

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

STERICYCLE OF WASHINGTON, INC.,

Complainant

v.

WASTE MANAGEMENT OF
WASHINGTON, INC.

Respondent.

DOCKET TG-110553

COMMISSION STAFF RESPONSE
TO WASTE MANAGEMENT OF
WASHINGTON, INC.'S MOTION
TO DISMISS STERICYCLE'S
COMPLAINT AND PETITION

1 Waste Management of Washington, Inc. (“Waste Management”) has moved to dismiss Stericycle’s Complaint and Petition on the grounds that it fails to state a claim upon which relief can be granted.¹ Waste Management’s motion should be denied because it relies on an unduly restrictive view of the authority of the Washington Utilities and Transportation Commission (“Commission”) under RCW 81.77.030. The Commission has authority under RCW 81.77.030 to consider Stericycle’s claim that Waste Management has abandoned its authority to collect biomedical waste under Certificate G-237. Whether Stericycle can prove that it is entitled to relief on that claim raises factual questions that cannot be decided on a motion to dismiss.

I. BACKGROUND

2 Biomedical waste is “solid waste” whose collection the Commission regulates under

¹ [WAC 480-07-380\(1\)\(a\)](#); *see* [CR 12](#)(b)(6).

RCW Chapter 81.77.² Generally, a company must obtain a “G certificate” from the Commission before hauling solid waste for compensation in Washington.³ The Commission has interpreted the authority conferred by a G certificate as including the authority to collect biomedical waste.⁴

3 Waste Management holds Certificate G-237.⁵ The certificate expressly restricts Waste Management from collecting biomedical waste in a few areas of King County adjacent to Redmond,⁶ but nothing else in Certificate G-237 mentions biomedical waste.

4 As described in the “Procedural Status” section of Waste Management’s motion, in March 2011 Waste Management filed a tariff for the collection and transportation of biomedical waste under its Certificate G-237.⁷ Stericycle filed a Complaint alleging that Waste Management had abandoned its authority to handle biomedical waste. Among other things, Stericycle asks the Commission to amend Certificate G-237 to exclude the collection of biomedical waste on the grounds that Waste Management has abandoned its authority to provide such services. Waste Management has moved to dismiss Stericycle’s Complaint.

² *In re Biomedical Waste Carriers*, Docket TG-970532, Declaratory Order at 10 (Wash. Utils. & Transp. Comm’n, Aug. 14, 1998); *In re Rowland d/b/a Kleenwell Biohazard & Gen. Ecology Consultants*, Docket TG-920304, Final Order at 6 (Wash. Utils. & Transp. Comm’n, Jan. 25, 1993.)

³ [RCW 81.77.040](#). Under [RCW 81.77.020](#), a company hauling solid waste under a contract with a city or town does not need a G certificate to perform that service.

⁴ See *In re Am. Env’tl. Mgmt. Corp.*, Order M.V.G. No. 1452 at 7 (Wash. Utils. & Transp. Comm’n, Nov. 30, 1990) (“The Commission agrees that the permanent authority of existing G-certificate holders includes the authority to collect infectious waste”); [WAC 480-70-041](#) (“Unless the company’s certificate is restricted against doing so, a traditional solid waste collection company may also perform specialized solid waste collection service.”)

⁵ A copy of Certificate G-237 is attached to Waste Management’s Motion to Dismiss Stericycle’s Complaint and Petition.

⁶ The restriction appears in the paragraph labeled “(PID435)” on the fourth page of Certificate G-237.

⁷ Dockets [TG-110506](#), [TG-110552](#). The tariff in Docket TG-110552 went into effect by operation of law on April 6, 2011. See Item 15, Wash. Utils. & Transp. Comm’n April 14, 2011 Open Meeting Agenda (available at <http://www.wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/80277cc4b835db3f8825786c0070134b!OpenDocument>)

II. ARGUMENT

A. The Commission Should Adhere to its Prior Interpretation of RCW 81.77.030.

5 Waste Management argues that the Commission has no authority under RCW
81.77.030 to “fragment” Certificate G-237 by deleting the right to perform one type of
service, as Stericycle requests. The restrictive reading that Waste Management advocates is
not consistent with the Commission’s prior interpretation and should be rejected.

6 The final paragraph RCW 81.77.030 provides:

The commission, on complaint made on its own motion or by an aggrieved party, at any time, after providing the holder of any certificate with notice and an opportunity for a hearing at which it shall be proven that the holder has willfully violated or refused to observe any of the commission’s orders, rules, or regulations, or has failed to operate as a solid waste collection company for a period of at least one year preceding the filing of the complaint, may suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter.

7 Waste Management argues that the Commission’s authority under RCW 81.77.030 is
all or nothing. According to Waste Management, the Commission can revoke only entire
certificates, and cannot “fragment” them by removing particular rights contained within a
certificate.⁸

8 The Commission considered the scope of its authority under RCW 81.77.030 in
Mason County Garbage Company v. Harold LeMay Enterprises, Cause No. TG-2163. Both
companies involved in that case held certificates that authorized them to collect solid waste
in Mason County. In 1974, they informally agreed that Mason County Garbage (Mason)
would serve residential customers, while Harold LeMay Enterprises (LeMay) would serve
commercial customers. The two companies operated that way until 1988, when Mason
learned that LeMay was resuming service to residential customers. Mason filed a complaint

⁸ Docket TG-110553, [Waste Management of Washington, Inc.’s Motion to Dismiss Stericycle’s Complaint and Petition](#), ¶ 14 (April 12, 2011).

with the Commission, arguing that LeMay had abandoned its right to serve residential customers in Mason County. Mason asked the Commission to amend LeMay's certificate by deleting that authority.

9 LeMay made an argument similar to the one that Waste Management makes now.

The Commission rejected it, holding:

The very existence of statutory authority [in RCW 81.77.030] to "amend or alter" certificates contemplates less-than-total geographic or commodity abandonment. Amendment recognizing major service types is appropriate.

* * *

When a certificate holder has failed to operate as a garbage and refuse collection company for a least one year preceding the filing of a complaint, the Commission is authorized to suspend, revoke, alter or amend the certificate. The statutory language is permissive (may) rather than mandatory (shall) and the Commission therefore has discretion to take any or none of the authorized actions, depending on the particular facts of the case and on public policy considerations. Public policy considerations might include, but would not necessarily be limited to, the limitations on restrictive amendments set forth in WAC 480-12-050.⁹ In this case, there do not seem to be any compelling public policy considerations which would preclude a restrictive amendment of the type requested. In fact, the Commission has granted just this type of limited authority on initial application.

