



WASHINGTON REFUSE & RECYCLING ASSOCIATION

May 27, 2016

Mr. Steve King
Executive Director
Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250

by email to sking@wutc.wa.gov

RE: Initial Order in Docket TG-151573

Dear Mr. King:

The Washington Refuse and Recycling Association (WRRA) has a number of concerns with the process of notification and the Initial Order in TG-151573. WRRA supports the recommendations of the Washington Utilities and Transportation Commission (WUTC) Staff and does not support the Initial Order in TG-151573. **WRRA strongly urges Staff to file a Petition for Administrative Review and urge the Commission to adopt the Staff recommendations.**

The regulated system in Washington is among the best, if not the best in the nation, but it requires adequate enforcement to function. The Staff investigation and recommendations in this case demonstrate the necessary level of diligence and enforcement to protect Washington's regulated system, solid waste collection companies, and to ensure the best service, protection, and lowest rates for Washington's consumers. The initial order appears to undermine not only a decade plus of focus and effort by both the WUTC and WRRA but contains several points of concern for WRRA and the solid waste industry as a whole:

- **Background #9:** The Company's argument that the certificated hauler lacked the equipment necessary to perform the job is unpersuasive, and has become a "go to" argument for illegal haulers in enforcement actions. This does not at all reconcile with our understanding of the facts. Furthermore, even if the certificate holder did not have the necessary equipment immediately available on hand, the certificate holder is under an obligation to provide the services, and would have taken the necessary steps to provide the service as required by law.
- **Decision #25:** The Initial Order States "the Company's actions technically harmed the certificated carrier by encroaching on its service territory..." The Company's actions did not "technically" harm Republic Services, they directly harmed the certificated carrier in the precise manner illegal haulers always harm the certificate holder by depriving the holder of valuable business and undermining the system that supports them and protects the consumers and environmental health of Washington's citizens. A repeat offender who diverts likely hundreds of thousands of revenue from the regulated hauler and Snohomish County has committed serious and harmful violations.
- **Decision #25:** The Initial Order states that "the violations themselves were neither serious nor harmful to the public." This claim is unfounded, erroneous, and not supported by the record. The Company is a repeat offender at the UTC already operating under a probationary period on another enforcement action. Under such circumstances, any violation is quite serious. The very premise of the

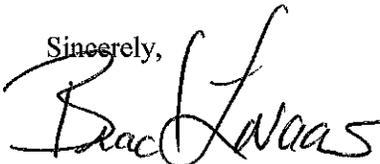
regulated solid waste system is to protect the public by ensuring that all waste is handled by a certificated hauler who operates under strict state law and regulation.

- **Decision #28:** The Initial Order supports its reasoning for a reduced and suspended fine by referencing the Company's pending application for limited authority. This rationale is misplaced and should not be a factor here, especially with repeat violators. Enforcement should not be subverted under the cover of a pending and incomplete certificate application, the procedural and substantive sufficiency of which will be decided long after the filing date for Administrative Review in this action. Again, we raise the issue of lack of notice regarding an application for authority.
- **Generally:** WRRRA has witnessed a recent trend of illegal operators who submit incomplete applications, receive months of "technical assistance" in processing of the application, which under the rule could have been outright rejected, and then withdraw those applications after docketing and protests from WRRRA members are received. This, of course, allows them the putative cover of "applicant status" which they then use to mitigate appropriate fines and dodge consequences in the underlying enforcement action once the application is withdrawn.
- **Generally:** These findings appear to erode the Commission's latest 2013 enforcement policy and suggest that technical assistance to known violators overrides requirements for compliance with the law and recognition that existing certificated carriers, who have not failed or refused to provide service to the satisfaction of the Commission, are not encouraged or notified about this process. This decision, if left standing will continue a disturbing trend of disregard for WUTC enforcement of its own statutes. It will also continue to cost the regulated companies and local governments revenues, which ultimately then are made up by rate payers and tax payers. Contrary to the reasoning of the Initial Order, even the WUTC's ability to provide regulatory oversight of certificated companies and enforcement against uncertificated companies providing unauthorized solid waste collection activities, is harmed through the loss of regulated revenues and the corresponding reduction in the WUTC Regulatory Fee.

This is the first solid waste company adjudicative proceeding at the WUTC in which WRRRA has not participated in decades, and occurred due to an apparent change in notification regarding the existence of the proceeding. Neither WRRRA, Republic Services/Rabanco- the certificated hauler for the area, nor any WRRRA Member Company were notified of this action by the Commission and thus were not parties to the action. Accordingly, we ask Commission Staff to file a Petition for Administrative Review of the initial order in TG-151573 and encourage Staff to engage in a dialogue with WRRRA and affected member companies. Without adequate enforcement, the entire regulated system is undermined, and we send the message that crime does in fact pay.

Please feel free to contact myself or the association's attorneys, Jim Sells (jamesells@comcast.net) and Rod Whittaker (rod@wrra.org) or Dave Wiley (dwiley@williamskastner.com), representing Republic Services/Rabanco. We are eager to offer any perspective and resources necessary to assist Commission Staff with this matter.

Sincerely,



Brad Lovaas
Executive Director