

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

)	
WASHINGTON UTILITIES AND)	DOCKET NO. TG-041481
TRANSPORTATION COMMISSION,)	
)	ORDER NO. 05
Petitioner,)	
)	
v.)	ORDER APPROVING AND
)	ADOPTING SETTLEMENT
T&T RECOVERY, INC.,)	AGREEMENT
)	
Respondent.)	

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Synopsis: The Commission approves and adopts the proposed settlement agreement attached to this Order.

1 **NATURE OF PROCEEDING.** On September 20, 2004, the Washington Utilities and Transportation Commission, pursuant to RCW 81.04.510, instituted this special proceeding upon its own motion to determine whether T&T Recovery, Inc., (T&T) is transporting solid waste for collection or disposal for compensation over the public highways in Washington State without a certificate of public convenience and necessity as required by RCW 81.77.040.

2 **APPEARANCES.** John Ridge and Jamie Van Nostrand, attorneys, Seattle, Washington, represent T&T Recovery, Inc. (T&T). James K. Sells, attorney, Silverdale, Washington, represents Washington Refuse and Recycling Association (WRRRA). Polly L. McNeil, attorney, Seattle, Washington, represents Sanitary Service Company, Inc. (Sanitary Service). David W. Wiley, attorney, Seattle, Washington, represents Island Disposal, Inc. (Island Disposal). Lisa

Watson, Assistant Attorney General, Olympia, Washington, representing Commission Staff.

3 **PETITIONS FOR INTERVENTION.** Petitions to intervene were filed by WRRRA, Sanitary Service and Island Disposal. During the prehearing conference, convened on February 1, 2005, T&T objected to the WRRRA petition to intervene. WRRRA is a trade association representing over 70 solid waste carriers in the State of Washington. In the prehearing conference order, the petition filed by WRRRA was taken under advisement. Inadvertently, the prehearing conference order omitted a ruling on the petitions to intervene to which T&T did not object.

4 Sanitary Service and Island Disposal both currently do business as regulated solid waste carriers in the state of Washington.¹ The petitions of Sanitary Service and Island Disposal meet the conditions for intervention established in 480-07-355(3)², and since there were no objections to their petitions, they are granted. With regard to WRRRA's petition to intervene, the Commission notes that there is no objection to WRRRA's participation as a signatory to a settlement agreement but the Commission declines to rule on the WRRRA petition to intervene because it is unnecessary to do so in light of the Settlement Agreement.

5 **SETTLEMENT.** On March 2, 2005, the parties and WRRRA filed a Settlement Agreement (Agreement) and a Narrative Supporting Settlement Agreement (Narrative). The Narrative summarizes the major terms of the Agreement but is not intended to modify it. The Narrative further provides statements from all the parties and WRRRA in support of adoption of the Agreement.

¹ Sanitary Service Certificate No. G-14; Island Disposal Certificate No. G-154.

² WAC 480-07-355(3) provides that a petition must disclose "a substantial interest in the subject matter of the hearing" or be "in the public interest."

6 The Agreement, attached to this Order and incorporated herein, resolves issues related to the allegations that T&T has been illegally collecting solid waste without a certificate of public convenience and necessity as required by RCW 81.77.040. T&T contends that its operations include exempt transportation of mixed and segregated recyclables to recycling facilities. T&T also contends that its primary business is demolition and clean-up of demolished sites, and that its solid waste hauling is an incidental by-product of that business, and is therefore exempt from the Commission's regulation under RCW 81.77.010(5).³

7 By terms of the Agreement, T&T is required to:

1. Keep records of its recycling, demolition and cleanup hauling and report to the Commission and the parties for a period of 18 months⁴ in order to provide a comprehensive view of its operations and to allow the parties to evaluate whether its operations are subject to the Commission's jurisdiction under RCW 81.77.040;⁵
2. Label its containers; provide job site supervisors with brochures clearly identifying acceptable recyclable materials and banned materials; and refuse to pick-up containers with unacceptable quantities of solid waste or banned materials;⁶
3. Investigate and report to Staff any claims of violations of the Agreement during the 18-month reporting period.⁷

³ RCW 81.77.010(5) defines "private carrier" as a person "who, in his own vehicle, transports solid waste purely as an incidental adjunct to some other established private business owned or operated by him in good faith..."

⁴ Agreement ¶ 9-28.

⁵ RCW 81.77.040 provides that a solid waste collection company must obtain a certificate of public convenience and necessity and identifies procedures to be followed for obtaining a certificate when an applicant requests a certificate for an existing service area.

⁶ Agreement ¶ 29-45.

⁷ Agreement ¶ 44.