Mason County Garbage Co. v. Harold LeMay Enters., Order M.V.G. No. 1403 at 6, 7

(Wash. Utils. & Transp. Comm'n, Aug. 18, 1989) (attached as Attachment A); *see id.* at 8-9.

10 The Commission examined the evidence and determined that LeMay had abandoned its right to provide residential garbage service in Mason County. The Commission amended

⁹ As of 1989, WAC 480-12-050(5) provided, in part: "The commission will not accept restrictive amendments to applications for the transfer of a [common or contract carrier] permit or a portion thereof nor will it impose restrictive conditions on such a transfer where it is found that the restrictive amendment or conditions requested by the parties would divide rights at a point other than along clearly defined geographical or political lines, or would permit the separation of a commodity or commodities from a class of substantially related commodities or from a commodity classification set forth in Appendix 'A' herein entitled 'Classification of brokers, forwarders and motor carriers of property.'" Wash. St. Reg. 86-12-029. The Commission repealed WAC 480-12-050 in 1999. Wash. St. Reg. 99-01-077.

LeMay's certificate accordingly.¹⁰

11 LeMay appealed, and the Court of Appeals reversed. The Court assumed that “the Commission has the authority to amend a garbage collection certificate based upon a certificate holder’s abandonment of only a portion of its authority,” but it held that the facts did not establish abandonment in that case.¹¹ On remand, the Commission restored the authority it had deleted from LeMay’s certificate.¹²

12 The Court of Appeals did not reject the Commission’s interpretation of its authority under RCW 81.77.030, and that interpretation has remained unchanged since the *LeMay* litigation. Under that interpretation, the Commission has discretionary authority to “alter, or amend” a G certificate if the evidence establishes that a company has abandoned a portion of its authority and if public policy considerations do not preclude an amendment.¹³

13 An agency, of course, may change its interpretation of a governing statute, but it must provide a reasoned explanation for doing so.¹⁴ Waste Management says the Commission should disregard its 1989 *LeMay* decision and adopt a “strict interpretation” of RCW 81.77.030 in this case because biomedical waste collection is different from traditional solid waste collection.¹⁵ Certainly, the Commission may consider the nature of

¹⁰ *Mason County Garbage Co. v. Harold LeMay Enters.*, Order M.V.G. No. 1403 at 9 (Wash. Utils. & Transp. Comm’n, Aug. 18, 1989).

¹¹ *Harold LeMay Enters. v. Utils. & Transp. Comm’n*, 67 Wn. App. 878, 883, 841 P.2d 58, 61 (1992).

¹² *Mason County Co. v. Harold LeMay Enters.*, Order M.V.G. No. 1599 (Wash. Utils. & Transp. Comm’n, Jan. 19, 1993).

¹³ *Mason County Garbage Co. v. Harold LeMay Enters.*, Order M.V.G. No. 1403 at 7 (Wash. Utils. & Transp. Comm’n, Aug. 18, 1989) (“the Commission therefore has discretion to take any or none of the authorized actions, depending on the particular facts of the case and on public policy considerations”).

¹⁴ *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005); see *Vergeyle v. Empl. Sec. Dep’t*, 28 Wn. App. 399, 404, 632 P.2d 736, 739 (1981), *overruled on other grounds by Davis v. Empl. Sec. Dep’t*, 108 Wn.2d 272, 276, 737 P.2d 1262 (1987).

¹⁵ Docket TG-110553, [Waste Management of Washington, Inc.’s Motion to Dismiss Stericycle’s Complaint and Petition](#), ¶¶ 16-24, 26 (April 12, 2011).

biomedical waste collection, along with other circumstances and public policy, when it exercises its discretion under RCW 81.77.030. But the mere fact that this is a biomedical waste case is not a good reason for the Commission to disregard *LeMay* and hold that it has no discretion.¹⁶

14 Should either Stericycle or Waste Management rely on an agreement not to compete that the companies may have executed in 1996 without Commission approval, the public policies for the Commission to consider could include those disfavoring contracts in restraint of trade.¹⁷ At this time, however, the agreement is not before the Commission, and it is unclear whether or to what extent either company intends to rely on it.¹⁸

B. The Constitution Does Not Preclude the Commission From Considering Whether to Award Relief in this Case.

15 Waste Management suggests that, because G certificates are property entitled to constitutional protection, the Commission cannot “fragment” rights under them except in “egregious circumstances.”¹⁹ G certificates are property for some purposes, as RCW 81.77.040 recognizes.²⁰ The Constitution does not say that government action cannot alter property rights, however. It says that no person shall be deprived of property without due process of law.²¹ Generally, government deprivation of property interests must be preceded

¹⁶ See *Mason County Garbage Co. v. Harold LeMay Enters.*, Order M.V.G. No. 1403 at 7 (Wash. Utils. & Transp. Comm’n, Aug. 18, 1989) (“the Commission therefore has discretion to take any or none of the authorized actions, depending on the particular facts of the case and on public policy considerations”).

¹⁷ See generally [15 U.S.C. § 1](#); [RCW 19.86.030](#).

¹⁸ See Docket TG-110553, [Complaint and Petition of Stericycle of Washington, Inc.](#), ¶¶ 8, 17 (March 21, 2011); Docket TG-110553, [Waste Management of Washington, Inc.’s Motion to Dismiss Stericycle’s Complaint and Petition](#), ¶¶ 4, 27-29 (April 12, 2011).

¹⁹ Docket TG-110553, [Waste Management of Washington, Inc.’s Motion to Dismiss Stericycle’s Complaint and Petition](#), ¶ 25 (April 12, 2011).

²⁰ [RCW 81.77.040](#) provides that certificates “may be sold, assigned, leased, transferred, or inherited as other property, only if authorized by the commission.”

²¹ Wash. Const. art. I, § 3; U.S. Const. amend. XIV, § 1.

by notice and an opportunity for hearing.²² Indeed, RCW 81.77.030 requires that the Commission provide “notice and an opportunity for a hearing” before altering or amending a certificate. The Washington Administrative Procedure Act also requires that “an agency may not revoke, suspend, or modify a license unless the agency gives notice of an opportunity for an appropriate adjudicative proceeding.”²³ The adjudicative proceeding that the Commission has commenced in this case provides appropriate procedural due process.

