

**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

PUBLIC COUNSEL’S REQUEST TO
RESPOND AND RESPONSE TO
STAFF MOTION TO WITHDRAW
COMPLAINT; REQUEST FOR
CLARIFICATION

1. The Public Counsel Unit of the Washington Attorney General’s Office (“Public Counsel”) hereby requests permission to respond to Commission Staff’s Motion to Withdraw Complaint (“Motion”) pursuant to WAC 480-07-375, WAC 480-07-380(3)(b), and WAC 480-07-395.
2. Public Counsel does not oppose the Staff’s Motion. However, Public Counsel respectfully requests that in the order resolving the Motion, the Washington Utilities and Transportation Commission (“UTC” or “Commission”) clarify its authority under to regulate collection and transportation of industrial waste in Washington State, which was an issue raised by International Resource Management, Inc., d/b/a WasteXpress and WasteXpress Hazardous Waste Disposal (“WasteXpress” or “Company”) in its Answer pleading it filed with the Commission on July 2, 2020.

STATEMENT OF FACTS

3. In Order 01 in Docket TG-200131, “Order instituting Special Proceeding; Complaint Seeking to Impose Penalties; Notice of Virtual Prehearing Conference” (“Order 01” or “Complaint”), the Commission alleged that the Company committed at least two violations of RCW 81.77.040.¹ The UTC Staff Investigation Report clarifies the Staff findings of two violations: (1) one violation for hauling solid waste for compensation without first having obtained a certificate of public convenience and necessity from the Commission authorizing it to do so, and (2) a second violation for advertising for solid waste collection and transportation in the Seattle and Tacoma areas without first obtaining a solid waste certificate.²
4. The Company responded in its July 2, 2020, Answer that it “does not operate as a ‘solid waste collection company’ as that term is defined in Commission rules at WAC 480-70-041.”³ The Company argued that it was not required to obtain a certificate of public convenience and necessity from the Commission to operate because it believes the definition of “solid waste collection” in WAC 480-70-041 extends only to the collection of solid waste from residential or commercial customers, and not collection from industrial customers. Because the Company serves almost exclusively industrial customers, it argued that its operations are not subject to Commission regulation.⁴
5. Later, in Docket TG-200764, Company submitted its August 28, 2020, application for a certificate of public convenience and necessity to operate as a solid waste collection company.

¹ Ord. Instituting Spec. Proceeding; Complaint Seeking to Impose Penalties; Notice of Virtual Prehearing Conference (Set for Aug. 20, 2020), ¶ 37 (June 12, 2020) (hereinafter “Complaint”).

² Investigation Rep., Int’l Resource Mgmt., Inc. d/b/a WasteXpress at 7–8 (Apr. 2020).

³ Int’l Resource Mgmt., Inc. d/b/a WasteXpress Answer. ¶ 6 (July 2, 2020) (hereinafter “Answer”).

⁴ Answer, ¶¶ 11–12; *see also* Complaint ¶ 11.

The Company updated its application on November 5 and 25, 2020, to clarify its request for Commission authority to provide service as follows:

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.⁵

6. The Commission granted the Company's request on December 23, 2020, in Order 01, "Order Granting Application," which includes a recitation of Certificate No. G069470 in "Appendix A," stating the Company's authority to provide the service described above. The Commission granted the Company's application "conditioned upon the applicant complying with RCW 81.77 and WAC 480-70 relating to solid waste collection companies."⁶

RESPONSE TO MOTION AND REQUEST FOR CLARIFICATION

7. Public Counsel does not oppose the staff's Motion to withdraw the Complaint, because the Company appears to have addressed the violations at issue by applying for and obtaining Commission authority to operate under a certificate for public convenience and necessity. However, Public Counsel asks the Commission to clarify that the authority granted to the Company in Certificate No. G069470 acknowledges the Commission's regulatory authority under RCW 81.77 and WAC 480-70 over the Company's collection of solid waste from industrial customers.

⁵ See Int'l Resource Mgmt., Inc. d/b/a WasteXpress Application for Solid Waste Certificate (Aug. 28, 2020); Int'l Resource Mgmt., Inc. d/b/a WasteXpress Updated Pages for Solid Waste Collection Co. Application (Nov. 5, 2020); Restrictive Amendment to Application for Certificate, on behalf of Int'l Resource Mgmt., Inc. d/b/a WasteXpress, from Thomas Benke (Nov. 25, 2020).

⁶ Order 01, Order Granting Application (Dec. 23, 2020) at 3, ¶ 4.

8. The definitions in WAC 480-70-041 referenced in the Company’s July 2, 2020, Answer include a definition of “Classes of service,” which “means either commercial, specialized, drop box, or residential service.”⁷ These definitions also include “Commercial service,” which “means solid waste collection service provided to a business, institutional, or industrial generator.”⁸ These definitions include a definition of “Commercial authority,” which “means authority to provide solid waste collection service to business, institutional, or industrial generators.”⁹ Thus, where the WAC Chapter 480-70 regulations discuss “commercial” services, the regulations, and the UTC’s regulatory authority, includes coverage of waste from industrial generators.

CONCLUSION

9. Public Counsel does not oppose the UTC Staff’s January 5, 2021, Motion to Withdraw Complaint. In addition, for the reasons stated above, Public Counsel respectfully requests that the Commission clarify its regulatory authority over industrial waste as stated in RCW 81.77 and WAC 480-70.

DATED this 7th day of January, 2021.

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⁷ WAC 480-70-041.

⁸ *Id.*

⁹ *Id.*