

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper
Carrier Classification of:

GLACIER RECYCLE, LLC;
HUNGRY BUZZARD RECOVER, LLC;
AND T&T RECOVERY, INC.

DOCKET NO. TG-072226

COMMISSION STAFF'S
RESPONSE OPPOSING HUNGRY
BUZZARD'S MOTION TO
DISMISS

1 Commission Staff submits the following response in opposition to Hungry Buzzard's
March 24, 2008, Motion to Dismiss.

I. INTRODUCTION

2 In its Motion to Dismiss, Hungry Buzzard requests that it be dismissed from this
proceeding "subject to the stipulation that Hungry Buzzard will comply with the final
decision entered by the Commission herein."¹ Hungry Buzzard asserts, based on a
declaration from its managing member, Marc Christiansen, that it "has ceased the activities
which form the basis for the . . . proceedings."² Based on its stipulation to comply with the
final decision and its representation regarding cessation of activities, Hungry Buzzard
asserts that further proceedings against it are moot.³

3 In response to data requests propounded to all Respondents by Staff on February 27,
2008, Hungry Buzzard provided, on March 25, 2008, its written objection to all of Staff's
data requests as "overly broad, unduly burdensome and expensive in light of the needs of the

¹ Motion to Dismiss at 4.

² *Id.* at 1.

³ *Id.* at 3.

case with respect to Hungry Buzzard, LLC, and limitations on its resources,” referencing WAC 480-07-400(3) and the company’s motion to dismiss filed the same day.⁴

4 Staff objects to dismissal of Hungry Buzzard from this proceeding, despite the company’s representation that it is no longer hauling material directly to the Weyerhaeuser facility, and despite Mr. Christiansen’s stipulation to abide by the final decision reached in this proceeding.

II. DISCUSSION

5 There are three reasons for Staff’s objection to dismissal of Hungry Buzzard.

1. **Hungry Buzzard may still be transporting solid waste that ends up at Weyerhaeuser’s facility.**

6 It is not true that Hungry Buzzard has “shut down all operations” as of January 2008, as Mr. Christiansen’s Declaration suggests.⁵ In fact, it may be that there is no legally significant difference between what Hungry Buzzard is now doing, and what it was alleged to be doing in the order initiating this proceeding.

7 According to a March 3, 2008, letter from Mr. Christiansen, the company has only shut down its alleged materials recovery (sorting) facility in Snohomish County.⁶ The company admits it is still transporting what it asserts to be recyclable materials to various facilities owned or operated by other entities:

To clarify, Hungry Buzzard has shut down all operations at its material recovery facility. Hungry Buzzard still operates as a trucking company of recyclable materials; however, all materials that it collects are hauled to the material recovery facilities identified in the March 3, 2008 letter. Hungry Buzzard does not currently send anything to the Weyerhaeuser material recovery facility in Longview, Washington.⁷

⁴ Thompson Decl at ¶ 2.

⁵ Christiansen Decl. ¶ 2.

⁶ Thompson Decl. ¶ 3, Exh. A.

⁷ Thompson Decl. at ¶ 4.

The legality of the sorting facility is not the focus of this proceeding because the Commission does not regulate sorting facilities. Rather, the Commission regulates the *transportation* of solid waste. Therefore, the focus is whether the Respondents are “operating, or managing vehicles used in the business of *transporting solid waste* for collection or disposal, or both, for compensation . . . over any public highway in this state as a ‘common carrier’ or as a ‘contract carrier.’”⁸ (Although the names of some of the entities to which Hungry Buzzard claims to be hauling in its March 3, 2008, letter⁹ suggest that they are engaged in recycling, there is no evidence as to whether they are *bone fide* recyclers.) Significantly, one of the facilities to which the company admits it hauls materials is that of Respondent Glacier Recycle, LLC.¹⁰ Glacier Recycle admits to hauling CDL material from its facility to the Weyerhaeuser facility in Longview.

8 Thus, even though Hungry Buzzard asserts that it is no longer hauling material to the Weyerhaeuser facility, it does not deny that it is still collecting CDL waste from commercial generators of such waste, or that such waste may be ending up, through additional transportation by Respondent Glacier Recycle, at the Weyerhaeuser facility. If Hungry Buzzard is hauling material to Glacier Recycle that Glacier, in turn, hauls to Weyerhaeuser for disposal, then there is no significant difference between the facts alleged in the Order Instituting Special Proceeding and what Hungry Buzzard is currently doing.

⁸ [Emphasis added.] RCW 81.77.010 (defining “solid waste collection company”); RCW 81.77.020 (providing that no person shall engage in the business of operating as a solid waste collection company except in accordance with RCW 81.77). The Order initiating this proceeding, in the first paragraph, states that this proceeding is “to determine whether Glacier Recycle, LLC, Hungry Buzzard Recovery, LLC, and T&T Recovery, Inc. (collectively “the companies”), are operating as solid waste collection companies, hauling solid waste for compensation without the necessary certificate required for such operations by RCW 81.77.040.”