16 Waste Management suggests that granting the relief Stericycle requests would result in an unlawful taking of private property.²⁴ The Washington Constitution requires just compensation when private property is taken for public or private use.²⁵ But the scope of Waste Management’s private property interest in Certificate G-237 derives from and is defined by state law. State law provides that the certificate is subject to the Commission’s authority to alter or amend under RCW 81.77.030.²⁶ The Commission does not take any property within the meaning of the takings clause when it exercises that authority.²⁷

C. The Fact that Stericycle Will Have the Burden of Proof is Not a Basis for Dismissal.

17 Waste Management is correct that Stericycle, as the complainant, will have the burden to prove abandonment.²⁸ The language of RCW 81.77.030 makes that clear:

²² *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985).

²³ [RCW 34.05.422\(1\)\(c\)](#). G certificates fall within the definition of a “license” under [RCW 34.05.010\(9\)\(a\)](#).

²⁴ Docket TG-110553, [Waste Management of Washington, Inc.’s Motion to Dismiss Stericycle’s Complaint and Petition](#), ¶ 25 (April 12, 2011); see [Answer of Waste Management of Washington, Inc. to Complaint and Petition of Stericycle](#), ¶ 33 (April 21, 2011).

²⁵ Wash. Const. art. I, § 16; see U.S. Const. amend. V.

²⁶ [RCW 81.77.030](#).

²⁷ See *Kafka v. Mont. Dep’t of Fish, Wildlife & Parks*, 201 P.3d 8 (Mont. 2008) (game farm regulation did not take farmers’ property interests in game farm licenses); *Vanek v. State*, 193 P.3d 283 (Alaska 2008) (fishing regulations did not take fishers’ property interests in commercial fishing permits).

²⁸ Docket TG-110553, [Waste Management of Washington, Inc.’s Motion to Dismiss Stericycle’s Complaint and Petition](#), ¶ 20 (April 12, 2011).

The commission, on complaint made on its own motion or by an aggrieved party, at any time, after providing the holder of any certificate with notice and an opportunity for a hearing *at which it shall be proven that the holder . . . has failed to operate* as a solid waste collection company for a period of at least one year preceding the filing of the complaint, may suspend, revoke, alter, or amend any certificate

(Emphasis added.)

18 The statutory language does not describe what kind of proof is needed, but the legislative history sheds some light on that question. The “failed to operate” language was added in 1965.²⁹ The bill that added it also contained this second “failed to operate” clause:

The commission on complaint made on its own motion or by an aggrieved party, at any time, after the holding of a hearing of which the certificate holder has had notice and an opportunity to be heard, and at which it shall be proven that the holder has failed to operate as a garbage and refuse collection company in part of the area or territory covered by such certificate for a period of at least one year preceding the filing of the complaint, may alter or amend such certificate by deleting such area or territory therefrom if such area or territory is being served pursuant to a certificate held by another garbage and refuse collection company.

19 Governor Dan Evans vetoed the above language, saying:

It is possible that a company might fail to operate in a certain territory because a competitor had all of the available customers; and a deletion of this territory would thus eliminate any chance of competition in the future.

Moreover, this bill does not require a showing that the company in question had refused service to any potential customer.

I have vetoed the last paragraph of Section 1 because I fear that it will have the effect of reducing competition in the garbage and refuse collection industry which would not be in the best interests of the public.³⁰

20 Washington courts may consider a governor’s statements on vetoing a part of a bill to discern the meaning of the remaining sections.³¹ The statement quoted above shows

²⁹ 1965 Wash. Laws. 1st ex. sess. ch. 105, § 1 (copy attached as Attachment B).

³⁰ 1965 Wash. Laws 1st ex. sess. ch. 105, Note.

³¹ *E.g., Guillen v. Contreras*, 169 Wn.2d 769, 777 n.3, 238 P.3d 1168, 1172 n.3 (2010); *State ex rel. Royal v.*

Governor Evans thought the unvetoes “failed to operate” portion of RCW 81.77.030 would not have the effect of reducing competition. He understood that a showing of “failed to operate” could include evidence that a company had refused service to a potential customer.

21 Though the Court of Appeals in *LeMay* did not mention the 1965 veto message, it expressed a similar view about the type of proof required under RCW 81.77.030: “We believe that a certificate holder can be deemed to have abandoned a portion of its ‘business of transporting garbage and/or refuse for collection’ only if the certificate holder either is unavailable to serve customers or refuses to serve potential customers.”³² That view is consistent with the common law, which defines abandonment or waiver of a legal right as an “intentional relinquishment of a known right” that must be demonstrated by “unequivocal acts or conduct.”³³

22 The fact that abandonment may be difficult to prove is not a basis for dismissing Stericycle’s complaint. Under CR 12(b)(6), a plaintiff states a claim upon which relief can be granted if it is possible that facts could be established to support the allegations in the complaint.³⁴ Stericycle’s allegation of abandonment meets that standard. The Commission should deny Waste Management’s motion to dismiss and allow the facts to be developed.

III. CONCLUSION

23 The Commission should adhere to its interpretation of RCW 81.77.030 in *Mason County Garbage Company v. Harold LeMay Enterprises*, Order M.V.G. No. 1403 (Wash. Utils. & Transp. Comm’n, Aug. 18, 1989). Under that interpretation, the Commission “may

Bd. of Yakima Cnty. Comm’rs, 123 Wn.2d 451, 462-65, 869 P.2d 56, 63-64 (1994).

³² 67 Wn. App. at 883, 841 P.2d at 61.

³³ *Wagner v. Wagner*, 95 Wn.2d 94, 102, 621 P.2d 1279, 1283-84 (1980); *White Pass Co. v. St. John*, 71 Wn.2d 156, 163-64, 427 P.2d 398, 402 (1967).

³⁴ *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96, 101, 233 P.3d 861, 862 (2010). Under [WAC 480-07-380](#)(1)(a), the Commission will consider the standards of CR 12(b)(6) in ruling on a motion to dismiss.

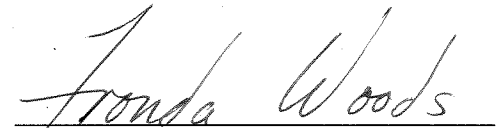
... alter, or amend” a G certificate by deleting a portion of it after considering the evidence and public policy.³⁵ Neither the due process clause nor the takings clause of the state and federal constitutions precludes the Commission from considering whether to alter or amend Waste Management’s certificate.

