶ 41.

⁴ *Id.* at 8 ¶ 38-40.

⁵ Docket TG-200131, WasteXpress Answer to Complaint, at 16 ¶ 48 (Jul. 2, 2020).

⁶ Docket TG-200131, Notice of Prehearing Conference, at 1 (Jul. 13, 2020).

⁷ *See generally In re Application of International Resource Management, Inc. d/b/a WasteXpress, for a certificate of public convenience and necessity to provide solid waste collection service*, Docket TG-200764, WasteXpress Application (Aug. 28, 2020).

⁸ Docket TG-200131, Second Notice of Prehearing Conference, at 1 (Sept. 8, 2020).

⁹ *Id.*

9 On November 3, 2020, Staff filed a letter in this docket, on behalf of all parties, seeking to again continue the prehearing conference to allow Staff and the Company to continue processing the Application.¹⁰ Staff's letter noted that the parties believed sufficient progress had been made to further continue the prehearing conference, so the Company would have time to complete its Application and address any potential protests to the Application.¹¹

10 On November 4, 2020, the Commission issued a third notice rescheduling the prehearing conference for January 11, 2021.¹²

11 On December 23, 2020, the Commission issued Order 01, Order Granting Application in Docket TG-200764.¹³ In that order, the Commission found the Company to be fit, willing, and able to properly provide the proposed operations and that the proposed service was necessary and would be of convenience to the public.¹⁴ The Commission granted the Application (conditioned on the Company's compliance with RCW 81.77 and WAC 480-70) under Certificate Number G069470,¹⁵ to include the following authority:

Specialized solid waste collection (as a Class C company) throughout the state of Washington, collecting hazardous waste; dangerous waste; special waste (e.g. any solid waste that requires additional processing, special handling, special packaging, special transportation and/or additional disposal techniques due to its quantity, concentration, physical or chemical characteristics or biological properties). Dropbox service may be provided for hazardous, dangerous and/or special waste only.¹⁶

¹⁰ Docket TG-200131, Third Notice of Prehearing Conference, at 1 (Nov. 4, 2020).

¹¹ *Id.*

¹² *Id.*

¹³ *See generally* Docket TG-200764, Order 01 (Dec. 23, 2020).

¹⁴ *Id.* at 1 ¶ 3.

¹⁵ *Id.* at 1 ¶ 4.

¹⁶ *Id.* at 3, Appx. A; *see also* Docket TG-200764, Certificate No. G069470 (Dec. 23, 2020).

12 On January 4, 2021, Staff contacted the Company and the Public Counsel Unit of the
Washington State Office of the Attorney General, and the Company represented that it does
not object to the relief requested by Staff in this motion.

IV. STATEMENT OF ISSUES

13 Should the Commission grant Staff’s request to withdraw the Complaint, considering
that the Commission granted the Company a certificate of convenience and necessity on
December 23, 2020, thereby bringing the Company’s operations into compliance?

V. EVIDENCE RELIED UPON

14 Staff relies on the documents on file with the Commission in Docket TG-200131 and
Docket TG-200764.

VI. ARGUMENT

15 Once the Commission issues a hearing notice or otherwise commences an
adjudicative proceeding, “a party may withdraw from that proceeding, or may withdraw the
party’s tariff, complaint, petition, or application on which a proceeding is based, only upon
permission granted by the commission in response to a written motion.”¹⁷

16 The Commission will grant such a motion when the requested withdrawal is in the
public interest.¹⁸

17 The Commission has formally expressed its support for informal and cooperative
resolutions of enforcement actions. “The commission supports parties’ informal efforts to
resolve disputes without the need for contested hearings when doing so is lawful and
consistent with the public interest.”¹⁹

¹⁷ WAC 480-07-380(3)(a).

¹⁸ WAC 480-07-380(3)(b).

¹⁹ WAC 480-07-700.

18 The Commission has also stated that its “ultimate objective in any enforcement
action is to obtain compliance with applicable law.”²⁰

19 The Commission should grant Staff’s requested relief and withdraw the Complaint
because doing so is in the public interest. Now that the Company has voluntarily come into
compliance and possesses a certificate of convenience and necessity from the Commission,
much of the relief sought in the Complaint is moot. The Commission no longer needs to
expend its time and resources, nor those of the parties, to conduct a special proceeding to
formally classify the Company’s operations because the Company is now a classified and
permitted entity subject to the Commission’s jurisdiction. Additionally, the Complaint’s
second request for relief, that the Commission order WasteXpress to cease and desist from
transporting solid waste until it obtains a certificate, is also moot given that WasteXpress
now possesses a certificate of convenience and necessity. Withdrawing the Complaint will
promote judicial economy and the efficient use of public resources by expeditiously
disposing of these now-moot issues, and it is therefore in the public interest to grant this
motion. Withdrawal of the Complaint is also in alignment with the Commission’s stated
support for parties’ informal efforts to resolve disputes without the need for contested
hearings, when lawful and in the public interest, and its ultimate goal of achieving
compliance through enforcement actions.²¹

20 Staff believes that the remainder of the Complaint’s requested relief, seeking to
assess penalties of up to \$1,000 for each violation of RCW 81.77.040, should also be
withdrawn. First, the Company has voluntarily come into compliance, and worked in good
faith with Staff during the application process to successfully obtain a certificate of

²⁰ See *WUTC v. CenturyLink*, Docket UT-140597, Order 03, Final Order Approving Settlement Agreement ¶
10 (Feb. 22, 2016).

²¹ *Id.*

convenience and necessity. This demonstrates the Company's understanding of the importance of compliance with Commission rules and intention to comply going forward. Second, given that the Company now possesses a certificate of convenience and necessity, Staff believes the likelihood that the Company will again violate RCW 81.77.040 to be low. Therefore, Staff believes that pursuing penalties for the two violations of RCW 81.77.040 would, at this point, serve a predominantly backward-looking purpose rather than promoting ongoing compliance. Withdrawing the Complaint, with respect to penalties, also aligns closely the Commission's support for informal dispute resolution and its ultimate goal of obtaining compliance through Commission enforcement actions, something that is squarely in the public interest.

VII. CONCLUSION

21 For the reasons stated, Staff respectfully requests that the Commission withdraw its Complaint.

DATED this 5th day of January 2021.

Respectfully submitted,

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