⁹ *Id.* at ¶ 3, Exh. A.

¹⁰ *Id.*

2. Hungry Buzzard may have simply diverted its transportation of the material alleged to be solid waste from Weyerhaeuser to another non-recycler for disposal.

9 Even if Hungry Buzzard has changed its operations such that the material it is transporting no longer ends up at Weyerhaeuser, the Commission is not required to dismiss its proceeding as against Hungry Buzzard. The broad purpose of the proceeding, as stated in the Commission's order, is to determine "whether Glacier Recycle, LLC, Hungry Buzzard Recovery, LLC, and T&T Recovery, Inc. (collectively "the companies"), are operating as solid waste collection companies, hauling solid waste for compensation without the necessary certificate required for such operations by RCW 81.77.040." Evidence developed through discovery may show that Hungry Buzzard has simply diverted its transportation of non-recyclable construction and demolition waste (which the Commission's order alleged Hungry Buzzard was collecting for transportation) from the Weyerhaeuser facility to some other disposal arrangement. Hungry Buzzard has not denied that it is collecting and transporting the same type of CDL waste for which there apparently is no recycling market. If discovery reveals that to be the case, then Staff may ask that the proceeding against Hungry Buzzard be severed from this proceeding because of a lack of sufficient common issues (*i.e.*, the common destination of Weyerhaeuser), and that the Commission amend the allegations and relief requested against Hungry Buzzard.

10 A company should not be allowed to evade a determination as to whether its operations are subject to Commission regulation simply by changing its operations in some way when a proceeding is initiated under RCW 81.04.510. A proceeding under that statute

is investigative in nature,¹¹ and the Commission is not bound to dismiss its investigation every time the company that is under investigation changes its operations.

3. There may be little value in Hungry Buzzard's stipulation to comply with the Commission's final decision in the case because each Respondent may present a unique set of facts.

11 WAC 480-70-016(4) lists the factors the Commission will consider in a case such as this:

In determining whether operations require a solid waste certificate or a motor carrier permit, the commission will consider factors including, but not limited to:

- (a) The intent of the shipper;
- (b) The intended destination of the shipment;
- (c) The actual destination of the shipment;
- (d) Special handling or conditions placed on the shipment by the shipper and/or receiver;
- (e) The value of the commodity being transported;
- (f) Whether the carrier is primarily engaged in the business of providing solid waste collection or is primarily engaged in the business of providing a service other than the collection of solid waste; and
- (g) Whether the carrier holds itself out to the public as a transporter of solid waste.

¹¹ "Whenever the commission believes that any person or corporation is engaged in operations without the necessary approval or authority required by any provision of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and bring with him books, records, accounts and other memoranda, and give testimony under oath as to his operations or acts, and the burden shall rest upon such person or corporation of proving that his operations or acts are not subject to the provisions of this chapter. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary."

Thus, the considerations are multi-faceted and even if the Commission ultimately determines that T&T Recovery and/or Glacier Recycle do not require a solid waste certificate, it might still determine that Hungry Buzzard's operations do require a certificate.

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If, for example, the Commission were to conclude that carriage of structural material to Weyerhaeuser is transportation for disposal (as Staff will argue), it could nonetheless conclude (although Staff will argue otherwise) that the amounts transported by Glacier Recycle and T&T Recovery are sufficiently small in relation to the amount of material those companies collect, that the companies do not require a solid waste collection certificate. The Commission might reach the opposite conclusion with regard to Hungry Buzzard. This is not merely hypothetical. In reports T&T Recovery filed with the Department of Ecology (which Staff obtained directly from DOE), T&T claimed to have delivered ██████████ of its "tons sold" to Weyerhaeuser in 2006.¹² Hungry Buzzard claims to have delivered ██████████ of its "tons sold" to Weyerhaeuser in that same year.¹³ Thus, the Commission could find that the dividing line for a solid waste collection certificate lies somewhere between these percentages. Or, the Commission might look at multiple factors, in addition to these kinds of percentages, as suggested by WAC 480-70-016. If Hungry Buzzard does not remain in the case, there will be no finding as to whether *its* unique operations require it to have a solid waste collection certificate.¹⁴

III. CONCLUSION

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For the foregoing reasons, Staff respectfully requests that the Commission deny Hungry Buzzard's motion to dismiss.

¹² Thompson Decl. at ¶ 5.

¹³ *Id.*

¹⁴ On the other hand, if the Commission does adopt a percentage test, then this finding would apply to other companies as a matter of *stare decisis*.

DATED this 3rd day of April, 2008.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General

A handwritten signature in black ink, appearing to read 'J. Thompson', written over a horizontal line.

JONATHAN C. THOMPSON
Assistant Attorney General
Counsel for Washington Utilities and
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