24 Stericycle’s complaint states a claim upon which relief can be granted under RCW 81.77.030. Whether Stericycle can prove that it is entitled to any relief on that claim will depend on the facts. The Commission should deny Waste Management’s motion to dismiss and allow the facts to be presented.

DATED this 6th day of May 2011.

Respectfully submitted,

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Assistant Attorney General
Counsel for Washington Utilities and
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³⁵ *Mason County Garbage Co. v. Harold LeMay Enters.*, Order M.V.G. No. 1403 at 7 (Wash. Utils. & Transp. Comm’n, Aug. 18, 1989) (“the Commission therefore has discretion to take any or none of the authorized actions, depending on the particular facts of the case and on public policy considerations”).

DOCKET TG-110553

ATTACHMENT A

to

COMMISSION STAFF RESPONSE TO WASTE MANAGEMENT OF
WASHINGTON, INC.'S MOTION TO DISMISS STERICYCLE'S
COMPLAINT AND PETITION

Mason County Garbage Co. v. Harold LeMay Enterprises,
Order M. V. G. No. 1403, Cause No. TG-2163,
Commission Decision and Order Granting Exceptions, in Part; Reversing Proposed
Order; Amending Respondent's Certificate
(Wash. Utils. & Transp. Comm'n, Aug. 18, 1989)

SERVICE DATE

AUG 18 1989

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MASON COUNTY GARBAGE COMPANY,)	ORDER M. V. G. NO. 1403
)	
Complainant,)	CAUSE NO. TG-2163
)	
vs.)	COMMISSION DECISION AND
)	ORDER GRANTING EXCEPTIONS,
HAROLD LemAY ENTERPRISES,)	IN PART; REVERSING
)	PROPOSED ORDER; AMENDING
Respondent.)	RESPONDENT'S CERTIFICATE
.....))	

NATURE OF PROCEEDING: This is a complaint against a garbage and refuse collection company filed pursuant to chapter 81.77 RCW.

PROPOSED ORDER: On December 12, 1988, Administrative Law Judge Alice L. Haenle entered a proposed order dismissing the complaint on the basis that no grounds for restriction of respondent's certificate exist.

EXCEPTIONS AND REPLIES: Complainant excepted to the proposed order and contends that the evidence of record establishes that respondent abandoned a portion of its certificate authority and that respondent's certificate should be restricted to read in accordance with the service actually provided. Respondent replies that it operated as a garbage and refuse collection company as required by statute and that its certificate should not be restricted.

COMMISSION: The Commission grants the complainant's exceptions in part, reverses the proposed order and amends the respondent's certificate to delete abandoned authority.

[1]* Whether or not the holder intended to abandon a certificate (or a portion thereof) is judged by objective evidence, not by the holder's stated subjective intent. RCW 81.77.030; WAC 480-08-190.

[2] A failure to provide one or more types of service under a certificate is persuasive evidence of abandonment or

*Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

voluntary restriction, but it is not conclusive evidence. RCW 81.77.030.

[3] A finding that a certificate has been abandoned is supported by evidence that the certificate holder did not hold itself out as available to provide the services in question. RCW 81.77.030.

[4] To establish "holding out," a certificate holder must show that it made its services known in the territory and that it was willing and able to serve to the extent of its resources. RCW 81.77.030.

[5] The Commission will determine first whether or not a certificate holder has "failed to operate as a garbage and refuse collection company" and then will determine whether it is appropriate to suspend, revoke, alter or amend the certificate. The Commission will consider the specific facts of the case and any relevant public policy considerations. RCW 81.77.030

APPEARANCES: Complainant Mason County Garbage is represented by Richard A. Finnigan, Attorney, Tacoma. Respondent Harold LeMay Enterprises is represented by Linda R. Larson and Polly A. Lord, Attorneys, Seattle. The Commission is represented by Robert E. Simpson, Assistant Attorney General, Olympia.

MEMORANDUM

This is a complaint brought by Mason County Garbage Company (Mason County Garbage) against Harold LeMay Enterprises (LeMay) pursuant to RCW 81.77.030. Under that statute the Commission may suspend, revoke, alter or amend a certificate if the certificate holder has "failed to operate as a garbage and refuse collection company for a period of at least one year preceding the filing of the complaint". At the hearing, the complainant requested: (1) a finding that a portion of LeMay's certificate authority in Mason County has been abandoned and, (2) a restrictive amendment of the certificate to authorize refuse collection in drop box containers only.

The Administrative Law Judge entered a proposed order dismissing the complaint on the basis that the respondent's operations during the year preceding the complaint were sufficient to establish that it operated as a garbage and refuse collection company within the meaning of the statute. The proposed order holds that a certificate holder need not provide every conceivable type of garbage and refuse collection service at all times in order to be operating within the meaning of RCW 81.77.030, so long as it provides reasonable service, and that

failure to provide every conceivable type of service does not constitute abandonment of a certificate.

Complainant filed 11 exceptions to the proposed order. All of these exceptions concern the interpretation of RCW 81.77.030 and will be dealt with generally. RCW 81.77.030 reads, in pertinent part, as follows:

The Commission, on complaint made on its own motion or by an aggrieved party, at any time, after the holding of a hearing of which the holder of any certificate has had notice and an opportunity to be heard, and at which it shall be proven that the holder . . . has failed to operate as a garbage and refuse collection company for a period of at least one year preceding the filing of the complaint, may suspend, revoke, alter or amend any certificate....

Complainant argues that the evidence establishes that LeMay voluntarily restricted or abandoned its certificate and that the Commission should alter or amend the certificate to reflect the actual service provided. In this case complainant argues that LeMay's authority in Mason county should be restricted to refuse collection in drop box containers only, as that was the service provided during the year preceding the filing of the complaint. Respondent replies that it operated as a garbage and refuse collection company by providing drop box service, that this service was sufficient to preserve all of the authority under its certificate and that the certificate should not be restricted.

BACKGROUND

Both Mason County Garbage (Certificate G-88) and LeMay (Certificate G-98) hold authority to collect garbage in Mason County. Lemay has operated in Mason County since the 1960s or earlier. During the 1950s and 1960s LeMay had some residential accounts. Since 1974 LeMay has provided only weekly drop box service for commercial accounts. It did not service any can or container customers until 1988.

Mason County Garbage has also been operating in Mason County since the 1960s or earlier. Mason County Garbage has provided residential can and container service to its customers in Mason County.

In 1974, Harold LeMay and the then owners of Mason County Garbage met and discussed the services that each company was providing. The owners of Mason County Garbage called the

meeting because they were concerned about possible competition from LeMay. It was agreed that the companies would continue providing services as they had been; LeMay would continue serving drop box customers and Mason County Garbage would continue serving residential can and container customers. This agreement was reached in recognition of the small number of customers in Mason County and because it would not have been economically viable for both companies to offer the same types of service.

Michael D. Johnson purchased Mason County Garbage in 1984. The companies co-existed in Mason county until Mr. Johnson observed LeMay providing container service to one account and learned that residential service was imminent. The resulting complaint was filed on February 23, 1988.

INTENT OF THE PARTIES

Both parties make much of the issue of intent. Each party contends that it had no intent to abandon, relinquish, or restrict its authority either in 1974 or thereafter. Mason County argues that abandonment of a certificate should be established by objective evidence alone and that the subjective intent of the parties is irrelevant. LeMay replies that intent is relevant in this case insofar as it relates to any contract issue and that in any event the objective evidence of record does not establish that any authority was abandoned.

[1] Permit authority, once issued and while being exercised, is a property right. It cannot be taken away without proper procedural safeguards and without the fairly clear indication that there was an intention to abandon the permit or a part of it, or that some other principle is paramount to the property right. Order M. V. No. 132877, In re Paffile Truck Line, Inc.,/Service Truck Lines, Inc., App. No. P-68392 (Dec., 1985).

However, the intent to abandon is established by the objective evidence and not by the stated intent of the party. In a case concerning the use of a trade name, the court stated ". . .it must appear there was an intent to abandon the trade name, but necessarily intent, unless admitted, can be shown only by the acts of the party and the reasonable inferences to be drawn therefrom." Foss v. Culbertson 17 Wn 2nd 610 (1943). In that case the plaintiff had not used certain trade names for over three years, but argued that it was never his intent to abandon them.

It must appear that there was an intent to abandon the permit and that is determined by the objective manifestation

of intent, not by the stated subjective intent of the party which is not otherwise manifested.

ABANDONMENT/VOLUNTARY RESTRICTION

Whether or not a certificate holder has failed to operate as a garbage and refuse collection company is a question of fact to be determined based on the evidence presented in each case. A garbage and refuse collection company is defined as one in the business of transporting garbage and refuse for collection and/or disposal for all potential customers within a specialized area. RCW 81.77.010(7). The parties in this case agree that LeMay's operations fit within this definition. However, Mason County Garbage argues that LeMay's operations were so limited and specialized that it is reasonable to conclude that LeMay operated only a portion of its authority and that it failed to operate as a garbage and refuse collection company in all other respects. Neither party argues that the informal agreement reached in 1974 restricted either party's certificate. Rather, the argument is that LeMay's actions as a result of the agreement evidences a voluntary restriction or abandonment of its authority.

[2] A failure to provide one or more types of service is persuasive evidence of abandonment or voluntary restriction. However, it is not conclusive evidence. The Commission recognizes that not all garbage and refuse collection services are required at all times. A certificate holder should not be required to provide services which are not required by its customers because it fears losing its authority. A certificate holder with general garbage and refuse collection authority should have some flexibility in the services it provides to allow it to meet customer/community demands.

[3] Thus, a finding that a certificate has been abandoned should be supported by evidence that no services were provided under all or a portion of the certificate. Additionally, there should be evidence that the certificate holder did not hold itself out to provide those services. Evidence of this nature will support a finding that the certificate holder "failed to operate as a garbage and refuse collection company" with regard to that portion of the certificate which is at issue.

Respondent cites City Sanitary Service, Inc. v. Washington Utilities and Transportation Commission 64 Wn. 2d 739, 393 P. 2d 952 (1964) to support the position that all services need not be provided under a garbage and refuse collection certificate to preserve the rights under that certificate. That case considered whether or not the applicant was

operating as a garbage and refuse collection company for purposes of the grandfather clause in RCW 81.77.040. The application was challenged because the applicant did not haul from any restaurants or food serving establishments. The Commission stated that "garbage and refuse collection from any establishment is all that is necessary." However, it should be noted that the applicant had provided only commercial/industrial service and was granted authority which was limited, in general terms, to the actual type of service it had provided in the past. City Sanitary does not stand for the proposition that any service at all preserves all operating rights under a general garbage and refuse collection certificate. The very existence of statutory authority to "amend or alter" certificates contemplates less-than-total geographic or commodity abandonment. Amendment recognizing major service types is appropriate.

During the year preceding the filing of the complaint, LeMay provided only drop box service and not residential can or container service. The inquiry is then whether or not LeMay held itself out during the year February 1987 through February 1988 as available to provide garbage and refuse collection services other than drop box service.

The evidence on the record establishes that LeMay advertised in a regional telephone directory for 1988 under the general heading "Garbage and Rubbish Collection". That ad lists just the company name and phone number and does not detail the services available. A large ad in the same directory emphasizes LeMay's drop box service. A third listing, for the county landfill, also lists LeMay's business phone number. Witnesses produced by Mason County Garbage, long-time residents of the area, were unaware that LeMay could or would provide can or container service. LeMay's trucks were present in the county only to provide the drop box services. Under these facts the Commission is not convinced that LeMay held itself out as a general garbage and refuse collection company.

[4] Where a party relies on "holding out" to preserve its permit authority, it must demonstrate that it was willing and able to perform service within the territory and that it made that fact known to the extent of its resources. Order M. V. No. 137755, In re Courtesy Moving and Storage, Inc./Big Red, Inc., App. No. P-71320 (May, 1988). In 1987, LeMay had revenues from garbage and refuse collection services in excess of \$9 million. LeMay's authority includes large portions of Thurston, Pierce, Grays Harbor and Lewis Counties. Under these circumstances, the telephone listings and the presence of LeMay's trucks for weekly drop box collection in the area are insufficient to establish that it held itself out as having general garbage and refuse collection authority. The company

did not operate in such a way as to bring its name to the attention of potential can or container customers. It should be found to have made a conscious decision not to provide those services.