- 8 The Agreement further provides that anytime during the first six months of the 18-month reporting period, Staff may request to reschedule a Show Cause hearing if Staff concludes that T&T is willfully violating the Agreement. During the last year of the 18-month reporting period, Staff may, after consultation with WRRRA and the parties, bring a motion to either reschedule a Show Cause Hearing or request the proceeding be dismissed. Otherwise, the Commission Staff and the parties will review all of T&T's reports and records from the 18-month period and file a motion to close the docket or reschedule a Show Cause hearing.
- 9 In the Narrative, each party provides a statement supporting the Agreement as a fair and reasonable resolution of the proceeding. Staff's statement⁸ calls the Agreement a "fair and reasonable resolution of the current docket." Staff states that the Agreement provides a mechanism for ensuring that T&T is in compliance with statutes and rules governing its operations and provides T&T an opportunity to document its contentions that its operations do not violate Chapter 81.77 RCW.
- 10 Staff also states that the Agreement is in the public interest because it avoids the cost of a protracted hearing and use of the Commission's resources and time. Further, Staff observes that the Agreement provides a structure for communication among the parties and the building of relationships of greater trust, which would strengthen the industry.
- 11 T&T⁹ advances similar reasons for adoption and adds that the Agreement provides greater certainty than a resolution that might have resulted from a contested hearing.

⁸ Narrative ¶¶ 28-31.

⁹ *Id.*, ¶¶ 32-34.

- 12 SSC, Island Disposal and WRRRA¹⁰ agree with both Staff and T&T and reiterate that resolving the issues by settlement adds greater clarity to the outcome and provides appropriate remedies if the Agreement is abrogated.
- 13 **DISCUSSION AND DECISION.** Chapter 81.77 RCW and Chapter 480-07 WAC govern the transportation of solid waste in Washington. These statutes and rules prohibit transport of solid waste without a certificate of public convenience and necessity. Transport of commercial recycling is exempt from Commission regulation under RCW 81.77.010(8). Also, under RCW 81.77.010(5), transportation of solid waste as an adjunct to a primary business is exempt from regulation.
- 14 The Commission's rules provide for settlement of contested proceedings and the Commission has discretion to accept a settlement, impose conditions, or reject a settlement.¹¹ The primary issue in this case is whether T&T is transporting solid waste instead of exempt commercial recyclables and exempt solid waste that is a by-product of its primary business. The parties' Agreement would allow T&T an opportunity to demonstrate that its operations are truly exempt from Commission regulation and that it is operating in compliance with statutes and rules governing transport of solid waste. The Agreement also provides a mechanism that allows Commission Staff and others to monitor T&T's compliance and that encourages communication among the parties. Finally, adoption of the Agreement would conserve the Commission's resources and avoid a protracted evidentiary proceeding.
- 15 For these reasons, the Commission concludes that approval and adoption of the proposed Settlement Agreement is reasonable and would serve the public interest.

¹⁰ *Id.*, ¶ 35.

¹¹ WAC 480-07-730(1).

FINDINGS OF FACT

Having discussed above the provisions of the attached Settlement Agreement and the supporting Narrative, and having stated findings of fact and conclusions of law in the text of the Order, the preceding findings and conclusions are incorporated by this reference.

- (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to determine its jurisdiction over solid waste carriers and to grant or deny applications for certificates of public convenience and necessity to collect, transport and dispose of solid waste for compensation in the state of Washington.
- (2) T&T Recovery, Inc. is a company alleged to have transported solid waste for collection or disposal for compensation over the public highways in the state of Washington without a certificate of public convenience and necessity.
- (3) On September 20, 2004, the Commission initiated a special proceeding to determine whether T&T Recovery, Inc., is transporting solid waste in violation of state statutes and Commission rules.
- (4) On March 2, 2005, parties to the proceeding and the Washington Refuse and Recycling Association filed a Settlement Agreement (attached to this Order and incorporated herein) which required T&T Recovery, Inc. to document its transport of recyclables and solid waste incidental to its demolition business for a period of 18 months.
- (5) The terms of the Settlement Agreement are fair, just and reasonable and adoption of the Settlement Agreement would serve the public interest.

CONCLUSIONS OF LAW

Having discussed above in detail all matters material to our decision and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law.

- (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding.
- (2) The Settlement Agreement filed on March 2, 2005, which is attached to this Order and incorporated by reference as if set forth in full in the body of this Order, should be approved and adopted by the Commission as a reasonable resolution of the question whether T&T Recovery, Inc.'s operations are subject to Commission regulation.

ORDER

16 THE COMMISSION ORDERS That the Settlement Agreement attached to this Order and incorporated herein is approved and adopted.

Dated at Olympia, Washington, and effective this 11th day of March, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.

APPENDIX A