

**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

ORDER 02

GRANTING WITHDRAWAL
AND DISMISSING COMPLAINT;
CLOSING DOCKET

BACKGROUND

- 1 On June 12, 2020, the Commission entered a Complaint against International Resource Management, Inc., d/b/a WasteXpress and d/b/a WasteXpress Hazardous Waste Disposal, (WasteXpress or Company) and set a prehearing conference for August 20, 2020 (Complaint). 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. The Complaint instituted a special proceeding to formally classify the Company's operations and determine, in fact, whether the Company improperly conducted business without the required Commission authority. 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.
- 2 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.
- 3 On July 13, 2020, the Commission issued a second notice rescheduling the prehearing conference for September 10, 2020.
- 4 On August 28, 2020, WasteXpress applied for a certificate of convenience and necessity with the Commission in Docket TG-200764 (Application).

- 5 On September 4, 2020, Commission staff (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.
- 6 On September 8, 2020, the Commission issued a second notice rescheduling the prehearing conference for November 10, 2020.
- 7 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.
- 8 On November 4, 2020, the Commission issued a third notice rescheduling the prehearing conference for January 11, 2021.
- 9 On December 23, 2020, the Commission issued Order 01, Order Granting Application in Docket TG-200764. 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. 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.
- 10 On January 5, 2021, Staff filed its Motion to Withdraw Complaint (Motion to Withdraw Complaint). Staff submits that the Commission should withdraw the Complaint against WasteXpress because WasteXpress has come into compliance with Commission regulation and has obtained the required certificate of public convenience and necessity. Staff argues that the Complaint's request for a cease and desist order is now moot. Staff submits that it is in the public interest to withdraw the request for penalties against WasteXpress, noting the Company has come into voluntarily compliance with Commission regulations. Staff states that the other parties to this proceeding, WasteXpress and the Public Counsel Unit of the Office of the Attorney General (Public Counsel), do not object to this Motion.

- 11 On January 6, 2021, Public Counsel emailed the presiding officer requesting an opportunity to respond to Staff's Motion to Withdraw by the following day, January 7, 2021. The presiding officer accepted a response from Public Counsel by this deadline.
- 12 On January 7, 2021, Public Counsel filed Request to Respond and Response to Staff's Motion to Withdraw Complaint. Public Counsel indicates that it does not oppose Staff's Motion. 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.
- 13 On January 7, 2021, WasteXpress emailed the presiding official requesting an opportunity to respond to Public Counsel's Response. WasteXpress submits that the Commission has not exercised its statutory authority to regulate the collection of solid waste from industrial customers. WasteXpress opposed the clarification requested by Public Counsel and suggested that this issue should be resolved outside of this proceeding.

DISCUSSION

- 14 When Staff proposes that the Commission issue a formal complaint, a Commission administrative law judge will determine whether probable cause exists to issue the complaint.¹ If probable cause is found, the administrative law judge will sign the complaint on behalf of the Commission.²
- 15 Once the Commission has issued a complaint and commenced an adjudicative proceeding, a party may withdraw the tariff or complaint on which the proceeding is based only upon permission granted by the Commission in response to a written motion.³
- 16 We agree with Staff that it is in the public interest to withdraw and dismiss this Complaint. The Commission commenced this special proceeding to determine whether WasteXpress was providing solid waste collection subject to Commission jurisdiction. The Company has since come into voluntary compliance with Commission regulations by obtaining from the Commission a certificate of public convenience and necessity. At this point in time, the Complaint's requests for relief are either moot or would seek to assess penalties against a company that is no longer operating in violation of Commission rules and applicable statutes. In light of these circumstances and Staff's unopposed

¹ WAC 480-07-307.

² *Id.*

³ WAC 480-07-380(3)(a).

Motion, we find that the public interest is best served by withdrawing and dismissing this Complaint without prejudice.

- 17 We decline Public Counsel’s request to hold in this Docket 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.”⁴ Although the parties may continue to disagree about the Commission’s authority to regulate the collection of solid waste from industrial customers, WasteXpress has obtained the required certificate of public convenience and necessity, thereby availing itself to Commission regulation and rendering any such disagreement moot. For these same reasons, we decline WasteXpress’s request to further respond to Public Counsel.

FINDINGS AND CONCLUSIONS

- 18 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property, and affiliated interests of public service companies, including solid waste collection companies.
- 19 (2) WasteXpress is a solid waste collection company subject to Commission jurisdiction.
- 20 (3) On August 28, 2020, WasteXpress applied for a certificate of convenience and necessity with the Commission in Docket TG-200764.
- 21 (4) On December 23, 2020, the Commission granted WasteXpress a certificate of public convenience and necessity in Docket TG-200764.
- 22 (5) Because the Company has come into voluntary compliance with Commission regulations, thus eliminating the underlying dispute in this Docket, granting Staff’s motion to withdraw and dismiss the Complaint without prejudice is in the public interest.

ORDER

THE COMMISSION ORDERS:

- 23 (1) Staff’s Motion to Withdraw the Complaint against International Resource Management, Inc., d/b/a WasteXpress and d/b/a WasteXpress Hazardous Waste

⁴ Public Counsel Resp. to Staff’s Motion to Withdraw Complaint ¶ 7.

Disposal, is granted. The Complaint in this Docket is deemed withdrawn and dismissed without prejudice.

24 (2) Docket TG-200131 is closed.

DATED at Lacey, Washington, and effective January 8, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael Howard

MICHAEL HOWARD

Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).