AMENDMENT OF CERTIFICATE

[5] When a certificate holder has failed to operate as a garbage and refuse collection company for a least one year preceding the filing of a complaint, the Commission is authorized to suspend, revoke, alter or amend the certificate. The statutory language is permissive (may) rather than mandatory (shall) and the Commission therefore has discretion to take any or none of the authorized actions, depending on the particular facts of the case and on public policy considerations. Public policy considerations might include, but would not necessarily be limited to, the limitations on restrictive amendments set forth in WAC 480-12-050. In this case, there do not seem to be any compelling public policy considerations which would preclude a restrictive amendment of the type requested. In fact, the Commission has granted just this type of limited authority on initial application.

However, we are not entirely in accord with complainant's initial request. The complaint asks that LeMay's certificate be limited to authorize refuse collection in drop box containers only. The evidence of record does not establish that LeMay limited its operation to refuse collection. Complainant apparently recognizes this and, on exception, requests that the certificate be limited to garbage and refuse collection in drop box containers.

Based on the entire record and the file in this case, the Commission makes and enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Michael D. Johnson, d/b/a Mason County Garbage Company, holds certificate G-88. Harold LeMay Enterprises, Inc., holds certificate G-98. Both certificates authorize garbage collection in Mason County.
2. On February 23, 1988, Mason County Garbage filed a complaint against LeMay. LeMay answered on June 6, 1988.
3. On June 9, 1988 the Commission entered an order on stipulation of the parties dismissing complainant's motion for summary suspension of tariff rates.

4. A hearing was held on the remainder of the complaint which asked for a finding that respondent had abandoned a portion of its certificate, and that respondent's certificate be restricted to refuse collection in drop box containers only.

5. LeMay has provided drop box garbage and refuse collection service to customers in Mason County since 1974. LeMay did not serve any residential customers and did not provide can or container service until 1988.

6. In 1974 Harold LeMay and the owners of Mason County Garbage entered into a "gentleman's" agreement to continue to provide services in accordance with the way they were provided at that time. It would not have been economically viable for both companies to provide a full range of collection services; thus, LeMay provided drop box service and Mason County Garbage provided can and container service.

7. During 1987, LeMay's total revenues from its garbage and refuse collection business exceeded \$9 million. LeMay operates its business in four other counties in addition to Mason County.

8. LeMay has operated the Mason County landfill since 1986. In a 1988 Regional telephone directory, LeMay lists its business phone number as the landfill number. That directory also lists LeMay's phone number under its own name. There is an advertisement in the directory which emphasizes the drop box aspect of the business. All of these listings are under the general heading "Garbage and Rubbish Collection".

9. Witnesses produced by Mason County Garbage, long time residents of Mason County, were unaware that LeMay could or would provide residential can or container service.

10. Lemay did not refuse service to any customer or potential customer in Mason county during the year preceding the filing of the complaint.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this complaint and the parties thereto.

2. The provisions of RCW 81.77.030 allow the Commission to suspend, revoke, amend, or alter a certificate if the certificate holder has failed to operate as a garbage and refuse collection company for a period of at least one year preceding the filing of the complaint. When a certificate

holder fails to operate a portion of its authority during the test year, the certificate may be altered or amended to reflect that fact and a portion of the authority may be deleted.

3. A certificate holder has "failed to operate" within the meaning of RCW 81.77.030 when it has not performed services under a portion of its authority and it has not held itself out as having that authority.

4. Even under circumstances where a restrictive amendment is authorized by statute, it will not be imposed automatically. The Commission will look at the nature of the amendment and the particular facts of each case to determine whether or not an amendment is warranted by the circumstances.

5. LeMay's certificate should be amended based on the facts in this case. LeMay did not provide residential or container service under its general garbage authority, and while it did not refuse service to any potential or existing customers, it also did not hold itself out to provide that service.

6. The complaint is granted, in part. Respondent's certificate should be amended to authorize garbage collection in Mason County in drop box containers only.

O R D E R


WHEREFORE, IT IS HEREBY ORDERED That the complaint herein be granted, in part;

IT IS FURTHER ORDERED That Certificate G-98 of Harold LeMay Enterprises shall be and the same is hereby amended to restrict its authority in Mason County to collection in drop box containers only.

The certificate as amended is set forth in appendix "A" attached hereto and by this reference made a part hereof.

DATED at Olympia, Washington, and effective this 16th
day of August, 1989.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



A. J. PARDINI, Commissioner

APPENDIX A

GARBAGE COLLECTION SERVICE In That portion of Pierce County beginning in Section 30, Township 21 North, Range 4 E.W.M. at the point of intersection of the northeast boundary of the Tacoma city limits and the Pierce County-King County line; thence southerly along the Tacoma city limits as of April 1, 1974, to its point of intersection with 72nd Street East known herein as the point of beginning; thence east on the centerline of 72nd Street East to Waller Road; thence south on the centerline of Waller Road to 112th Street; thence east on the centerline of 112th Street to Meridian Street; thence south on the centerline of Meridian Street to the Kapowsin Highway; thence east on the centerline of Kapowsin Highway to its point of intersection with Electron County Road; thence east along the centerline of Electron County Road to the Southwest corner of Section 33, Township 18 North, Range 5 E.W.M.; thence continuing east along the centerline of the Section line between Township 17 North and 18 North, to its intersection with the East boundary line of Mt. Rainier National Park; thence south along said boundary to its intersection with the Pierce County-Yakima County boundary line; thence south along the Pierce County-Yakima County line to the intersection of said line with the Pierce County-Lewis County line; thence west along the Pierce County-Lewis County line to the intersection of the Thurston County-Pierce County-Lewis County line; thence northerly along the Thurston County-Pierce County line to Puget Sound; thence northerly along the east shoreline of Puget Sound including Anderson Island, McNeil Island and Ketron Island to the intersection with the south shoreline of Chambers Bay; thence east along the south shoreline of Chambers Bay, including the property of West Tacoma Newsprint Co. as of April 1, 1974, to the intersection with the projected west property line of Western State Hospital; thence south along the west property line projected to the intersection of Steilacoom Boulevard (State Historical Road No. 1); thence east along centerline of Steilacoom Boulevard to the northerly projected centerline of Water Street (99th Avenue S.W.); thence south along projected centerline of Water Street to the intersection of Clara Boulevard; thence southerly and easterly along Clara Boulevard including easterly and southerly side to the rear property line of those addresses fronting on Clara Boulevard and Lake Louise Drive to intersection with centerline of Lake Louise Drive; thence southerly and westerly along said centerline to the intersection with centerline of Holden Road; thence south along Holden Road including those addresses fronting on east side of said road from Lake Louise Drive to 112th Street S.W., to the intersection with centerline of Military Road; thence southeasterly along said centerline to the intersection with Washington Boulevard S.W. (120th Street); thence west along centerline of Washington Boulevard to the intersection with Nottingham Avenue; thence south along centerline of Nottingham Avenue to the intersection with Fort Lewis military reservation boundary; thence

