

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

In re the Matter of Determining the Proper)	DOCKET TG-072226
Carrier Classification of)	
)	ORDER 05
GLACIER RECYCLE, LLC;)	
HUNGRY BUZZARD RECOVERY, LLC;)	ORDER DENYING
AND T&T RECOVERY, INC.)	HUNGRY BUZZARD’S MOTION
)	TO DISMISS
.....)	

MEMORANDUM

- 1 **NATURE OF PROCEEDING.** Docket TG-072226 involves a special proceeding instituted under Revised Code of Washington (RCW) 81.04.510 by the Washington Utilities and Transportation Commission (Commission) on its own motion to determine whether three companies holding motor freight common carrier permits under RCW 81.80 are operating as solid waste collection companies, hauling solid waste for compensation without the necessary certificate required by RCW 81.77.040 and Washington Administrative Code (WAC) 480-70-016.
- 2 **HUNGRY BUZZARD’S MOTION TO DISMISS.** On March 24, 2008, Hungry Buzzard Recovery, LLC (Hungry Buzzard), filed a Motion to Dismiss (Motion), seeking to have the company excused from the proceeding on a promise to comply with any final decision entered in this matter. In sum, Hungry Buzzard contends that because it is no longer engaging in the activities that led the Commission to institute this action, the proceeding against it is now moot because no meaningful relief remains available. *Motion*, at 2.
- 3 **COMMISSION STAFF’S RESPONSE TO MOTION TO DISMISS.** On April 3, 2008, Commission Staff (Staff) filed its Response Opposing Hungry Buzzard’s Motion to Dismiss. Staff contends that Hungry Buzzard’s ongoing operations, although no longer directly involving the Weyerhaeuser facility in Longview, Washington, remain subject to investigation within the scope of this proceeding.
- 4 **REQUEST FOR ORAL ARGUMENT.** On April 7, 2008, Hungry Buzzard filed a letter with the Commission requesting oral argument on its motion. This matter is

straightforward and oral argument is not necessary. **Hungry Buzzard's request for oral argument is denied.**

5 **ANALYSIS.** The Order Instituting Special Proceeding (Order 01) in this matter seeks to determine the nature of Hungry Buzzard's and two other companies' operations and whether or not each company should be required to obtain a certificate of public convenience and necessity under RCW 81.77.040.

6 The Commission's enabling statute allows Staff to investigate "all facts that may indicate the true nature and extent of the [corporation's] operations or acts" and utilize the Commission's subpoena powers to obtain documents and question witnesses, as necessary. Only "*after* having made the investigation" described in the statute is the Commission "authorized and directed to issue the necessary order or orders declaring the operations or acts to be subject to, or not subject to, the provisions of" RCW Title 81. *RCW 81.04.510 (emphasis added).*

7 Order 01 contains four allegations regarding the respondent companies, two of which generally address the companies' alleged collection and transportation of construction, demolition and land clearing (CDL) waste. The other two allegations specifically allege transportation of solid waste to the Weyerhaeuser facility.

8 In this case, the responding companies, including Hungry Buzzard, bear the burden of proving that their alleged operations are not subject to the provisions of RCW 81.77.

9 The Declaration of Marc Christiansen (Christiansen Declaration), one of Hungry Buzzard's managing members, asserts that as of January 2008, "Hungry Buzzard no longer transports any materials to Weyerhaeuser's Longview facility. In fact, as of January 2008 Hungry Buzzard has shut down all operations while it considers its long term opportunities." Christiansen Declaration, ¶ 2. Mr. Christiansen also promises that Hungry Buzzard will comply with the final decision entered in case. Christiansen Declaration, ¶ 3. Based on these statements, Hungry Buzzard argues that the Commission's dispute with the company has been resolved and that no further relief can be obtained in this proceeding. *Motion*, at 3.

10 A case becomes "moot" when it no longer presents a justiciable controversy because issues involved have become academic or dead, has already been resolved, and the issue is not a recurring one likely to be raised again between the parties.¹ Further, our

¹ Black's Law Dictionary (Abridged 5th Edition, 1983), at 522.

Supreme Court has held that “a case is moot if a court can no longer provide effective relief,” stating that as a general rule, courts will not review a moot case.²

11 Nevertheless, our Supreme Court has indicated its willingness to review moot cases that present issues of continuing and substantial public interest.³ The Court has adopted a multi-factor test for determining when a moot case merits review. These factors include (a) whether the issue is of a public or a private nature; (b) whether an authoritative determination is desirable to provide future guidance to public officers; and (c) whether the issue is likely to recur.⁴

12 As noted above, in this case Staff seeks to determine whether or not Hungry Buzzard is operating as a solid waste collection company without the required certificate. The case against Hungry Buzzard would clearly be moot if the company had obtained the required certificate or otherwise resolved its dispute to Staff’s satisfaction. The case might also be considered moot if Hungry Buzzard ceased operations entirely.

13 Here, Staff asserts that its dispute with Hungry Buzzard has not been resolved by Hungry Buzzard’s decision to stop delivering waste to the Weyerhaeuser facility in Longview. According to Staff’s Response, the Christiansen Declaration, by itself, does not meet the company’s burden of proving that Hungry Buzzard is not a solid waste collection company.

14 Further, Staff’s Response demonstrates that Hungry Buzzard has not “shut down all operations” as originally asserted in Hungry Buzzard’s Motion. According to a clarification from Hungry Buzzard’s attorney, the company “still operates as a trucking company of recyclable materials, “hauling materials to alternate facilities, but not to Weyerhaeuser’s facility in Longview.” Thompson Declaration, ¶ 5.

15 Finally, Staff’s Response points out that Hungry Buzzard has not provided any response to data requests served on February 27, 2008. Thompson Declaration, ¶ 2.

16 **COMMISSION DECISION.** Hungry Buzzard continues to operate as a trucking company of recyclable materials. Further, Hungry Buzzard has not yet responded to

² *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793 (1984).

³ *Marriage of Horner*, 151 Wn.2d 884, 891, 93 P.3d 124 (2004), citing *Westerman v. Cary*, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994) (quoting from *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)).

⁴ *Id.*, at 892, citing *Westerman*, at 286-87

Staff's discovery requests which might clarify the type and extent of the company's current operations. Staff wishes to complete its investigation into Hungry Buzzard.

- 17 Releasing Hungry Buzzard from the classification proceeding at this early stage cannot be accomplished unless Hungry Buzzard has clearly demonstrated that the company's activities are beyond the Commission's jurisdiction and that it cannot be required to obtain a certificate under RCW 81.77.040. As the record now stands, Hungry Buzzard has not provided sufficient information to support such a conclusion.
- 18 Staff is statutorily authorized to conduct and complete its investigation into Hungry Buzzard's operations under RCW 81.04.510. Hungry Buzzard's changed operational schedule with regard to the Weyerhaeuser facility in Longview has not mooted the issues raised in the Order Instituting Special Proceeding. Therefore, Hungry Buzzard's Motion to Dismiss is denied and, at this time, we need not reach the Supreme Court's multi-factor test for determining when a moot case continues to merit further proceedings or review.

ORDER

THE COMMISSION ORDERS That Hungry Buzzard's Motion to Dismiss is denied.

Dated at Olympia, Washington, and effective April 7, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge