

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of

PNW COMPOSTS, INC.

For Authority to Operate as a Solid Waste
Collection Company in Washington.

DOCKET TG-230798

COMMISSION STAFF'S MOTION
FOR SUMMARY DETERMINATION

I. INTRODUCTION

1 On October 4, 2023, Applicant PNW Composts, Inc. filed an application for a new certificate of authority as a solid waste collection company. Waste Connections, Inc., certificate G-253, and Waste Control, Inc., certificate G-101, subsequently protested this application due to a direct overlap between the two companies' areas of operation and PNW Composts' proposed operating area.

2 This matter was set for adjudication and Order 01 was issued, wherein PNW Composts was ordered to submit direct testimony on February 21, 2024 and Staff was ordered to submit response testimony on March 27, 2024. PNW Composts has yet to submit direct testimony, without which Staff cannot submit the response testimony that is due today.

3 Staff therefore submits this motion for summary determination and requests that the presiding officer issue an order rejecting PNW Composts' application.¹

II. MOTION FOR SUMMARY DETERMINATION

4 A motion for summary determination is appropriate where there is "no genuine issue of material fact," entitling the moving party to "judgment as a matter of law."² "When ruling on

¹ Due to the aforementioned lack of direct testimony to respond to, Staff will not be able to submit response testimony by the deadline of today, March 27, 2024.

² WAC 480-07-380(2)(a).

such a motion, the commission will consider the standards applicable to a motion made under Washington superior court civil rule 56.”³

5 Under such standards, if a movant without the burden of proof moves for summary judgment, it must first show an absence of an issue of material fact.⁴ The inquiry then shifts to the non-movant with the burden of proof. If the non-movant ““fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial,’ then the trial court should grant the motion.”⁵

III. THE COMMISSION SHOULD GRANT STAFF SUMMARY DETERMINATION BECAUSE PNW COMPOSTS HAS FAILED TO MEET ITS BURDEN

6 By failing to file its direct testimony, PNW Composts has failed to present any evidence from which a genuine issue of material fact could arise. PNW Composts, as the applicant, bears the burden of proof at hearing to show why its application for certificate authority should be granted.⁶ Without direct testimony, PNW has presented no issues for adjudication, Staff and the protesting parties have no issues to which they can respond. Therefore, no genuine issues of material fact exist and summary determination is appropriate.

IV. CONCLUSION

7 Because summary determination is appropriate and PNW Composts has failed to meet its burden, Staff requests that the presiding officer issue an order rejecting PNW Composts’ application for a certificate of authority.

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³ *Id.*

⁴ *Young v. Key Pharmaceuticals, Inc.*, 112 Wash.2d 216, 225 n.1 (1989 (“The moving defendant may meet the initial burden by “showing—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party’s case.” (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)).

⁵ *Young*, at 225.

⁶ WAC 480-70-091.

DATED this 27th day of March 2024.

Respectfully submitted,

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