along said boundary to the shoreline of American Lake; thence easterly and southerly along American Lake shoreline to southwesterly property line to Tacoma Country Club; thence south and east along said property line to the intersection of old Highway 99 extended; thence north along the centerline of old Highway 99 to the intersection of 112th Street S.W. (Airport Road); thence north along the centerline of old Highway 99 (South Tacoma Way) excluding the east side of the highway for business and dwellings fronting on and having a Highway 99 address, to the south city limits of the City of Tacoma as of April 1, 1974; thence west along southerly boundary of City of Tacoma (80th Street extended) to the intersection with Orchard Street extended; thence north along centerline of Orchard Street extended to the intersection with South 19th Street; thence west along centerline of South 19th Street to the intersection with Day Island Waterway (east side of The Narrows); thence following the shoreline of Puget sound in a northerly direction to Point Defiance and Commencement Bay; thence following the shoreline of Commencement Bay to its intersection with the west city limits of Tacoma located in Section 21, Township 21 North, Range 3 E.W.M.; thence following the city limits of Tacoma in a clockwise direction to its intersection with 72nd Street East, the point of beginning.

Also, all areas within the boundaries of Pierce County occupied by United States Government Installations.

GARBAGE COLLECTION SERVICE In Hoquiam and Aberdeen, both city limits as of September 6, 1960, and in that portion of Grays Harbor County east of Aberdeen described as follows: Starting at the S.E. corner of Sec. 13, T. 17 N., R. 9 W.; thence west on the south line of said section projected to the east limits of Aberdeen as of September 6, 1960; thence following the east limits of Aberdeen in a northerly direction to the N.W. corner of Sec. 2, T. 17 N., R. 9 W.; thence east on the north line of said section projected to the N.E. corner of Sec. 1, T. 17 N., R. 9 W.; thence south on the east line of said section projected to the S.E. corner of Sec. 13, T. 17 N., R. 9 W., the place of beginning.

In Lewis County.

In Mason County restricted to drop box service only.

In Olympia as of September 6, 1960, and in that portion of Thurston County described as follows: Starting at the point where the south bank of Alder Lake intersects with the south line of Sec. 19, T. 15 N., R. 5 E. (Thurston-Lewis County Line); thence following said county line west to the north south centerline of Section 21, T. 15 N. R. 1 E.; thence north along centerline to the north line of Section 9, T. 16 N., R. 1 E.; thence west along north line of said section to the southwest corner of Section 6, T. 16 N., R. 1 E.; thence north along west line of said section to the N.W. corner of Sec. 6, T. 16 N., R. 1

E.; thence east on the north line of said section projected to the S.W. corner of Sec. 33, T. 17 N., R. 1 E.; thence north on the west line of said section projected to the westerly bank of the Nisqually River (Sec. 9, T. 18 N., R. 1 E.); thence following the westerly bank of said river in a southeasterly direction to Alder Lake; thence following the south bank of Alder Lake easterly to the point of intersection with the south line of Sec. 19, T. 15 N., R. 5 E., the place of beginning.

Also, beginning in the northwest corner of Section 2, T. 16 N., R. 4 W.; thence east along north line of said section projected to the northeast corner of Section 5, T. 16 N., R. 3 W.; thence south along west line of said section to the southeast corner of said Section 5; thence west along south line of said section projected to the southeast corner of Section 2, T. 16 N., R. 4 W.; thence north along west line of said section to the north west corner of Section 2, T. 16 N., R. 4 W.; the point of beginning.

REFUSE AND TRADE WASTE COLLECTION SERVICE From the Puget Sound Navy Yard at Bremerton to dumps in Kitsap County. Garbage and Refuse Collection Service at U.S. Naval Supply Depot, Seattle, Washington, under contract with the DEPARTMENT OF THE NAVY.

GARBAGE AND REFUSE COLLECTION SERVICE in that portion of Thurston and Lewis Counties described as follows: Beginning at the point where the north-south centerline of Section 21, T. 15 N., R. 1 E. intersects the Thurston-Lewis County Line; thence west on said line to the north-south centerline of Section 19, T. 15 N., R. 2 W.; thence south along said centerline to the south line of Section 7, T. 14 N., R. 2 W.; thence west along said south line extended to the southwest corner of Section 9, T. 14 N., R. 3 W.; thence north along the west line of said Section 9 extended to the southeast corner of Section 20, T. 15 N., R. 3 W.; thence west along the south line of said Section 20 extended to the southwest corner of Section 23, T. 15 N., R. 4 W.; thence north along the west line of said Section 23 extended to the northwest corner of Section 14, T. 16 N., R. 4 W.; thence east along the north line of said Section 14 extended to the southwest corner of Section 7, T. 16 N., R. 1 E.; thence north along the west line of said Section 7 to the northwest corner of said Section 7; thence east along the north line of said Section 7 extended to the north-south centerline of Section 9, T. 16 N., R., 1 E.; thence south along said north-south centerline extended to the south line of Section 21, T. 15 N., R. 1 E., the Thurston-Lewis County Line, the point of beginning.

LIMITATION: No service to be rendered to or from the Cedar Creek Youth Camp located in Sections 11 and 12, T. 16 N., R. 4 W., Thurston County, Washington.

The following authority was obtained by transfer from Enar Shoblom, d/b/a Butlers Cove Refuse Service, holder of Certificate No. G-4:

GARBAGE COLLECTION SERVICE In the following described territory within Thurston County: Starting at the southeast corner of the southwest quarter of the southwest quarter of Section 27, T. 18 N., R. 2 W.; thence west on the south line of said section extended to the southwest corner of Section 28, T. 18 N., R. 3 W.; thence north on the west line of said section extended to the shore line of Totten Inlet (Oyster Bay); thence northeasterly along the southeasterly shore of said Inlet to the north end of Steamboat Island; thence easterly and southerly along the west shore of Squaxin Passage and Budd Inlet to the point where it intersects with the north line of Section 10, T. 18 N., R. 2 W.; thence west along said line to the northeast corner of the northwest quarter of the northwest quarter of said Section 10; thence south on said quarter section line extended to the south line of Section 27, T. 18 N., R. 2 W., the place of beginning.

M. V. G. No. 1403

DOCKET TG-110553

ATTACHMENT B

to

COMMISSION STAFF RESPONSE TO WASTE MANAGEMENT OF
WASHINGTON, INC.'S MOTION TO DISMISS STERICYCLE'S
COMPLAINT AND PETITION

1965 Wash. Laws 1st ex. sess. ch. 105

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CHAPTER 105.

[House Bill No. 348.]

GARBAGE AND REFUSE COLLECTION COMPANIES.

AN Act relating to public service companies; amending section 4, chapter 295, Laws of 1961 and RCW 81.77.030; adding two new sections to chapter 295, Laws of 1961 and to chapter 81.77 RCW; amending section 81.08.010, chapter 14, Laws of 1961 and RCW 81.08.010; amending section 81.12.010, chapter 14, Laws of 1961, as amended by section 5, chapter 59, Laws of 1963, and RCW 81.12.010.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Section 4, chapter 295, Laws of 1961 and RCW 81.77.030 are each amended to read as follows:

RCW 81.77.030 amended.

The commission shall supervise and regulate every garbage and refuse collection company in this state,

Garbage and refuse collection companies. Supervision and regulation by commission.

(1) By fixing and altering its rates, charges, classifications, rules and regulations;

(2) By regulating the accounts, service, and safety of operations;

(3) By requiring the filing of annual and other reports and data;

(4) By supervising and regulating such persons or companies in all other matters affecting the relationship between them and the public which they serve.

The commission, on complaint made on its own motion or by an aggrieved party, at any time, after the holding of a hearing of which the holder of any certificate has had notice and an opportunity to be heard, and at which it shall be proven that the holder has wilfully violated or refused to observe any of the commission's orders, rules, or regulations, or has failed to operate as a garbage and refuse collection company for a period of at

Garbage and refuse collection companies. Supervision and regulation by commission.

least one year preceding the filing of the complaint, may suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter.

The commission on complaint made on its own motion or by an aggrieved party, at any time, after the holding of a hearing of which the certificate holder has had notice and an opportunity to be heard, and at which it shall be proven that the holder has failed to operate as a garbage and refuse collection company in part of the area or territory covered by such certificate for a period of at least one year preceding the filing of the complaint, may alter or amend such certificate by deleting such area or territory therefrom if such area or territory is being served pursuant to a certificate held by another garbage and refuse collection company.

New section.

SEC. 2. There is added to chapter 295, Laws of 1961 and to chapter 81.77 RCW a new section to read as follows:

Temporary certificates—Conditions on issuance—Fee.

The commission may with or without a hearing issue temporary certificates to engage in the business of operating a garbage and refuse collection company, but only after it finds that the issuance of such temporary certificate is consistent with the public interest. Such temporary certificate may be issued for a period up to one hundred eighty days where the area or territory covered thereby is not contained in the certificate of any other garbage and refuse collection company. In all other cases such temporary certificate may be issued for a period not to exceed one hundred twenty days. The commission may prescribe such special rules and regulations and impose such special terms and conditions with reference thereto as in its judgment are reasonable and necessary in carrying out the provisions of this chapter. The commission shall

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collect a fee of twenty-five dollars for an application for such temporary certificate.

SEC. 3. Section 81.08.010, chapter 14, Laws of 1961 and RCW 81.08.010 are each amended to read as follows:

RCW 81.08.010 amended.

The term "public service company", as used in this chapter, shall mean every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title: *Provided*, That it shall not include any such company the issuance of stocks and securities of which is subject to regulation by the Interstate Commerce Commission: *Provided further*, That it shall not include any "motor carrier" as that term is defined in RCW 81.80.010 or any "storage warehouse", "storage warehouseman" or "warehouseman" as those terms are defined in RCW 81.92.010 or any "garbage and refuse collection company" subject to the provisions of chapter 81.77 RCW.

Public service companies—
Securities.
Definitions.

SEC. 4. Section 81.12.010, chapter 14, Laws of 1961, as amended by section 5, chapter 59, Laws of 1963, and RCW 81.12.010 are each amended to read as follows:

RCW 81.12.010 amended.

The term "public service company," as used in this chapter, shall mean every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title or Title 22: *Provided*, That it shall not include common carriers subject to regulation by the Interstate Commerce Commission: *Provided further*, That it shall not include motor freight carriers subject to the provisions of chapter 81.80 or garbage and refuse collection companies subject to the provisions of chap-

Public service companies—
Transfer-of-property.
Definitions.

Garbage and refuse collection companies.

ter 81.77 RCW: *Provided further*, That nothing contained in this chapter shall relieve public service companies from the necessity for compliance with the provisions of RCW 81.80.270.

"Garbage and refuse" defined.

81.77-015

SEC. 5. Whenever in this chapter the phrase "garbage and refuse" is used as a qualifying phrase or otherwise it shall be construed as meaning "garbage and/or refuse."

Passed the House March 19, 1965.

Passed the Senate March 24, 1965.

Approved by the Governor April 2, 1965, with the exception of a certain item in Section 1, which was vetoed.

Veto message.

NOTE: Governor's explanation of partial veto is as follows:

"The bill amends certain laws relating to garbage and refuse collection companies. The last paragraph of Section 1 would permit the Utilities and Transportation Commission to alter or amend a certificate held by a garbage and refuse collection company if such a company had failed for at least one year to operate in a part of the area or territory covered by the certificate.

"It is possible that a company might fail to operate in a certain territory because a competitor had all of the available customers; and a deletion of this territory would thus eliminate any chance of competition in the future.

"Moreover, this bill does not require a showing that the company in question had refused service to any potential customer.

"I have vetoed the last paragraph of Section 1 because I fear that it will have the effect of reducing competition in the garbage and refuse collection industry which would not be in the best interests of the public.

"The remainder of House Bill 348 is approved."

DANIEL J. EVANS,
Governor.

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